

Item No. 01

(Court No. 1)

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

(By Video Conferencing)

Original Application No. 461/2022

Social Action for Forest & Environment (SAFE)

Applicant

Versus

Union of India

Respondent

Date of hearing: 11.07.2022

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

Applicant: Mr. Nidhesh Gupta, Senior Advocate with Mr. Saksham Maheshwari &  
Mr. Vanshdeep Dalmia, Advocates

**ORDER**

1. Challenge in this application is to Notification dated 20.04.2022 and Clause A (i) of Notification dated 09.05.2022 under section 3 of the Environment (Protection) Act, 1986 (EP Act) read with sub-rule (4) of rule 5 of the Environment (Protection) Rules, 1986 amending the EIA Notification dated 14.09.2006 on the ground of the said notifications being ultra vires the EP Act.

2. By Notification dated 20.04.2022, the EC process in respect of certain Category 'B' projects has been decentralized power to grant EC assigned to SEIAA instead of EAC of MoEF&CC while by Notification dated 09.05.2022, duration of convening rescheduled public hearing meeting has

been shortened and authority allowed to be given to supervise the public hearing to the SDM, where the project is in jurisdiction of one sub-division.

3. We have heard learned Counsel for the applicant. It is submitted that both the Notifications are ultra-vires the Environment (Protection) Act, 1986 and Rules. Decentralizing the power of appraisal of large projects and assignment of such power to SEIAA will be against the interest of environment in absence of capacity of the said bodies. General Condition appended to the EIA notification dated 14.9.2006 has been wrongly dispensing with in respect of minor mineral projects so that in situations stipulated in the said Condition, appraisal will now be done by SEIAA and not by the MoEF&CC. Procedure of Draft Notification under Rule 5(3) of the EP Rules has been wrongly avoided.

4. The impugned notifications are as follows:

**Notification dated 20.4.2022**

**“S.O. 1886(E).**—WHEREAS, the Central Government in the erstwhile Ministry of Environment and Forests, in exercise of its powers under sub-section (1) and clause (v) of sub-section (2) of section (3) of the Environment (Protection) Act, 1986 has published the Environment Impact Assessment Notification, 2006 (hereinafter referred to as the EIA Notification, 2006), vide number S.O.1533 (E), dated the 14th September, 2006 for mandating prior environmental clearance for certain category of projects;

And whereas, the State Environment Impact Assessment Authorities (SEIAAs) have been constituted under sub-section (3) of section 3 of the Environment (Protection) Act, 1986 for implementation of the EIA Notification, 2006 at State level for exercising delegated powers to consider and grant Environmental Clearance (EC) for all proposals under Category B;

And whereas, the SEIAAs have gained substantial experience over the past fifteen years in the EC appraisal process and the process at the State level has also been made completely online through the PARIVESH portal for efficient and transparent disposal of EC proposals;

**And whereas, the Central Government deems it necessary to further decentralise the EC process for facilitating clearances at State level;**

And whereas, as on date, category ‘B’ projects, relating to national defence and strategic importance with significant element of

security involvement are also being appraised at the State level which, the Central Government deems it necessary to be appraised centrally taking into account national security concerns;

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 sub-rule (4) of rule 5 of the Environment (Protection) Rules, 1986, **the Central Government, after having dispensed with the requirement of notice under clause (a) of sub-rule (3) of rule 5 of the said rules, in public interest, hereby makes the following further amendments** in the notification of the Government of India, in the erstwhile Ministry of Environment and Forests, number S.O. 1533 (E), dated the 14th September, 2006, namely:-

In the said notification,-

(1) in paragraph 4, for sub-paragraph (iii a), the following shall be substituted, namely:-

**(iii a) Such Category 'B' projects, relating to the National defence or strategic or security importance or those as notified by the Central Government on account of exigencies such as pandemics, natural disasters or to promote environmentally friendly activities under National Programmes or Schemes or Missions or such projects which are inordinately delayed beyond the stipulated timeline as laid down in this notification and also meet the criteria as laid down in this regard from time to time, shall be considered at the Central level as Category 'B' projects;**

(2) in the Schedule,-

(i) against item 1(a),-

(a) in column (3),-

(A) for ">100 ha. of mining lease area in respect of non-coal mining lease", the following shall be substituted, namely:-

">250 ha mining lease area in respect of major mineral mining lease other than coal";

(B) for the symbol, figures and letters "> 150 ha", the symbol, figures and letters "> 500 ha" shall be substituted;

(b) in column (4),-

(A) for "≤ 100 ha of mining lease area in respect of non-coal mine lease", the following shall be substituted, namely:-

"All mining lease area in respect of minor mineral mining leases and ≤ 250 ha mining lease area in respect of major mineral mining lease other than coal";

(B) for the symbols, figures and letters "≤ 150 ha", the symbols, figures and letters "≤ 500 ha" shall be substituted;

(ii) against item 1(c),-

(a) in column (3),-

(A) in serial number (i), for the symbols, figures and letters "≥ 50 MW", the symbols, figures and letters "≥100 MW" shall be substituted;

(B) serial number (ii) and the entries relating thereto shall be omitted;

(b) in column (4),-

(A) in serial number (i), for the symbol, figures and letters "< 50 MW", the symbol, figures and letters "< 100 MW" shall be substituted;

(B) in serial number (ii),-

(I) the word, symbol and figures "and < 50,000 ha." shall be omitted;

