

**BEFORE THE NATIONAL GREEN TRIBUNAL
SPECIAL BENCH**

(By Video Conferencing)

Original Application No. 14/2021(WZ)
(I.A. No. 90/2021)

Satish Sanjay Magade

Applicant

Versus

M/s Rhythm Country & Ors.

Respondent(s)

Date of hearing: 22.08.2022

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

Respondent(s): Mr. Rohit Arvind Jain and Mr. R.B. Mahabal Advocates for R-1
Mr. Nitin Deshpandey and Ms. Mansi Joshi, Advocates for R4&5
Mr. Aniruddhakulkarni, Advocate for CPCB

ORDER

The Issue – compliance of norms by M/s. Rhythm Country in raising Housing project at Pune

1. Grievance in this application is against violation of environmental norms by M/s. Rhythm Country (the project proponent) in setting up a construction project at 10(P), 11(P) Autade Handewadi Haveli, Pune. Construction commenced without requisite Environmental Clearance (EC) as per Environmental Impact Assessment (EIA) Notification dated 14.09.2006 and without requisite consent under the Air (Prevention & Control of Pollution) Act, 1981 and Water (Prevention & Control of Pollution) Act, 1974. The Maharashtra State Pollution Control Board

(SPCB) issued a show cause notice on 03.01.2020 followed by the order dated 6.7.2020 declining consent under the Air Act, 1981 and the Water Act, 1974 on account of the following failures:

- “(i) You have not replied to the show cause notice issued by Board dated 03.01.2021.*
- (ii) You have completed construction BUA more than restricted BUA in EC in EC i.e. 76,236.72 Sqm. (Actual constructed total BAU 101301.82 sqm).*
- (iii) You have not obtained re-validated consent to Establish since 2016.*
- (iv) You have has not submitted approval sanction plan from corporation.”*

2. It is stated that inspite of order dated 06.07.2020 of the Maharashtra SPCB directed stopping of construction work of the project, the project proponent continued the construction activities and completed construction measuring 1,01,301.82 Sqm.

Procedural History

3. Vide order dated 08.06.2021, the Tribunal directed a joint Committee of MoEF&CC, CPCB and State PCB to verify the compliance status of the project and give a report to this Tribunal. It was also directed that another Committee constituted for conducting functional audit of functioning of SEIAA may also cover the violations in the present case.

Joint Committee report about compliance status and stand of PP

4. Accordingly, the said joint Committee filed its report on 12.01.2022. It mentions that the Committee carried out site inspection in the presence of the Project Proponent (PP). It was found that EC was granted to the PP on 27.11.2017 in accordance with the MoEF&CC

Notification dated 09.12.2016 by the Pune Municipal Corporation (PMC). However, this Tribunal vide judgment dated 08.12.2017 disapproved the said Notification against which appeal is pending before the Hon'ble Supreme Court but no stay has been granted. However, the Hon'ble Supreme Court vide judgment dated 26.11.2021 in Civil Appeal No. 595/2021 held that the EC granted before NGT judgment has to be treated as valid but any further construction has to be compliant with said judgment. Thus, taking EC dated 27.11.2017 as valid, there are violations as follows:-

“3.0 CONCLUSIONS:

- (i) *Subsequent to notification dated 09.12.2016 (copy given at Annexure-II), Pune Metropolitan Regional Development Authority (PMRDA) vide letter dated 27.11.2017 granted Environmental Clearance to PP for the construction of residential and commercial project for FSI- 77660.0 sq.m; Non FSI- 68022.28 sq.m and total built up area of 1,45,682.28 sq.m.*
- (ii) *PP has constructed total built up area 32,226.01 sq.m, as on 08/11/2021 as per (i) information provided by PMRDA vide letter dated 05.01.2022 (copy is given at Annexure-IX).*

However, the following non-compliances of the aforesaid EC dated 27.11.2017 by PP have been observed:

