BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE

THROUGH PHYSICAL HEARING (WITH HYBRID OPTION)
****

Appeal No. 68/2019(WZ)
I.A. No. 237/2019 (WZ), I.A. No. 73/2023 (WZ),
I.A. No. 74/2023 (WZ) & Caveat No. 12/2019(WZ)

IN THE MATTER OF:

Shri Vishal Arinjay Shah
R/at: Manorama, S.No 39, Manik Baug,
Sinhagad Road, Pune- 411 051.

.....Appellant

Versus

1. Sou. Smita Pradeep Shah

R/At: 18 Raghupati, Shri. Raghuraj
Co-Op. Hsg. Soc., Old Vitthalwadi Octroi Naka,
Sinhagad Road, Pune - 411 030.

2. M/s. Grenesiis Constro Private Limited,

Through its Directors:

i. Mrs. Nisha Pramod Korgaonkar
ii. Ravindra Prabhakar Choudhari
iii. Shri. Kamlesh Manikprabhu Korgaonkar
iv. Shri. Shrikrishna Ramchandra Dadkar
v. Shri. Vijay Zumbarlal Rathi
vi. Shri. Arinjay Pramod Korgaonkar
vii. Shri Narendra Dattatray Joshi
viii. Shri. Anil Karvande Kamlakar
ix. Shri. Prashant Moreshwar Potdar

having its registered address at:

A-501, Thacker's House, 2418,
East Street, GT Road, Camp, Pune- 411 001.

3. The Pune Municipal Corporation, Pune

The Municipal Commissioner,
Having its office at:
Pune Municipal Corporation,
Shivajinagar, Pune- 411005

4. The Secretary, Ministry of Environment and Forests,

Government of India (MoEF)

Having its office at:
Indira Paryavaran Bhavan,
Aliganj, Jorbagh Road, New Delhi 110 003.

5. The Chairman, State Level Environment Impact Assessment Authority (SEIAA)

C/o. Secretary, Environment,
Environment Department,
Government of Maharashtra,
Having its office at:
Room No 217, Mantralaya, (Annex)

6. State Environment Assessment Committee, Maharashtra State (SEAC-Ill)

Having its office at:
Room No. 217, Mantralaya (Annex)
Madam Cama Road, Mumbai 400 032.

7. The Member Secretary, Maharashtra Pollution Control Board

Having office at: Kalpataru Point,
3rd Floor, Opp. Cineplanet, Sion East,
Mumbai 400 022.

8. M/s. Club Amida
A partnership firm having its
through its Partners :

i. Sunil Gurunath Revankar
ii. Lata Vithal Sheth
iii. Shri. Milind Ramchandra Rajwade

Having office at: 301, 302 & 303, Grand Horizon,
Sr. No, 39/1 A + 39/2/5/1 and 34/1/4,
Vadgaon Bk, Pune - 411 051

.....Respondent(s)

Counsel for Appellant:

Mr. Tanaji Gambhire, Advocate along-with
Mr. Shivraj P. Kadam, Advocate

Counsel for Respondent(s):
Mr. Sangramsingh Bhonsle, Advocate along-with
Ms. Samridhi Jain, Advocate and Associates for R-1, 2 & 8/PP
Mr. Rahul Garg, Advocate for R-3/PMC & R-4/MoEF&CC
Mr. Aniruddha Kulkarni, Advocate for R-5/SEIAA & R-6/SEAC-III
Ms. Manasi Joshi, Advocate for R-7/MPCB

PRESENT:

Hon'ble Mr. Justice Dinesh Kumar Singh (Judicial Member)
Hon'ble Dr. Vijay Kulkarni (Expert Member)

Reserved on	**:**	**19.07.2023**
Pronounced on	**:**	**09.08.2023**

JUDGMENT

1. This appeal has been preferred against the *ex-post-facto* EC dated 09.08.2019 granted to respondent No. 2-M/s. Grenesiis Constro Private Ltd./Project Proponent by the respondent No.5/SEIAA-Maharashtra for the construction of project Grand Horizon at Survey Nos. 39/1A + 39/2/5/1 and 34/1/4, Vadgaon Budruk, Manikbaug, Sinhgad Road, Pune; in pursuance of condition no. 3 sub-condition No. XLIV of the impugned EC, STP/MSW (appears to have been wrongly mentioned as it should be OWC) is not installed, hence conducting of commercial activity such as running of gymnasium by name 'Amida Fitness' situated on 3rd floor comprising of unit Nos.301, 302 & 303 may be directed to be stopped; respondent No.1 and respondent No.2 may be held vicariously liable for the breach of undertakings, conducting of illegal activity and for carrying out developmental activity in contravention to the provision; bank guarantee submitted be directed to be modified and that the project proponent be directed on interim basis to deposit the said amount by way of damages.