(II) in point (c) in the table, the word, symbol and figures "to < 50,000" shall be omitted;

(c) in column (5), after serial number (ii), the following serial number shall be inserted, namely:-

"(iii) Irrigation projects involving Inter-State issues shall be appraised at Central level without change in category.";

(iii) against item 1(d),-

(a) in column (3), for the symbols, figures and letters "≥ 50 MW", the symbols, figures and letters "≥100 MW" shall be substituted;

(b) in column (4), for the symbol, figures and letters "< 50 MW", the symbol, figures and letters "< 100 MW" shall be substituted;

(iv) against item 2(a),-

(a) in column (3), for the symbols and figure "≥1", the symbols and figures "≥ 2.5" shall be substituted;

(b) in column (4), for the symbols and figure "<1", the symbols and figures "< 2.5" shall be substituted;

(c) in column (5), after the existing paragraph, the following paragraph shall be inserted, namely:-

"Integrated coal mining projects with washeries located within mining lease area shall continue to be considered at Central level or State level, as the case may be, as per the extant threshold for coal mining projects.";

(v) against item 2 (b),-

(a) in column (3), the existing entries shall be omitted;

(b) in column (4), for the symbol, figures, words and letters "< 0.5 million TPA throughput", the words "All mineral beneficiation projects irrespective of the procedure for beneficiation" shall be substituted;

(c) in column (5), after the existing paragraph, the following paragraph shall be inserted, namely:-

"Integrated mining projects with beneficiation plants located within mining lease area shall continue to be considered at Central level or State level, as the case may be, as per the extant threshold for mining projects.";

(vi) against item 7 (a),-

(a) in column (3), for the words "All projects", the words "All new projects" shall be substituted;

(b) in column (4), the following shall be inserted, namely:-

"All expansions projects, including airstrips, which are for commercial use."

#### **Notification dated 09.05.2022**

**"S.O. 2163(E).**—Whereas, the Central Government in the erstwhile Ministry of Environment and Forests, in exercise of its powers under sub-section (1) and clause (v) of sub-section (2) of section (3) of the Environment (Protection) Act, 1986 has published the Environment Impact Assessment Notification, 2006 (hereinafter referred to as the EIA Notification, 2006) vide number S.O.1533 (E), dated the 14<sup>th</sup> September, 2006, for mandating prior Environmental Clearance (EC) for certain category of projects;

And whereas, for the grant of prior EC, public hearing is mandatory and it is an integral part of the EC process, unless specifically exempted for certain activities as mentioned in the EIA Notification 2006, as amended from time to time;

And whereas, on certain occasions, the public hearings have been postponed due to various reasons often being beyond the control of the Project Proponent and as per the provisions of the EIA Notification 2006, the whole process for the public hearing is to be started afresh resulting in undue delay in completing the EC process;

And whereas, one of the factors which results in delay or postponement of the public hearings is the non-availability of the District Magistrate or his representative not below the rank of an Additional District Magistrate to preside over the proceedings of the public hearing;

And whereas, the Central Government has been receiving representations to streamline the public hearing process;

And whereas, the Central Government taking into account the public interest involved, deems it necessary **to streamline the process of the public hearing by reducing undue delays and facilitating public participation without interrupting the access to the information pertaining to the project and also make a provision for the District Magistrate to authorise an officer not below the rank of Sub-Divisional Magistrate to preside over the Public Hearing to avoid such delay;**

And whereas, the Central Government further deems it necessary to clarify the ambiguity in Schedule 1(b) with regard to off-shore and on-shore oil and gas exploration, development and production, as amended vide notification no. S.O. 236(E), dated the 16<sup>th</sup> January, 2020 and as the Central Government has delegated the power to the State Environmental Impact Assessment Authority to grant ECs to all minor mineral mining projects, irrespective of mine lease area, the applicability of the general condition for minor minerals has lost its relevance thereby, in this regard, the Central Government

also deems it necessary to remove the applicability of the general condition for mining of minor minerals;

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 sub-rule(4) of rule 5 of the Environment (Protection) Rules, 1986, the Central Government, **after having dispensed with the requirement of notice under clause (a) of sub-rule(3) of rule 5 of the said rules, in public interest**, hereby makes the following further amendments in the notification of the Government of India in the erstwhile Ministry of Environment and Forests number S.O. 1533 (E), dated the 14<sup>th</sup> September, 2006, namely:-

In the said notification,-

(A) In the Schedule,-

(i) against item 1(a), in column (5), for the portion beginning with the words "General Conditions shall apply except." and ending with the words "on account of inter-state boundary", the following shall be substituted, namely:-

**"General Conditions shall apply except for mining of minor minerals.";**

(ii) against item 1(b), in column (3), for word "except", the words "with or without" shall be substituted;

(B) in Appendix IV,-

(i) in paragraph 3, after sub-paragraph 3.3, the following sub-paragraph shall be included namely :-

**"3.3 (a) In the event of any such postponement referred to in sub-paragraph 3.3, the time duration for convening the rescheduled public hearing should not be less than forty-five days from the date of first advertisement already published in accordance to para 3.1 for initial date of public hearing and it shall be ensured that a minimum notice period of fifteen days shall be provided to the public before the re-scheduled date of the public hearing, for furnishing the responses in writing: Provided that SPCB or UTPCC along with concerned authorities, as mentioned at para 2.2, shall ensure that all requisite documents are available to public in accordance with sub-paragraphs 2.3 and 2.4 from the date of first advertisement published for the initial date of public hearing till convening of the rescheduled public hearing.";**