- (a) ***Commercial Building A and B have been constructed to "Gr.+ Middle Floor +2 Floor" whereas in the said EC dated 27/11/2017 configuration of the same is mentioned "" G+2".***
- (b) ***Club house of total built up area of 431.91 sq.m. has been constructed which is not included in the list of buildings mentioned in the EC dated 27.11.2017. Plinth check certificate for club house is given on 16.03.2020 by PMRDA.***
- (iii) *PP has applied for EC to SEIAA vide Application dated 18.07.2020 for Total Built up Area of 1,84,1434 sq.m. and SEIAA granted ToR vide letter dated 08.02.2021. However, EC is not yet granted by SEIAA.*

Further, changes in construction made to that of EC dated 27.11.2017 (w.r.t. Commercial Building A & B and club house, as at para 2 (B) XI & XII above) have not been declared by PP while making application to SEIAA Maharashtra.

- (iv) **PP initiated construction for structures more than 20,000 sq. m. built up area since 21/9/2019 or before without obtaining CTE under Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 and they continued construction despite the consent refusal/stop work order from MPCB dated 06.07.2020. Upon grant of conditional CTE (copy given at Annexure-XVI) dated 12/5/2021, PP further continued construction without obtaining EC from SEIAA Maharashtra in violation of the said conditional CTE dated 12/5/2021 and construction activity was also observed during visit on 06/10/2021 by the committee.”**

5. The Committee accordingly calculated compensation for the said violations and made following recommendations:-

“6.0 RECOMMENDATIONS

- (a) *In view of the aforesaid violations for constructing changed construction configuration (w.r.t. adding club house and one extra floor in Commercial Building A & B to that of PMRDA granted EC dated 27/11/2017 and not mentioning such changed construction while applying for EC to SEIAA Maharashtra, as given at para 2 (b) (XI, XII), 3 (iii) above, the committee recommends that SEIAA Maharashtra may proceed for estimating & implementing Environmental Management Plan (EMP) cost as environmental compensation amount following the approach paper adopted by DoE and SEIAA Maharashtra vide SEIAA letter SEIAA-2018/CR-150/SEIAA dated 30/1/2019 for the "Assessment for Environmental Damage And Estimation of Remediation Costs For Building Construction Projects initiated without obtaining mandatory prior EC". The said approach paper also outlines preparation of remediation plan and natural and community resource augmentation plan equivalent to the said EMP cost taking into account of ecological damage and economic benefit derived due to violation. Areas identified for resource allocation through such EMP cost are Afforestation; Water conservation program; Urban environment and sanitation; Sewerage lines and STP, solid waste management, and; Urban air/noise pollution control. Details of the same including estimation and implementation procedures thereto are given under para 4 of this report.*
- (b) **In addition to the above, the committee recommends a compensation of Rs. 05 crores or Rs. 2,39,53, 125/- (Rupees Two Crores Thirty Nine Lakhs Fifty Three Thousands and One Hundred Twenty Five Only) as derived under para 5 of this report, as deemed fit by the Hon'ble NGT, may also be added in the said environmental compensation as damages for contravening provisions under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981, for starting construction for more than 20,000 sq.m. built up area without obtaining CTE;**

continuing construction despite the consent refusal/stop work order from MPCB dated 06.07.2020 and also violating CTE condition of not constructing without obtaining EC from SEIAA Maharashtra, as given under para 5 and 2 (c) (vi), 3 (iv) above.

- (c) *PP shall immediately stop construction and not initiate any construction till EC is granted by SEIAA, Maharashtra (in view of the Hon'ble Supreme Court order dated 26.11.2021 in Civil Appeal no.595 of 2021).*
- (d) *PP shall maintain the housekeeping at the labor camp and the solid waste generated be segregated and disposed as per the Municipal Solid Waste Management Rules 2016.”*