2. In brief the facts of this appeal are that the respondent No. 1/Sou. Smita Pradeep Shah has executed three independent development agreements with the respondent No.2/Project Proponent in respect of plots of land situated at Survey Nos. 39/1A + 39/2/5/1 and 34/1/4, Vadgaon Budruk, Manikbaug, Sinhgad Road, Pune. Accordingly, a development Power of Attorney was executed on 01.03.2011, on the basis of which the respondent No.2 has got sanctioned development plan from the respondent No.3/PMC i.e. the Planning Authority for the city of Pune,

which issued commencement certificate dated 09.11.2012. The total project i.e. Grand Horizon is a commercial as well as the residential project, which consists of 5 residential and 3 commercial floors, three parking floors below the residential podium and one floor beneath the ground. Initially though the total construction was beyond 20,000 sq. mtrs., the respondent No.2/Project Proponent did not submit a proposal to respondent No. 5/SEIAA for grant of EC. Hence, the appellant had moved the NGT for filing the Original Application No.22/2016, which was later on re-numbered as Original Application No.115/2018. During pendency of the said original application, on 02.12.2015 the respondent No.2/Project Proponent submitted a proposal to respondent No.5/SEIAA for its approval. The Original Application No.22/2016 was decided on 17.04.2018. The respondent No.2/Project Proponent had admitted the violation and had sought the benefit of the window opened vide Notification dated 14.03.2017, issued by the MoEF&CC for grant of *ex-post-facto* EC. NGT had granted liberty to the applicant to challenge the EC, which was granted by the SEIAA/respondent No.5 on 09.08.2019, annexed at page nos. 14 to 26 of the paper book. This EC has been challenged on the grounds that the same has been granted against the basic principle of the statue and is contrary to the environmental jurisprudence. The grant of EC is not a mechanical exercise. It requires meticulous appraisal of facts and precise assessment of the environmental damage. The SEAC/SEIAA has not made any independent appraisal of facts and precise assessment of the environmental damage but merely have relied upon the cost of ecological damage as assessed by the Project Proponent. Therefore, the entire EC stands vitiated. While awarding this EC, the principles of sustainable development, the precautionary principle and the polluter pays principle have been ignored. As per the clause 3(VI) of the impugned EC, it is stated that "the cost of ecological damage as assessed by the project proponent and discussed in the SEAC is Rs. 33.33 Crore". The damage caused in the construction period is mentioned as 5% of the total damage. Hence, the SEAC decided to put bank guarantee of Rs. 1.55 Crore i.e. 5% of the total damage assessment value by the project proponent. In fact, the said amount was required to be directed to be deposited as damages towards the ecological damage. Instead of awarding damages upon the project proponent for admitted violation and causing environmental damage, the SEAC and SEIAA have merely settled the case by directing to submit bank guarantee. As per the impugned EC vide condition No. 3 sub-condition No. VI, it is mentioned that 'before start of any construction work at site, Consent to Establish shall be obtained from the MPCB', which has not been obtained and yet the project had been started. As per condition No.3 sub-condition No. XLIV of the impugned EC, the local body was required to ensure that no 'Occupation Certificate (OC) be issued prior to operation of STP/MSW site with due permission of MPCB. The STP as prescribed is not at all constructed upon the site. The PMC had issued OC to one commercial activity 'Amida Fitness' where approximately 2500 members are visiting daily for work-out, spa, massage and steam, showers etc. having total consumption of about 1,00,000 liters of water throughout the day. However, it is submitted that without obtaining Consent to Operate as prescribed under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974, the commercial activity is being run since morning 6 am to 10 pm. The toilets/wash rooms/bath room and other activities are consuming potable water without obtaining any Consent to Operate. Therefore, the said activity should be directed to be stopped immediately. The condition No.3 of the impugned EC lays down that it is allowed subject to the decision of the court cases. There are two