(ii) in paragraph 4.0,-

(a) after the words "his or her representative not below the rank of an Additional District Magistrate", the words "or any other District Level Officer authorised by him or her in this behalf" shall be inserted;

(b) after the existing paragraph, the following proviso shall be inserted, namely :-

**“Provided that in case the project or activity is confined to the territorial jurisdiction of one sub-division, the District Magistrate/District Collector/Deputy Commissioner, as the case may be, may alternatively authorise any officer not below the rank of Sub-Divisional Magistrate to supervise and preside over the entire public hearing process assisted by a representative of SPCB or UTPCC, as the case may be.”**

*Note: The principal notification was published in the Gazette of India, Extraordinary, Part II, section 3, sub section(ii), vide number S.O. 1533(E), dated the 14<sup>th</sup> September, 2006 and was last amended, vide the notification number S.O. 1953(E), dated the 27<sup>th</sup> April, 2022.”*

**(emphasis added)**

5. From the notification, it is seen that several projects are sought to be decentralized by giving power to SEIAA for grant of EC which power was being exercised by MoEF&CC. Object of appraisal of impact of a project on environment and grant of EC is to give effect to the ‘Precautionary’ principle of environmental law, which is part of sustainable development. Such appraisal has to be meaningful as held inter-alia in *Hanuman Laxman Aroskar vs. Union of India*, (2019)15 SCC 401. The environmental regulation mechanism for conducting such appraisal must be effective. Authority/agency conducting such appraisal must have requisite capacity. In its absence such large-scale decentralization may defeat the object of sustainable development and appraisal may be farce. Inadequacy of capacity of environmental regulators has been noted by this Tribunal inter-alia in order dated 01.06.2020 in OA No. 73/2020, *In re: Gas Leak at LG Polymers Chemical Plant in RR Venkatapuram Village, Visakhapatnam in Andhra Pradesh* as follows:

“xxx .....xxx.....xxx

37. *Dealing with environmental issues, including unfortunate incidents, the Tribunal has found need to revamp the existing regulatory framework quantitatively and qualitatively. The Tribunal*

has noted the observations of the CAG and parliamentary Committees on the subject. Reference may be made to order dated 22.11.2019 in O.A. No. 837/2018, Sandeep Mittal vs. Ministry of Environment, Forests & Climate Change & Ors. after noting the status of current monitoring mechanism of the MoEF:

“5. Further affidavit has been filed on 25.09.2019 on behalf of the MoEF&CC stating as follows:-

“1 to 6 xxx xxx xxx

7. **That according, if only the projects issued EC during 2013-2019 are taken, then the best case scenario in terms of their monitoring could be 2.5 yrs with 50% enhancement in sanctioned staff strength and worst case scenario would be 4.5 years with Man in Position (MIP) which is 32 at present across the ten (10) ROs in the country. Accordingly, the repeat inspection of a unit can only happen after 2.5 yrs and 4.5 yrs, respectively in the above two scenarios. That if all the projects issued EC since 1994 onwards are taken then the best case scenario is 6.5 yrs with 50% enhancement in sanctioned staff strength and worst case scenarios is 13 years with MIP indicating that. The repeat inspection of a unit can only happen after 2.5 yrs and 4.5 yrs, respectively in these two scenarios.**

8. That for Category ‘B’ projects for which compliance monitoring has been directed to be responsibility of SEIAA and SPCB, following to be taken note of:

- a. **Sanctioned staff strength and MIP of SEIAAs and SPCBs/PCCS are still not available.**
- b. **SEIAA and SPCBs are under the administrative control of State Government.**
- c. **There is ambiguity with respect to their present involvement in monitoring of EC conditions.**
- d. **Accordingly, it has been difficult to speculate the timeframe for taking up and completion of monitoring of Cat B projects at present.**
- e. The SEIAAs and SPCBs have been asked to provide information so that the above timeframe may be calculated.

9. That as directed, a Six Monthly Action Plan has been prepared to reduce the timeline, enhance coverage and transparency, reduce requirement of additional human resources while ensuring comprehensive compliance of environmental conditions, thereby resulting in greater protection of the environment on a continuing basis. The Six Monthly Action Plan is placed at Annexure R-2.

10. That as enumerated in the Action Plan, the Ministry plans to carry out a thorough assessment of the quantum of work involved and available human resources and accordingly take up the initiatives for comprehensive refining of the existing monitoring mechanism. Based on this exercise the following action are to be undertaken:



- a. **Filling up of vacant posts wherever applicable.**
- b. **Creation of additional posts in all the agencies to be involved in monitoring and compliance viz. ROs, CPCB, SEIAA and SPCBs; if required.**
- c. **Hiring of young professionals as per feasibility.**
- d. **Creation of new ROs, if required.**
- e. **Utilizing services of CPCB and SPCBs to effectively discharge responsibilities of monitoring.**
- f. **Strengthening Monitoring Cell within the Ministry.**
- g. **Develop web based online mechanism to automate the entire process of inspection and compliance monitoring.**

11. *That the Action Plan provides a detailed roadmap for the coming months which includes:*