Stand of PP

6. The PP has filed its response to the effect that project was undertaken after EC dated 27.11.2017. The violations found are within the limit of the built-up area for which EC was granted and no compensation needs to be levied for such deviations. In any case, compensation recommended by the Committee based on CPCB in-house methodology is uncalled for. The Tribunal may consider the matter as per Notification dated 14.03.2017 dealing with violations cases which requires furnishing of bank guarantee for restoration of damage to the environment as may be found by the SEIAA while granting EC. The PP has also relied upon judgment of Delhi High Court dated 23.01.2012 in *LPA No. 895/2010, DPCC v. Splendor Landbase Ltd.*, holding that the consents under the Water Act, 1974 are required only for residential buildings. The PP has also filed additional documents annexing interim order of the Hon'ble Supreme Court dated 14.07.2022 in *Civil Appeal No. 4494/2022, M/s Ekta Housing Private Limited v. Tanaji Balasahib Gambhire & Ors.* and dated 01.08.2022 in *Civil Appeal No. 1975/2022, M/s Xrbia Developers Limited v. Tanaji Balasahib Gambhire & Ors*, remanding a matter to this Tribunal in view of lack of opportunity in that case to the appellant. The PP has also filed written submissions on 18.07.2022 annexing MoEF&CC Memorandum dated 07.07.2021.

Report of the Committee on another aspect of functional audit of SEIAA Maharashtra

7. On another aspect i.e. functional audit of SEIAA Maharashtra, report has been filed on 20.08.2022 by the joint Committee comprising MoEF&CC and CPCB. The Committee sought factual information from SEIAA, Maharashtra with regard to violations cases and projects for which *post facto* ECs were granted and process adopted for granting of such ECs. Key findings and recommendations in the report are as follows:-

“8.1 Overall Observations of the Committee

Information and statistics as provided by SEIAA, Maharashtra have been examined and analysed with particular regard to its functioning. Some of the key observations flowing out of the Analysis / Audit of the functioning of SEIAA are as follows:

- i. During 2017-2021, a total of 4190 ECs were granted to different categories of Project out of which majority of the ECs were granted to Non-coal Mining Projects and Infrastructure projects including Construction Projects.*
- ii. Time taken by SEIAA for grant of ECs in many cases appear to be on the higher side when compared to the timelines prescribed in the EIA Notification, as amended. Looking to the delay in carrying out due diligence expeditiously, the possibility of initiation of the construction activities at site without obtaining EC in such cases, cannot be ruled out. This is also reflected in the information forwarded by SEIAA in the context of 93 cases received by SEIAA during Window Period and their latest status as given in the subsequent para.*
- iii. It is observed that a total of 93 cases were received during the Window Period out of which Environmental Clearances (ECs) have been granted to only 43 Projects and ECs in respect of 50 cases out of the total of 93 applications received during Window Period are pending with SEIAA due to various reasons. All these applications need to be examined against the ground realities to ensure that construction does not start without EC as per the provisions of EIA Notification, 2006, as amended. Later on SEIAA, Maharashtra communicated the ground status of these 50 cases as placed at Table 7.5.3 (b). It is submitted that, this information have been provided on the basis of inspection report submitted by MPCB at the instance of CPCB.*

- iv. Out of the aforesaid 43 cases received during the Window Period (14/3/2017 to 13/9/2017 and then again from 14/3/2018 to 13/4/2018) during which application in respect of Violation Cases were permitted to be received, 05 cases fall under industry category, 01 is under mining category, 01 is under Irrigation category and 36 fall under Building Construction. Amongst them, actions for damage assessment and remediation plan have been undertaken for all the 43 projects. However, actions under Section 15 of the E(P) Act, 1986, which should have been taken by the State Pollution Control Board in all the 43 cases appears to have been taken in respect of 15 nos. of Projects only.
- v. Analysis of the time taken for grant of EC to these 43 violation category projects revealed the following facts:
 - a. No EC was granted within 1 year from date of Application as against the specified time limit of 105 days for SEIAA for taking decision on the recommendations of State Expert Appraisal Committees (SEAC).
 - b. 12 nos. of projects were granted EC between 1 to 2 years from date of applications for EC.
 - c. 26 no. of projects were granted EC between 2 to 3 years from the date of applications for EC.
 - d. 04 nos. of projects were granted EC between 3 to 4 years from date of application for EC
 - e. 01 nos. of projects were granted EC between 4 to 5 years from date of Application for EC