Writ Petitions pending before the Hon'ble Bombay High Court bearing No.13203 of 2017 & Contempt Petition No. 233 of 2016, in respect of several issues pertaining to the illegal construction and grant of OC. These two litigations have not been disclosed by the Project Proponent in the EC application. Besides that it is also submitted that the additional congestion and impact upon the traffic is not assessed while granting in the said EC. There is no marginal space left for the fire tenders in the sanctioned plan. Due to high rise structure, the flow of fresh air and sunlight were not taken into consideration while granting EC. The demarcation certificate submitted to PMC by the Project Proponent is defective, which has been challenged in appeal before the SLR bearing Appeal No. 94/2017. This fact has also not been disclosed in the EC application. The entire assessment of the quantum of damage is based on the one sided calculations submitted by the Project Proponent as the SEIAA has not made its own assessment of the actual damage, nor has it got assessed through any independent machinery and yet the EC has been granted. Therefore, above prayers have been made for quashing the *ex-post-facto* EC.

3. This matter was first considered by the Tribunal on 17.07.2020 when direction was issued to send notices to the respondents.

4. From the side of respondent No.2/Project Proponent, reply affidavit dated 04.10.2020 has been filed, where-in it is mentioned that the answering respondent had applied for an *ex-post-facto* Environment Clearance in view of the Notification dated 14.03.2017 as a category B project under the Buildings and Construction Projects before the Central Environment Impact Assessment Authority on 17.07.2017. Thereafter, the Ministry of Environment, Forest and Climate Change (MoEF&CC) vide its Notification dated 08.03.2018 directed that the cases of violation and

projects or activities covered under category- B of the EIA Notification-2006 shall be appraised by the State Level Expert Appraisal Committee and that the EC shall be granted at the State Level. Further, the MoEF&CC vide its Notification dated 15.03.2018 transferred the application of the Project Proponent for grant of Environment Clearance from the Central Level to the State Level Environment Impact Assessment Authority for appraisal. Thereafter, the project of the answering respondent was considered by the State Level Expert Appraisal Committee, in terms of the MoEF&CC Notification dated 14.03.2017 and 08.03.2018 in its Meeting dated 10.04.2019 and accordingly, recommended for the grant of EC to the State Level Environment Impact Assessment Authority. The SEAC in its minutes of the meeting dated 10.04.2019 assessed the cost of remediation plan and natural & community resource augmentation plan as Rs.1.95 Crores and decided to obtain bank guarantee of the said amount from the project proponent in compliance with the MoEF&CC Notification dated 14.03.2017. Thereafter, the SEIAA in its meeting dated 17.07.2019, on the basis of recommendations by SEAC, decided to grant the EC to the answering respondent, subject to certain conditions.

5. It is further mentioned in this affidavit by the respondent No.2/Project Proponent that the jurisdiction of the Tribunal is restricted to adjudicate as to whether the EC dated 09.08.2019 has been granted after following the due process of law and in accordance with law. But the appellant in guise of an appeal has also alleged violation of the Environment Clearance conditions. In this regard, it is made clear that the violation of the Environment Clearance conditions can only be adjudicated by the Tribunal under the provisions of Section 14 of the National Green Tribunal Act, 2010 and not under the provisions of Section 16 of the National Green Tribunal Act, 2010.

6. It is further mentioned in this affidavit by the respondent No.2/Project Proponent that with respect to the allegations that SEIAA and SEAC did not make any independent appraisal of facts and precise assessment of environmental damage, in this regard, it is submitted that in terms of the Notification dated 14.03.2017, the Expert Appraisal Committee was to prescribe a specific Terms of Reference (ToR) for the project on assessment of ecological damage, remediation plan and natural & community resource augmentation plan, which was required to be prepared as an independent chapter in the EIA Report by Accredited Consultant. Thereafter, the EAC was to stipulate the implementation of the remediation plan and natural & community resource augmentation plan in the EC, for which the project proponent was required to submit a bank guarantee equivalent to the amount of the said Plan. In the present case, the Terms of Reference was issued by SEIAA, as per which, the answering respondent was to prepare a remediation plan and natural & community resource augmentation plan by Accredited Consultant. In compliance of the Terms of Reference, the answering respondent prepared an EIA report and Environmental Management Plan in consultation with Pollution & Ecology Control Services and Vertex Enviro Consultancy Pvt. Ltd., a NABET accredited laboratory. Along-with the EIA Report and Environmental Management Plan dated April 2019, the answering respondent submitted an assessment for Environmental Damage and an Estimation for remediation cost as prepared by the said agency and it was assessed to be Rs. 1,95,00,000/-. The SEAC in its meeting dated 10.04.2019 approved the cost of a remediation plan and natural & community resource augmentation plan and decided to obtain bank guarantee of Rs. 1,95,00,000/- from the answering respondent. Thereafter, the SEIAA in its meeting dated 17.07.2019, on the basis of the

recommendations of SEAC, decided to grant the EC to the answering respondent, subject to submission of bank guarantee of Rs. 1,95,00,000/- to the Maharashtra Pollution Control Board towards effective implementation of the remediation plan and natural & community resource augmentation plan.