- a. **Hiring of an Independent Agency to assess the work requirement.**
- b. **Constitution of Monitoring Evaluation Committee (MEC) to steer and supervise a new monitoring mechanism.**
- c. **Engagement of Consultant for development of web based mechanism for end to end digitization.**

12. *That in the interim, till the larger Action Plan is implemented, in order to improve the monitoring process, following actions has been/will be taken up:*

- a. **Filling up on nine vacant posts of Scientists in the ROs.**
- b. **Strengthening the Monitoring Cell in the Ministry.**
- c. **Delegation of the action on monitoring reports of Category 'B' projects to SEIAA as per the Notification no. SO 637 (E) dated 28<sup>th</sup> February 2014.**
- d. **Evolving a mechanism for online maintenance of monitoring and compliance data with regard to Category-A and Category-B projects and integrating it with the existing PARIVESH portal of the Ministry."**

6. *We have considered the above averments as well as contents of annexures R-I and R-II giving data of the projects and 'six monthly action plan'. We are of the view that the mandate of law is not complied with by the above stand of the MoEF&CC. **It is well acknowledged that there is rampant violation of the Environmental Clearance (EC) conditions. This Tribunal has, in order dated 21.11.2019, noticed serious violations of EC conditions with respect to A Category 'housing projects' in Haryana and found monitoring of***

**conditions of EC ineffective.<sup>1</sup> The said order also refers to earlier orders wherein similar serious violations have been noticed. The violations include absence of scientific management of sewage and solid waste, not having open spaces, illegal drawal of ground water, construction in excess of sanctioned plan etc. It is difficult to say such violations are limited to State of Haryana. In absence of adequate mechanism, such rampant violation are bound to continue defeating the environmental principle of precautionary and sustainable development. In this regard, it is apt to note that this aspect was considered by the Hon'ble Supreme Court in T.N. Godavarman Thirumulpad Vs. Union of India & Ors. (2014) 4 SCC 61. Reference was made to the observations in Lafarge Umiam Mining Private Limited Vs. Union of India, (2011) 7 SCC 338 that power of the regulator under Section 3(3) of the Environment (Protection) Act, 1986 is coupled with duty and that the monitoring mechanism for the clearance conditions was not satisfactory. The Hon'ble Supreme Court also referred to a report on 'Scope, Structure and Processes of National Environment Assessment and Monitoring Authority (NEAMA)' for the Ministry of Environment and Forests, Government of India prepared by Department of Management Studies, Indian Institute of Technology, Delhi. Therein it was found that there are huge gaps in monitoring and enforcement of clearance conditions which defeats the purpose of Environmental Clearance process. The said finding quoted in the judgment is as follows:**

**"Several studies have pointed toward the poor monitoring of the clearance conditions. Huge gaps in monitoring and enforcement of clearance conditions actually defeats the very purpose of grant of conditional environmental clearance."<sup>2</sup>**

- 7. We also note the observations from Report of the Comptroller and Auditor General of India on Environmental Clearance and Post Clearance Monitoring 2016 that there are shortfalls in monitoring of environmental parameters. Reasons for such shortfalls are inadequate staff, inadequate database, not assigning clear responsibility for post EC monitoring, absence of monitoring at regular intervals particularly for critically polluted areas.**
- 8. Thus, there is dire need for revamping the monitoring mechanism by MoEF&CC as well as SEIAAs, CPCB and State PCBs Post EC monitoring processes need revamping in quantitative as well as qualitative terms. There is need to prioritize the projects where potential environmental degradation is high on account of nature of activity as well as area being ecologically sensitive. In respect of such projects and in such areas,**

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<sup>1</sup> Order dated 21.11.2019, O.A. No. 506 / 2019, Mukund Dhote v. UOI & Ors.

<sup>2</sup> Para 10

**monitoring may have to be more intensive and at higher frequency. In no case frequency of monitoring should be less than once in a year.**

- 9. The present scenario of monitoring once in 4.5 years and planned modification resulting in monitoring in 2.5 years is farce and does not meet the requirement of law by any standards. As already observed monitoring has to be, as far as possible, quarterly and in no case less than twice a year.**
- 10. Data of environmental degradation in the form of air, water and soil pollution reflected in the form of 351 polluted river stretches, 122 non-attainment cities and 100 polluted industrial clusters is eloquent testimony of such degradation and failure of monitoring mechanism. Statistics of deaths and diseases on account of such degradation are well known and need not be elaborated here.**
- 11. On being asked, learned counsel for MoEF&CC is unable to even mention the percentage of compliance as according to him there is no such data available, which is shocking. With a view to plan such monitoring, the percentage of compliance must be ascertained. Trend over a period of time in terms of increase in compliance or otherwise must be studied so that there can be corresponding review of mechanism based on correct data. Experience so far shows that with the increasing developments, in absence of adequate monitoring mechanism it would be difficult to check such violations thereby defeating 'precautionary' principle.**
- 12. In view of the above, remedial action may be planned at the earliest. The plan should cover all the sub categories of projects, including B category. Monitoring mechanism needs a also to be evolved for SEIAAs, regional offices of the MoEF&CC and the regional offices of CPCB. Since these steps are inalienable constitutional obligations, steps need to be taken to suitably augment the requisite manpower in these establishments for effective monitoring by MoEF&CC, CPCB and SEIAAs.**
- 13. There is no information about the result of steps taken in terms of 'six monthly action plan' so far. Making of such plan may be of no value unless it is resulting in improvement of the ground situation in terms of strengthening of monitoring, which is not shown to be happening. Expressing difficulties in improving the situation is not a solution. If there is an EC regime, compliance has to be monitored. The principle of Sustainable Development and the Precautionary principle, which have been held to part of 'Right to Life' require that EC conditions are fully complied.**