Delay in granting EC : In this context, it is intimated by SEIAA that Project Proponent (PP) had to obtain ToR by submitting application online on the portal during the **Window Period** for dealing with violation cases,. Thereafter, EIA report is required to be submitted by the PP collecting baseline data and damage assessment. Proposal for grant of EC under “Violation Category” cannot be considered unless Remedial Action Plan and Natural and Augmentation Plan and detailed EIA report have been duly submitted by the Project Proponent. Delay in granting Environment Clearance in case of violation cases is mainly due to delay in submission of necessary and complete documents and also because of the time taken for finalization of Approach Paper to calculate ecological damage. **It is observed by the Committee that the aforesaid justification given by SEIAA cannot be fully acceptable and is attributable to the lack of intensive monitoring by SEIAA . Based on multiple interactions with Member Secretary, SEIAA ; SEIAA Maharashtra has now developed a SoP regarding its own functioning which is attached as Annexure Damage Assessment and Remediation Action Plan in 43 Violation Cases**

In this context, it is stated by SEIAA that, Maharashtra Pollution Control Board **now** has been directed to undertake a drive to assess the status of damage assessment and remediation action measures taken including cost aspects in 43 cases where the EC has been issued in respect of

applications received during the Window Period. Information gathered during site inspection by MPCB has been processed by SEIAA and same is placed at **Table 7.5.3 (a)** and may also be seen at **Annexure 25C**. It is found that, necessary action have been taken in respect of all the projects barring action under Section 15 of the Environment Protection Act.

In order to ensure time bound implementation of the Remediation Plan, Bank Guarantees (BG) need to be deposited by the Project Proponent to SEIAA .before issue of EC. However, in 04 nos. of cases with Sl. Nos. 11, 22, 24 & 39 as mentioned in Table No. 7.3.3 (a) cases ECs were found to have been issued by SEIAA prior to deposition of requisite BGs which is in violation of prescribed procedure.

- vi. For remaining , 50 nos. of projects under violation Category w.e.f. 01.04.2017 to 31.07.2021 , it is intimated by SEIAA that (in the context of Applications received during Window Period) ECs had not been granted. On the basis of scrutiny and analysis of these cases , the violation cases can be classified under the following categories :
 - i. Work started on the ground without getting EC
 - ii. Work carried out in violation of Earlier EC
 - iii. Work completed in violation of Earlier EC
 - iv. Work completed without EC
 - v. Industries were established and operational before 2006 for Bulk drugs manufacturing. Units with New Product Mix have been started without EC.
- viii. Information on these 50 projects, as provided to the Committee, have been examined. Specific observations in these cases are as follows:
 - a. There are many projects in the State which have been initiated and have been under implementation without applying for EC, CTE and CTO displaying lack of coordinated approach and concerted action.
 - b. There are 08 nos. of Projects in which construction has been initiated without prior EC and the construction work is still in progress. Ref : Projects mentioned in sl nos. 19, 20, 21, 28 , 31, 33, 39, 44 etc. Such projects include the Government projects also. It is obvious that even the government organizations are also not following the rules & regulations.
 - c. Bank Guarantees have been imposed in 08 nos. of cases (e.g. 5, 6, 16, 17, 19, 20, 21, 22 as mentioned in Table No. 7.3.3 (b) but timeline for depositing are not mentioned for these cases.
 - d. ECs have been issued to 13 nos. of Projects mentioned e.g. Sl. No. 6, 22, 28, 32, 33, 35, 36, 40, 41, 43, 44, 49 & 50 in Table 7.3.3 (b) but still they are kept under the list of 50 projects. Further, action against these projects including

imposition of Bank Guarantee, Damage Assessment Plan etc. are not mentioned. Even, out of these 13 projects, CTE have note granted to 02 nos of Projects and / CTO have not been granted to 11 nos. of Projects.

