

Item No. 02

Court No. 1

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

Review Application No. 18/2023
IN
Appeal No. 41/2022
(I.A. No. 218/2023 & I.A. No. 219/2023)

Ishhita Foundation

Applicant

Versus

Ministry of Environment, Forests and
Climate Change & Ors.

Respondent(s)

M/s Tesmus Trading Pvt. Ltd.
Office No. 203, Gupta Tower,
1 G Block, Community Center,
Vikaspuri, Delhi

Review Applicant

Date of hearing: 08.05.2023

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

Applicant(s): Mr. Akshay Singh, Advocate for Appellant in Appeal No. 41/2022
Mr. Vanshdeep Dalmia and Ms. Anisha Jain, Advocates for Review
Applicant (M/s Tesmus Trading Pvt. Ltd) in R.A. 18/2023
Respondent(s): Ms. Priyanka Swami, Advocate for SEIAA, UP

ORDER

1. This application seeks review of order dated 16.01.2023 in Appeal No. 41/2022, *Ishhita Foundation vs. Ministry of Environment, Forests and Climate Change & Ors.* The review applicant is the original Project Proponent (PP) in whose favour Environment Clearance (EC) was granted for mining on Yamuna River at Gata No./Khasra No. 61 to 69, 86 to 92, 93Mi, 94Mi, 98Mi and 99Mi (Khand No. G.M.-1), in Village Ghadiwa Majhigawan, Tehsil Khaga, District Fatehpur, admeasuring 25.00 hectare

with annual quantity of 2,50,000 cubic meter. Against the EC dated 11.08.2022, the appeal was entertained. Against other two ECs, the appeal was dismissed as barred by limitation. The Tribunal sought response from SEIAA, UP and the PP about validity of EC dated 11.8.2022.

2. Response was filed only by SEIAA, UP but no response was filed by PP. In its response, the SEIAA, UP, did not dispute that requirement of preparation of DSR, Mining Plan, EIA, EMP and public hearing had not been followed. The Tribunal accordingly set aside the impugned EC vide order dated 16.01.2023.

3. Aggrieved by the above order, the PP has preferred this review application by submitting that the Mining Plan, EIA, EMP, public hearing and DSR procedures have actually been followed. The PP was not actually served though affidavit of service was filed to this effect by the appellant.

4. Without going into the question of valid service, we have heard learned counsel for the PP with a view to consider whether the impugned EC is illegally sustainable. For the reasons that follow, we do not find any ground for review.

5. First reason why the impugned EC is vitiated is absence of replenishment study prior to grant of EC. Neither the PP nor SEIAA, UP in its reply has not shown that any such study prior to grant of EC.

6. Second reason is absence of cluster procedure. Admittedly, there is a cluster for which ECs have been granted i.e. the mining areas at Khand No. G.M.-1, G.M. -2 and G.M. – 3 in Village Ghadiva Majhgawan, Tehsil Khaga, District Fatehpur. This attracts cluster procedure as per Notification dated 15.01.2016 issued by MoEF&CC. Cluster area should not exceed 10 hectares. In the present case, cluster area is 25 hectares. No

cluster procedure has been followed. No cluster EIA/EMP has been undertaken. While the review applicant has stated that there is EIA/EMP but it is not shown to be as per cluster procedure.

7. Further, there has been no public hearing. While according to PP, public hearing was conducted on 03.03.2021, as shown by Annexure A-7 to the review application, the same could not be relied upon in view of stand of SEIAA, UP in para 7 of its reply. It is stated that the application of PP itself was dated 18.06.2021 i.e. after the public hearing dated 03.03.2021. It is further seen from para 7 of reply of SEIAA, UP that in the meeting held on 24.08.2021, the PP did not appear and proceedings were closed. The same was subsequently taken up and impugned EC was granted on 11.08.2022. During this period, no public hearing is shown to have been conducted. Earlier public hearing cannot be substitute for public hearing to be conducted after application for EC. Relevant extract from reply of SEIAA, UP is reproduced below:

“7. That Project Proponent made An online application on 18.06.2021 for Environmental Clearance "Gadhiva Majhgawan Sand/Morrum Mining Project at Riverbed of River Yamuna, M/S TESMAS. TREADING PVT LTD" (a category of EIA notification 2006 (as amended). Case was considered by SEAC in its 562' meeting dated 24.08.2021 wherein the project proponent/consultant did not appear in the meeting. Committee discussed the matter and made following observation:

The project proponent/consultant did not appear. The committee discussed and deliberated that project file should be closed and he opened only after request from the project proponent. The file shall not be treated as heading or SEAC The matter will be discussed only after submission of online request on prescribed online portal.

Copy of minutes of 562" SEAC, Meeting held 24.08.2021 is being filed herewith and marked Annexure no.06.

8. That subsequently, the case was considered in 488th SEIAA meeting dated 07.09.2021 wherein the State Level Environment Impact Assessment Authority agreed with the recommendations of the SEAC. Copy of minutes of 488th

SEIAA, Meeting held on 07.09.2021 is being filed herewith and marked as Annexure no.07.

9. *That the case again was considered by SEAC in its 640th meeting dt. 04.04.2022. During the meeting, the project proponent along with his consultant made presentation. Committee discussed the matter and made following observation:-*
 - a. *Based on the documents submitted and presentation made by the project proponent, the committee directed the project proponent to submit following information:*
 - i. *Monitoring photograph mentioning date and time along with geo coordinates*
 - ii. *Agreement/ Consent between project proponent and competent authority/ landowner for haulage road from lease site to link road.*
 - iii. *Revised CER Plan as per discussion during presentation.*
 - iv. *Detailed plan for dust suppression.*

Copy of minutes of 640th SEAC, Meeting held on 04.04.2022 is being filed herewith and marked as Annexure no.08.

10. *That subsequently, the case was considered in 589 SEIAA meeting dated. 22.04.2022 wherein the State Level Environment Impact Assessment Authority agreed with the recommendations of the SEAC. Copy of minutes of 589th SEIAA, Meeting held on 22.04.2022 is being filed herewith and marked as Annexure no.09.*
11. *That case was again considered by SEAC in its 668th meeting dated. 27.06.2022. During the meeting, the project proponent along with his consultant made presentation. The committee discussed the matter and recommended to Environment Clearance for the project. Copy of minutes of 668th SEAC, Meeting held on 27.06.2022 is being filed herewith and marked as Annexure no.10.*
12. *That, the case was considered in 633rd SEIAA meeting dated. 25.07.2022 wherein the State Level Environment Impact Assessment Authority agreed with the recommendations of the SEAC. Copy of minutes of 633rd SEIAA, Meeting held on 25.07.2022 is being filed herewith and marked as Annexure no 11.*
13. *That Further, SEIAA, Vide EC no. EC22B001UT182304- dated: 11.08.2022 issued Environment Clearance of the proposed project. Concerned copy of EC letter dated 11.08.2022 is being filed herewith and marked as Annexure no.12.”*

8. Thus, the impugned EC cannot be sustained. It is, however, made clear that the SEIAA, UP will be free to grant EC afresh after following due process of EC.

The review application is dismissed.

All pending IAs will also stand disposed of.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Dr. A. Senthil Vel, EM

May 8, 2023
Review Application No. 18/2023
IN Appeal No. 41/2022
I.A. No. 218/2023 & I.A. No. 219/2023
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