14. **No satisfactory mechanism exists at present, as shown by the above affidavit itself. It is stated that, at present, it takes 4.5 years for monitoring which means that for such long period the non-compliance continues making mockery of law. There has to be speedy monitoring and speedy action, wherever necessary. There has to be a robust plan for the purpose which is the responsibility of the concerned Government Departments. We place on record our disapproval for the present sorry state-of-affairs and expect meaningful improvement.**
15. **We are, thus, of the view that for meaningful monitoring, all Category A projects are monitored not less than twice in a year and all Category projects are monitored not less than once in a year.**
16. *Let the Secretary, MoEF&CC and Chairman, CPCB hold a meeting with such other experts as may be found necessary and establish and/or augment the institutional setups in MoEF&CC, CPCB and SEIAAs for meaningful monitoring of Category A and B projects in the light of the above observations. Compliance report may be filed before this Tribunal by e-mail at [judicial-ngt@gov.in](mailto:judicial-ngt@gov.in) by MoEF&CC and CPCB. The MoEF&CC may also furnish compliance status by SEIAAs.”*

**(emphasis supplied)**

38. Similarly, vide order dated 11.01.2019 in O.A. No. 95/2018, *Aryavart Foundation vs. M/s Vapi Green Enviro Ltd. & Ors.*, following observations may be noted:

- “37. ..The SPCB has not shown that it took any stringent action as required which can act as deterrent against violation of pollution norms. Simply issuing notice has not brought about the desired results. No closures have been ordered, nor prosecution launched nor other adequate preventive and remedial measures, including assessment and recovery of damages taken. In this respect, there is failure of GPCB. We may only observe that even a regulatory authority may be held accountable if it colludes with polluters by being required to pay damages or errant officers being held liable for action, including prosecution. **Frequent failures of regulatory bodies need to be remedied for meaningful enforcement of environmental norms.** This Tribunal in *Threat to life arising out of coal mining in South Garo Hills district Vs. State of Meghalaya & Ors.*<sup>3</sup>, held that **State machinery is also required to compensate for their negligence and failure which may act as deterrent against the officers who neglected their basic duty of protecting the environment or colluded with the polluters and law violators. The polluters as well as colluding officers are to be made accountable not only by prosecution or closure of industry but also by**

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<sup>3</sup> O.A. No. 110(THC)/2012 Order dated 04.01.2019 para 28-29

**assessing and recovering such damages for loss to the environment as it may not only compensate the environment or victims but also act as deterrent to prevent further damage.**

38. *It is well acknowledged that there is serious threat to the environment in this country. Studies show huge number of pollution related deaths and diseases<sup>4</sup>. Any violation of laid down environmental norms has to be seriously viewed and sternly dealt with.*
39. *It was in the year 1974 that the Water (Prevention and Control of Pollution) Act, 1974 was enacted after noticing that problem of pollution of rivers and streams had assumed considerable importance and urgency on account of growth of industries, threatening the sources of drinking water, the aquatic life and sources of irrigation. After considering the Expert Committee reports on the subject, the statutory framework was adopted giving enormous powers to the Pollution Control Boards (PCBs) for closure, prohibition or regulation of any industries operation or process as well as filing of complaints for prosecution. Minimum sentences have been laid down for violation of the norms. Polluter Pays Principle is an accepted norm within the purview of regulatory regime. The statutory functions of the PCBs, include programs for prevention, abatement and control of pollution and exercise all incidental powers. The CPCB has powers to issue directions to the State Boards. Needless to say, that similar provisions have been made for protection of air quality under the Air (Prevention and Control of Pollution) Act, 1981 as well as for other environmental issues under the Environment (Protection) Act, 1986.*
40. *As already noted, the SPCB is equally accountable for its failure and in appropriate cases can be prosecuted for conspiracy or collusion with other offenders causing pollution. The pollution cannot be allowed to be profitable activity and deterrent action must be taken wherever pollution is found so as to render causing of pollution unprofitable and unacceptable to prevent damage to the health and lives of the citizens. Any polluter must be subjected to heavy and deterrent economic sanctions. Unfortunately, this is not happening as expected for which failure the regulatory authority cannot disown their responsibility.*
41. **We note that the State of Environment in the country, even as per official figures, is alarming. As many as 351 river stretches have been declared to be polluted**

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<sup>4</sup> [https://niti.gov.in/writereaddata/files/new\\_initiatives/presentation-on-CWMI.pdf](https://niti.gov.in/writereaddata/files/new_initiatives/presentation-on-CWMI.pdf)- India ranks 120th in 122 countries in Water Quality Index as per Niti Ayog Report, <https://www.thehindu.com/sci-tech/energy-and-environment/india-ranked-no-1-in-pollution-related-deaths-report/article19887858.ece>- Most pollution-linked deaths occur in India, <https://www.hindustantimes.com/india-news/delhi-world-s-most-polluted-city-mumbai-worse-than-beijing-who/story-m4JFT063r7x4Ti8ZbHF7mM.html>- Delhi's most polluted city, Mumbai worse than Beijing as per WHO; [http://www.un.org/waterforlifedecade/pdf/global\\_drinking\\_water\\_quality\\_index.pdf](http://www.un.org/waterforlifedecade/pdf/global_drinking_water_quality_index.pdf)- WHO Water Quality Index.