- e. ECs to some projects have been granted by SEIAA without following EIA Notification, 2006 and concerned Office Memorandum issued by MoEF&CC and these projects (e.g. Project mentioned at Sl.No. 6, 35, 36, 40 and 41) have also been completed. Still they are kept under this category of 50 Projects.
- f. In some cases (e.g. project mentioned at sl. No. 36) the Projects have been completed but in violation of EC. **In spite of that, second EC has been granted and no action for Violation has been initiated.**
- g. In case of existing Industrial Projects (05 nos. of Projects e.g. Sl. No. 4549), expansions have been carried out in violation of EIA Notification, 2006. However, CTOs have been granted by MPCB to these Projects without taking any action. It appears that there is a lack of synchronization and coordination among the State Government Agencies including SEIAA and MPCB.
- ix. Lack of coordination amongst various Agencies concerned for issuing Permissions, Clearance, Consents etc. have been noticed as mentioned in the foregoing paras. Concerned Agencies are not following the Notifications issued from time to time which is leading to violations in many cases. Further, compliance verification and monitoring could not be performed from time to time.
- x. The Committee feels that SEIAA could have paid greater attention as regards the following:
 - a. Processing of EC applications including reasons having quoted for delay.
 - b. Actions under Section 15 of the E(P) Act, 1986 against violation projects
- xi. **It is observed by the Committee that this action of monitoring of action plan undertaken recently by SEIAA through MPCB could have been undertaken long back in these "Violation Category " i.e. immediately after submission of such plans by the violator PPs.**
- xii. Violation of stipulated procedure has taken place during the process of grant of EC as observed in the matter of M/s Keystone Properties, Pune. Possibility of similar violation in other cases, especially in the light of the aforesaid observations, as mentioned above cannot be ruled out.

8.2 Identification of Issues leading to Blatant Violation

After careful examination of the information received from SEIAA, Maharashtra, issues leading to violation have been identified as follows:

- (i) Wilful violation of the provisions of EIA Notification, 2006 by the Project Proponents.
- (ii) Suppression of information by the Project Proponents.
- (iii) Processing of applications received for grant of EC needs to be better synchronized and coordinated. This includes scrutinization of necessary NOCs / Licenses / Clearances from other concerned departments
- (iv) Time-lines prescribed for processing the EC applications as laid down in the EIA notification, 2006, as amended is not adhered to.
- (v) Lack of coordination amongst the various Agencies concerned for issuing Permissions, Clearance, Consents etc coupled with lack of knowledge of the status on the ground before grant of such clearances.
- (vi) Lack of surveillance in the State especially by MPCB, T&C Planning Department and Local Bodies.

9.1 Recommendations:

9.1.1 For Project Proponent

Project Proponents may be made aware of the concerned Environmental Regulations and Environmental Norms. Periodic workshops may be organized with the related Associations, Organizations and key Institutions so as to apprise them about the extant provisions of Acts, Rules, OMs, Procedures and the Dos and the Don'ts as far as Environmental Clearances and adherence to Environmental Safeguards are concerned.

9.1.2 For SEIAA

- Action u/s 15 of the E(P) Act, 1986 against all the projects falling under violation category may be initiated by SEIAA, Maharashtra.
- SEIAA, Maharashtra needs to follow the Rules/Provisions of **'Environment Impact Assessment Notification, 2006 including its amendments'** in 'letter & spirit' for considerations of the applications received for obtaining EC including those falling under the "Violation category". Timelines for grant of EC need to be adhered to.
- SEIAA, Maharashtra may work in close coordination with State Government agencies including Maharashtra Pollution Control Board, Town & Country Planning Department, Municipal Corporations, Ground Water Board, City Development Authority and other organization like CPCB

(Regional Directorate) and IIT Mumbai. This will facilitate transparency in the matter and effective enforcement of Legal Framework.