7. It is further mentioned in this affidavit by the respondent No.2/Project Proponent that SEAC previously in its meetings dated 12.06.2018 and 19.08.2018 had calculated the cost of Environmental Damage upon the answering respondent to be Rs. 33.34 Crore and therefore decided to impose bank guarantee of Rs. 1.55 Crores (5% of total damage assessment value) from the answering respondent. The SEIAA in its minutes of the meeting dated 28.09.2018 considered recommendation of the SEAC and decided to impose a bank guarantee of Rs. 1.55 Crore on the answering respondent. However, subsequently, on the basis of assessment for environmental damage and estimation for remediation cost as prepared by Pollution and Ecology Control Services and Vertex Enviro Consultancy Pvt. Ltd on behalf of the answering respondent, enhanced the said amount to Rs.1.95 Crores and therefore, the SEIAA and SEAC after independent appraisal of facts and the assessment of Environmental Damage imposed a cost of Rs.1.95 Cr. upon the answering respondent. Such bank guarantee was to be deposited prior to the grant of EC and to be released after successful implementation of plan, in terms of the procedure laid down in the MoEF&CC Notification dated 14.03.2017 as the same has been followed in this case. It is mentioned that the answering respondent has been granted Consent to Establish by the MPCB dated 31.01.2020. Therefore, the allegation of starting the construction without the Consent to Establish is baseless. The answering respondent had been granted part Occupation Certificate prior to operation of the STP/MSW.

The contention of the appellant, which is said to be violation of the EC condition No. 3(XLIV) is an issue beyond the scope of the appeal filed u/s 16 of the National Green Tribunal Act, 2010.

8. From the side of respondent No.5/SEIAA, reply affidavit dated 11.05.2023 has been filed, where-in it is submitted that in exercise of powers conferred under Section 3 of the Environment (Protection) Act, 1986, the Central Government had issued Notification dated 14.03.2017, providing therein that the projects and activities requiring prior Environmental Clearance under the EIA Notification 2006, having been commenced without obtaining prior Environmental Clearance from the Central Government or SEIAA, as the case may be, such a case would be treated to be a case of violation and would be dealt with by the procedure laid down in the said Notification. The PP made an application on 18.07.2017 under the said Amnesty Scheme, which was transferred by MoEF&CC vide Notification dated 15.03.2018 to the SEIAA for appraisal. SEAC considered the proposal in its Meeting dated 12.06.2018 and accorded Terms of Reference for proposed construction for undertaking Environment Impact Assessment (EIA) and preparation of Environment Management Plan (EMP) for further discussion and consideration of SEAC as per MoEF&CC Notification. Thereafter, SEAC imposed the following specific conditions:-

" 1) PP to submit traffic impact study.

2) PP to submit details of CER activities in consultation with the affected people in the project area as per MoEF&CC Circular dated 01.05.2018, if applicable.

3) PP to submit an indemnity bond for project land.

4) PP to plant native tree species and submit revise tree list.

5) PP to submit energy saving calculations.

6) Cost of Ecological Damage as Assessed by PP and discussed in the SEAC is Rs. 33.34 Crore. In general, the damage caused in construction period is 5% of the total damage. Therefore committee decided to put Bank Guarantee of Rs, 1.55 Crore (5% of the total damage assessment value)
7) PP to submit Bank Guarantee of Rs, 1.55 Crore.
8) PP to submit compliance report for remediation and augmentation is planned for various aspects affecting environment."

9. It is further mentioned that SEAC considered the proposal of the PP in its 67th Meeting dated 19.08.2018 and noted following violations:-

" • Violation was declared vide order no SEIAA - 2015/III/CR-545/TC-3 Dated 02/08/2016.
- **MPCB has filed the case in the court vide case no 3766/2016 Dated 01/09/2016.**
- Application has been submitted by PP at MoEF & CC on dated 18/07/2017
- Hon'ble NGT's order dated 19-04-2018 in OA No. 115/2018 (PB) [Earlier OA no. 22/2016 (WZ)] is in favour of the PP."