**by the CPCB. Vide order dated 20.09.2018 in Original Application No. 673/2018, News item published in 'The Hindu' authored by Shri. Jacob Koshy Titled "More river stretches are now critically polluted: CPCB", this Tribunal considered the issue of such polluted stretches and noticed the directions of the Hon'ble Supreme Court from time to time for stopping discharge of untreated sewage and effluents in water bodies. Such discharge causes serious diseases, including Cholera and Typhoid. Sewage treatment capacity was disproportionate to the sewage generated. As per some studies noted in the order, 75 to 80% water is polluted in India. Pollution of River Yamuna<sup>5</sup>, Ganga<sup>6</sup>, Hindon<sup>7</sup>, Ghaggar<sup>8</sup>, Sutlej and Beas<sup>9</sup>, Son<sup>10</sup>, Subarnarekha<sup>11</sup>, Ami<sup>12</sup> were also noted. The States were directed to prepare action plans to make the water of the polluted river stretches atleast fit for bathing within six months from the dates of preparation of approved action plans. When the matter was reviewed on 19.12.2018, it was found that only 16 States had prepared action plans, most of which were not complete. The direction was issued for payment of environmental compensation per month by every State/UT for failure to prepare action plan and also to furnish Performance Guarantees for execution of the action plans within the stipulated time.**

42. **This Tribunal in News Item Published in "The Times of India' Authored by Shri Vishwa Mohan Titled "NCAP with Multiple timelines to Clear Air in 102 Cities to be released around August 15"<sup>13</sup> has dealt with the issue of 102 air polluted cities identified by the CPCB. Taking into account eminent threat to human health as a result of air pollution, this Tribunal directed all the States/UTs with non-attainment cities to prepare action plans for bringing down the standards of air quality within the prescribed norms within six months. The Tribunal further constituted the Air Quality Monitoring Committee to ensure implementation of such action plans. The CPCB and the SPCBs were entrusted with the responsibility to design a robust nation-wide ambient air quality monitoring program to strengthen the existing monitoring network.**

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<sup>5</sup> Manoj Mishra Vs. Union Of India O.A. No. 6/2012 order dated 26.07.2018

<sup>6</sup> M.C. Mehta vs. Union of India O.A. No. 200/2014 order dated 06.08.2018

<sup>7</sup> Doaba Paryavaran Samiti vs. State of U.P. and Ors. O. A. No. 231/2014 Order dated 08.08.2018

<sup>8</sup> Stench Grips Mansa's Sacred Ghaggar River (Suo-Motu Case) and Yogender Kumar O.A. No. 138/2016 Order dated 07.08.2018

<sup>9</sup> Sobha Singh and Ors. Vs. State of Punjab and Ors. O.A. No. 916/2018 Order dated 14.11.2018

<sup>10</sup> Amarshakti vs. State of Bihar and Ors. O.A. No. 596/2016 Order dated 24.08.2018

<sup>11</sup> Sudarsan das vs. State of West Bengal and Ors. O.A. No. 173/2018 Order dated 04.09.2018

<sup>12</sup> Meera Shukla vs. Municipal Corporation, Gorakhpur and Ors. O.A. No. 116/2014 Order dated 25.10.2018

<sup>13</sup> Original Application No. 681/2018 Order dated 08.10.2018

43. ***In re: Compliance of Municipal Solid Waste Management Rules, 2016<sup>14</sup>, the Tribunal directed preparation of action plans for solid waste management consistent with the Solid Waste Management Rules, 2016 in view of the fact that as per annual report of the CPCB prepared in April 2018, most of the States were not complying with the statutory rules.***
44. ***As already noted earlier, this Tribunal considered the matter of polluted industrial clusters in News Item published in “The Asian Age” Authored by Sanjay Kaw titled “CPCB to rank industrial units on pollution levels” vide order dated 13.12.2018. It was noted that 43 industrial clusters in 16 States were identified as Critically Polluted Areas and 32 industrial clusters were categorized as Seriously Polluted Areas. In 2017-18, the number of identified polluted industrial clusters went upto 100. Accordingly, the Tribunal directed the State Pollution Control Board to finalize time bound action plan to restore the environmental quality as per the norms laid down by the CPCB and directed CPCB and SPCBs to take coercive measures against the violators on the basis of ‘Precautionary Principle’ and ‘Polluter Pays Principle’.***
45. ***In Techhi Tagi Tara Vs. Rajendra Singh Bhandari & Ors.<sup>15</sup>, the Hon’ble Supreme Court noted that the State Pollution Control Boards (SPCBs) continued to be manned by persons not having expertise or professional experience. The State Governments were not able to appoint qualified, impartial, and politically neutral persons of high standing to the crucial regulatory posts. Political appointments were being made in blatant violation of Apex Court guidelines to debar favorable persons being appointed.<sup>16</sup> The appointments being made did not***

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<sup>14</sup> Original Application No. 606/2018 Order dated 31.08.2018

<sup>15</sup> (2018) 11 SCC 734 para 3-4, 28-34: The judgment takes into consideration various Committees appointed laying down guidelines for the functioning of SPCBs viz.,