- *SEIAA may consider utilising the features of PARIVESH and also independently use the available IT Tools to assess the situation on the ground based on the latitude and longitude mentioned in the application submitted on the PARIVESH portal to ensure that construction of the Project/Activities for which EC has been asked for has not started so as to avoid grant of EC in a routine manner to “Violation Category” of Projects.*
- *Taking a cue from the analysis of the Violation cases, it may be seen that delay in deciding upon the application for grant of ToR and processing for grant of EC may lead to a situation where the Project Proponent may be emboldened to start the Project which may result in compromising with the environmental safeguards which need to be observed. It may be worthwhile to explore the possibility of devising a method whereby PARIVESH Portal , through its own IT tool seamlessly flags the cases where there are delays beyond the specified time of 45 days post the recommendations of SEAC as mentioned in the EIA Notification ,2006 , as amended and generates alerts not only for SEIAA but also for the Ministry so that such cases are dealt with on priority and corrective/remedial actions are undertaken by SEIAA/EAC in the best interest of protection of the environment.*
- *SEIAA, Maharashtra may also take support of Technology viz. Parivesh for tracking of the process of issuing EC.*
- *ECs issued by SEIAA may be given wider publicity by posting it on the relevant Portals/Websites so as to bring in transparency and keep the stakeholders informed.*

9.1.3 For SPCB

- *State Pollution Control Board and State Environment Department may join hands together to conduct Stake-holder consultations in the State to avoid wilful violation of the provisions of EIA Notification 2006 by the Project Proponent.*

9.1.4 For all Agencies

- *Coordination amongst concerned State level Agencies may be established. These Agencies include SEIAA, MPCB , Town & Country Planning Department and Local Bodies so far as Construction Projects are concerned and similarly amongst the key stakeholders for other Projects/Activities . There is a need for exchange of knowledge and understanding of the issues of enforcement.*
- *Copies of the ECs may be made available to the surveillance Agencies in the State such as MPCB, T&C Planning Department, Public Health Engineering Department and Local Bodies to make them aware of EC conditions so that such conditions are duly facted by such Agencies while executing their own*

projects/activities and also for reporting violations if any which may become known to them during the course of their functioning.

- *Monitoring and assessment of compliance of Environmental Regulations including EC conditions and Remediation Action Plans, may be conducted on regular basis by the Integrated Regional Offices. Random inspection by Integrated Task Force comprising of the Officers from these departments may be conducted for surveillance in the State and prevention and execution of illegal / unauthorized projects in the State.*

9.2 Additional recommendations are as follows:

- *SEIAA may co-opt Member from MPCB, Town and Country Planning, Local Bodies and other concerned agencies for processing of EC applications as per need.*
- *EC must be issued in transparent fashion and area wise database be uploaded for the information of all concerned.”*

8. Apart from the above, report also makes specific observations with regard to 50 identified violation cases as follows:-

“Specific observations in these cases are as follows:

- There are many projects in the State which initiated and completed the projects without applying for EC, CTE and CTO and these Projects are continuing as such.*
- There are 08 nos. of Projects which have initiated the construction with prior EC and the construction work is still in progress. Ref : Projects mentioned at sl. nos. **19, 20,28, 31, 33, 36, 39, 44** etc. Such Projects include the Government projects also. It is obvious that even the government organizations are also not following the rules & regulations.*
- Bank Guarantees have been imposed in 08 nos. of the cases (e.g. 5, 6, 16, 17, 19, 20, 21, 22) but timelines for depositing the same have not been mentioned.*
- ECs have been issued to Projects mentioned at Sl. No. 6, 22, 28, 32, 33, 35, 36, 40, 41, 43, 44, 49 & 50 but still they are kept under this list of 50 projects. Further, action against these Projects including imposition of Bank Guarantee, Damage Assessment Plan etc. are not mentioned. Further, to many of such projects CTE / CTO have not been granted.*
- ECs to some Projects have been granted by SEIAA without following EIA Notification, 2006 and concerned Office Memorandum issued by MoEF&CC and these projects (e.g. Project mentioned at Sl. No. 6, 35, 36, 40 and 41) have also*

been completed. Still they are kept under this category of 50 Projects.

- vi. In some cases (e.g. Project mentioned at sl. No. 36, EC issuing date: 08.09.2020) the projects have been completed but in violation of EC and despite that, second EC has been granted. **No action for violation has been initiated.**
- vii. In cases of existing industrial projects, expansions have been carried out in violation of EIA Notification, 2006. However, CTOs have been granted by MPCB to these projects without taking any action. **It appears that there is a lack of synchronized action amongst the State Government Agencies including SEIAA and MPCB.**

7.5.2 Details of the Agency who is monitoring the remediation action plans

SEIAA informed that, Maharashtra Pollution Control Board is the agency for monitoring the Status of Remedial Action Plan. Maharashtra Pollution Control Board has now been directed to monitor the Status of Remedial Action Plan on six monthly basis and submit the report of the same to SEIAA .Details of status of implementation of Remedial Action plan is attached as Annexure 25D.

It is observed by the Committee that this step of monitoring implementation of Remedial Action Plan by SPCB, in addition to the monitoring being carried out by the Integrated Regional Offices (IROs) could have been undertaken earlier.

7.5.3 Details of projects for which post-facto ECs are granted, including the ECs for expansion projects which were in violation of existing EC:

SEIAA informed that no post facto Environment Clearances are granted by them.

7.5.4 Detailed status of violation cases which were received after the window period.

It is informed by SEIAA, Maharashtra that they have not considered any case of violation except those received during Window Period.

7.5.5 Consideration of Disciplinary / Legal Action by other Enforcement Agencies

It has been informed by SEIAA that before granting of EC, they have taken into account disciplinary/legal action, taken/in progress by Maharashtra State Pollution Control Board / Other Enforcement Agency(ies) against the Project Proponent.”

Consideration today, findings and directions

9. We have considered the matter and heard the learned counsel for the parties. Two issues for consideration are determining the non-compliance by the PP and accountability for the same and remedying the functioning of SEIAA, Maharashtra in the light of report of the Committee.

Violations by the PP and remedial action

10. As shown by the report quoted above in paras 4 and 5 above, violations by the PP stand established in proceeding with the construction without requisite consents from State PCB and inspite of stop work orders. We assume that EC granted by PMC to be valid but there are constructions in violation thereof. Plea that no consent under the Water and Air Acts are required in view of Delhi High Court judgment is untenable as in the present case, commercial constructions are also involved. Rejection of consents and stop work order issued by the State PCB have never been challenged. Moreover, such consents are conditions of EC granted by PMC. Even after conditional CTE, further constructions continued without EC from SEIAA, stipulated in the conditional CTE. With regard to the stand of construction is though beyond configurations mentioned in the EC being permissible as per Om issued by the MoEF&CC, all the conditions of the said OM are not shown to be applicable. Moreover, violations of Water and Air Acts stand established, as earlier observed. Thus, polluter pays principle applies. The project cost is said to be Rs. 335 Crores. Even if CPCB in-house methodology is not applied, percentage of cost of the project is to be adopted for restoration of environment, as laid down by the Hon'ble Supreme Court

in *M/s Goel Ganga Developers India Pvt. Ltd. v. Union of India*.¹ Compensation assessed by the Committee is less than 1.5% of the project cost. The present project is not covered by the Notification dated 14.03.2017 nor the PP has sought the benefit of the said Notification while applying for EC. Thus, MoEF&CC Notification dated 07.07.2021 is not applicable as EC has not been applied during the window period mentioned in the said Notification. The stand of the State PCB is that the PP established that project without requisite consent for which show cause notice dated 31.01.2020 was issued to which no reply was filed. The PP filed application for consent which was refused on 06.07.2020 in view of the construction of the project in view of the consent. EC has been granted by SEIAA on 08.02.2021 and thereafter consent has been granted on 12.05.2021.

11. In view of the above, violations by the PP are established and compensation of Rs. 5 Crores is liable to be paid as rightly held by the Committee. It may be deposited with the State PCB within two months which may be utilized for restoration measures in the light of the District Environment Plan by the District.

12. With regard to the functional audit report, the same has not been contested by SEIAA nor we see any reason not to accept the same. Accordingly, we accept the recommendations in the report and direct SEIAA, Maharashtra to take further action in light thereof.

The application is disposed of.

A copy of this order be forwarded to the State PCB and SEIAA Maharashtra by email.

¹ (2018)18 SCC 257

I.A. No. 90/2021 also stands disposed of.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Dinesh Kumar Singh, JM

Prof. A. Senthil Vel, EM

Dr. Vijay Kulkarni, EM

August 22, 2022
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