- (a) Bhattacharya Committee (1984) proposed that the structural organization of SPCBs should consist of technical services, scientific services, planning, legal services, administrative services, accounts, training cell and research and development.
- (b) The Belliappa Committee (1990) - Recommended (i) introducing elaborate monitoring, reporting and organizational systems at the national level along with four regional centres and one training cell in each Board, (ii) effecting suitable changes in the Boards recruitment policy to enable them induct persons with suitable academic qualifications, and (iii) ensuring that the Chairman and Member-Secretary are appointed for a minimum of three years.
- (c) The Administrative Staff College of India (1994) - Recommended, inter alia, that (i) the SPCBs be reoriented for implementing the instrument mix of legislation and regulation, fiscal incentives, voluntary agreements, information campaigns and educational programmes.
- (d) The Menon Committee – Recommending that the State Governments should not interfere with recruitment policies of the SPCBs, especially where the Boards are making efforts to equip their institutions with more and better trained engineering and scientific staff.

<sup>16</sup> *ibid.* The judgment notes the report of the Tata Institute of Social Sciences published in 2013 titled “Environmental Regulatory Authorities in India: An Assessment of State Pollution Control Boards” which stated about the appointments to the SPCBs that time and again across state governments have not been able to choose a qualified, impartial, and politically neutral person of high standing to this crucial regulatory post. The recent appointments of chairpersons of various State Pollution Control Boards are in blatant violation of the Apex Court

***inspire the confidence of the people. The Hon'ble Supreme Court directed all the States to frame guidelines and recruitment rules within six months. It may be pertinent to lay emphasis on the following observations of the Hon'ble Supreme Court in the aforesaid judgment:***

***“Unless corrective measures are taken at the earliest, the State Governments should not be surprised if petitions are filed against the State for the issuance of a writ of quo warranto in respect of the appointment of the Chairperson and members of the SPCBs. We make it clear that it is left open to public spirited individuals to move the appropriate High Court for the issuance of a writ of quo warranto if any person who does not meet the statutory or constitutional requirements is appointed as a Chairperson or a member of any SPCB or is presently continuing as such.”***

- 46. In addition to this, the Parliamentary Standing Committee on Science and Technology, Environment and Forest, August 2012 in its recommendations on the working of the SPCBs was perturbed to note that the SPCBs were not performing their duties vigilantly and recommended that MoEF&CC must ensure proper and effective coordination between the CPCB and SPCBs and take necessary steps to make the Pollution Control Boards functional and ensure that the discharge their duties effectively and efficiently.<sup>17</sup>***
- 47. During the hearing it was stated by the learned Counsel for the GPCB that guidelines in terms of Techī Tagī Tara (supra) have been issued and thus, the judgment has been complied with. However, he has not been able to dispute that the persons appointed are not having technical or professional qualifications or background as expected.***
- 48. This Tribunal, on 20.07.2018, in Satish Kumar vs. U.O.I & Ors.<sup>18</sup> also observed that persons of judicial background may be required in key position in PCBs as several functions of the SPCBs are quasi-judicial.***
- 49. The order of this Tribunal dated 07.08.2018 in Stench Grips Mansa's Sacred Ghaggar River (Suo-Moto Case)<sup>19</sup> noted that***

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guidelines. The primary lacuna with this kind of appointment was that it did not evoke any trust in the people that decisions taken by an ex-official of the State or a former political leader, appointed to this regulatory post through what appeared to be a totally non-transparent unilateral decision. Many senior environmental scientists and other officers of various State Pollution Control Boards have expressed their concern for appointing bureaucrats and political leader as Chairpersons who they feel not able to create a favourable atmosphere and an effective work culture in the functioning of the Board.

<sup>17</sup> Accessible at:

<http://164.100.47.5/newcommittee/reports/EnglishCommittees/Committee%20on%20S%20and%20T,%20Env.%20and%20Forests/230.pdf>

<sup>18</sup> O.A No. 56 (THC) of 2013

<sup>19</sup> O.A. No. 138/2016 (T<sub>NHRC</sub>)



*a task force must be constituted in every district and State to give reports on the environmental issues which should be published on the websites.*

50. **The Tribunal in the order on 08.08.2018 in Doaba Paryavaran Samiti Vs. State of U.P. & Ors.<sup>20</sup> noted that statutory authorities had miserably failed and were required to be held accountable for their failure.**
51. *In view of the fact clean environment, apart from other statutory provisions, is a mandate of Article 21 of the Constitution, causing of pollution having serious implications on health of the citizens cannot be accepted and no responsible authority could simply throw its hands in despair.<sup>21</sup>*
52. *Thus, there being far from satisfactory governance on the part of the SPCBs, as depicted by the compiled data, resulting in large number of deaths and diseases in the country, remedial measures are required. Lack of effective governance in the present case is patent from absence of steps for prosecution of the guilty persons or recovery of damages for restoration of the environment which is primary responsibility of the SPCB. Appointment process does contribute to such ineffectiveness.*
53. *There is, thus, urgent need to review the qualification and appointment procedure so as to realistically comply with the mandate of the judgment of the Hon'ble Supreme Court. There is also need to carry out performance audit of functioning of all the Pollution Control Boards and Pollution Control Committees in the country and to identify remedial steps required in manning and functioning of SPCBs and PCCs or otherwise. Unless strong effective regulatory regime is in place, and shortcomings identified and remedied to expect clean environment would be unrealistic and merely a dream.”*

**(emphasis supplied)**

39. *Vide order dated 28.08.2019 in O.A. No. 95/2018, Aryavart Foundation vs. M/s Vapi Green Enviro Ltd. & Ors., following observations may be noted:*

- “13. *Report dated 10.07.2019 filed by the CPCB is on the subject of performance audit of the State PCBs/PCCs. The report merely ranks the PCBs/PCCs, without proper assessment of the functioning.*
14. **What is expected is performance audit on issues such as adequacy with regard to environmental monitoring, efficacy of regulatory setup/mechanisms, staffing both technical and scientific manpower, scientific equipments, logistics support, competence etc. rather**

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<sup>20</sup> O.A. No. 231/2014

<sup>21</sup> *Supra* note 18

**than ranking the States. Let the same be done and state-wise reports submitted based on thorough analysis in terms of statutory functions. CPCB may devise an appropriate mechanism for the purpose. We also direct that all vacant positions in the SPCBs/PCCs may be filled up at the within four months and the Chief Secretaries of the States/UTs may ensure that there is no embargo in doing so, so that effective steps for protection of environment can be taken. It is also necessary to direct that the laboratories established by the SPCBs/PCCs, at headquarters as well as regional centers, are duly recognized for purposed of enforcement of environmental laws. The concerned authorities may take further steps accordingly. The CPCB may compile a report and file before the next date. SPCBs/PCCs may utilize the funds available with them, under EC/Consents or other heads instead of approaching other authorities and on that pretext not performing their essential function. The MoEF&CC may consider constituting an appropriate authority for the purpose with representatives from Central and State authorities on the pattern of Compensatory Afforestation Fund Management and Planning Authority (CAMPA) or otherwise. A compliance report be filed by the MoEF&CC before the next date.**

..... ..

Directions:

- iii. *Performance audit be done with reference to issues such as adequacy with regard to environmental monitoring, efficacy of regulatory setup/mechanisms, staffing both technical and scientific manpower, adequacy of laboratories and scientific equipments, logistics support, competence etc. rather than ranking the States and state-wise reports submitted along with recommendations based on thorough analysis in terms of statutory functions before the next date. CPCB may devise an appropriate mechanism for the purpose. CPCB and MoEF&CC may file a compliance report with reference to observations in para 14 above.”*

**(emphasis supplied)**

6. Further, finding inadequacy in performance of SEIAAs, in the context of Maharashtra, vide order dated 8.6.2021 in OA No. 13/2021 (WZ), *Shashikant Vithal Kamble v. M/s. Key Stone Properties & Ors Appeal No. 34/2020(WZ)*, the Tribunal directed performance audit of SEIAA as follows:

**“Since the allegations of this nature are frequently being made before this Tribunal and prima facie there appears to be fundamental flaw in working of the SEIAA in question, resulting in defeating the statutory mandate of prior EC and**

***directions of the Hon'ble Supreme Court, we direct constitution of a three-member Committee of Ministry of Environment, Forest and Climate Change (MoEF&CC) headed by an officer not below the level of Additional Secretary with the assistance of Chairman, Central Pollution Control Board (CPCB) to conduct functional audit of SEIAA, Maharashtra to find out how such frequent blatant violations are taking place and how the situation can be remedied."***

7. Similar observations were made in the context of SEIAA, UP vide order dated 13.8.2021 in OA 199/2021, Saviour Park Apartment Owners Assn vs. State of UP and others:

***"We are of the view that on the pattern of above orders passed by this Tribunal in Appeal No. 34/2020(WZ) and OA No. 13/2021 (WZ), apart from considering the remedial action against violations, two-member Committee comprising Additional Secretary, MoEF&CC, to be nominated by the Secretary MoEF&CC and the Chairman, CPCB need to conduct functional audit of SEIAA, UP to find out how frequent blatant violations are taking place and how the situation can be remedied."***

8. In pursuance of orders of this Tribunal, performance audit has been conducted and it has been found that SEIAA, Maharashtra and SEIAA, UP need to upgrade their capacity. In report submitted in OA No. 13/2021 (WZ), *Shashikant Vithal Kamble v. M/s. Key Stone Properties & Ors.*, in Chapter 8 and 9 of the report, key findings and recommendations have been given about functioning of SEIAA, Maharashtra, showing that there is huge gap in requirement and capacity of SEIAA. Similar is the position with regard to functioning of SEIAA, UP as per report submitted in O.A No. 199/2021, *Saviour Park Apartment Owners Association v. State of U.O & Ors.* Thus, unless the Central Government is satisfied that functioning of SEIAAs are upgraded to enable it to take requisite load, decentralization may result in irreversible environmental degradation by unchecked violations.

9. Thus, even though decentralization of EC process may not by itself be objectionable, adequacy of capacity for proper appraisal for grant of EC

in the light of observations in Hanuman Laxman (*supra*) needs to be ensured.

10. To consider this aspect, we require the MoEF&CC to file its response within four weeks by e-mail.

List for further consideration on 13.09.2022.

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

The applicant may serve a copy of paperbook to the MoEF&CC and file an affidavit of service within one week.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Prof. A. Senthil Vel, EM

July 07, 2022  
Original Application No. 461/2022  
AB