10. It is further mentioned in this affidavit by the respondent No.5/SEIAA that the case was discussed on the basis of documents submitted by the Project Proponent as well as in the light of presentation made by it. All issues relating to environment including air, water, land, soil, ecology, biodiversity and social aspects were examined. The proposal was appraised as category 8(a) B2 and was recommended to SEIAA for grant of EC. SEIAA considered the proposal in its meeting dated 28.09.2018 and decided to defer the proposal till the violation issues and remediation were addressed.

11. It is further mentioned in this affidavit by the respondent No.5/SEIAA that in the Form I, PP had disclosed cases pending against it

before the Courts and one of them being O.A. No.22/2016 pending before this Tribunal and another case being Criminal Complaint No. 3766/2016 pending before the Judicial Magistrate First Class. SEAC considered the proposal in its 85th Meeting dated 10.04.2019 and noted that the cost of remediation plan and natural & community resource augmentation plan as per revised approach paper is estimated as Rs.1.95 Cr. and also noted that the amount of CER as per MoEF&CC Circular dated 01.05.2018 is Rs.1.90 Cr. which was less than the remediation/augmentation plan. Therefore, the SEAC decided to obtain Bank Guarantee of Rs.1.95 Cr. for the project completion period. Based on this, SEAC decided to recommend the proposal to SEIAA for grant of prior EC.

12. It is further mentioned in this affidavit by the respondent No.5/SEIAA that SEIAA considered the proposal for EC in its Meeting held on 17.07.2019 and noted that the PP had submitted satisfactory compliance of the points raised by SEAC and noted that the remediation plan and Natural and Community Resource Plan submitted by it, were adequate. After deliberation, SEIAA decided to grant EC, subject to submission of bank guarantee of Rs.1.95 Cr. to Maharashtra Pollution Control Board towards effective implementation of the remediation plan and Natural and Community Resource Plan.

13. From the side of respondent No.3/PMC, reply affidavit dated 17.07.2023 has been filed, where-in it is submitted that the PMC is responsible only for issuance of commencement certificate, plinth checking certificate and occupation certificate and not responsible for issuing EC.

14. It is further submitted in this affidavit by the respondent No.3/PMC that inspection of site in question was done on 05.07.2016 by the

answering respondent and prepared the status Report, which is quoted herein below:-

"

Sr No.	Item	FSI (In sq. meter)	Non-FSI (In sq. meter)
01	FSI	7144.60	
02	Balcony		1,064.03
03	Staircase		262.56
04	Fire Staircase		248.76
05	Staircase Lobby		14.96
06	Passage		410.71
07	Lift Lobby		122.94
08	Lift		13.10
09	Fire Lift		12.78
10	Adjacent Terrace		1563.42
11	Lift Machine Room		231.63
12	Top Terrace		985.32,
13	O.H. Water Tank		54.90
14	Parking		13,171.28
	Total	7,144.60	18,153.39
Total Built Up Area (i.e F.S.I. + Non F.S.I.) = 25,297.99 sq. m.			

"

15. It is further submitted in this affidavit by the respondent No.3/PMC that the plans have been sanctioned on the application made by the Project Proponent under Section 44 of the MRTP Act, 1966 through a licensed Architect and thereafter, the proposals were sanctioned under Section 45 of MRTP Act. There is no bar on planning Authorities on sanctioning of the plans. The answering respondent has strictly abided

with the DC Rules, Maharashtra Regional and Town Planning Act, 1966 and Maharashtra Provincial Municipal Corporation Act, 1949 and has granted all the permissions accordingly.

16. From the side of appellant, rejoinder affidavit dated 10.05.2023 against the reply affidavits of respondents has been filed, where-in he has summarily mentioned important dates and events related to the grant of *ex-post-facto* EC to the projects in question, which are reproduced herein below for the sake of convenience:-

"

Sr.	Date	Event
1.	14.09.2006	EIA Notification-2006 mandating prior environment clearance
2.	04.04.2011	S.O.695(E) Notification for Clarification on BUA
3.		PMC granted first sanction
4.	20.11.2010	PMC First Sanction CC/2821/10
5.	25.08.2011	First NA Order PMH/NA/SR/68/2011
6.	09.11.2012	PMC Revision Sanction CC/2330/12
7.	24.07.2013	PMC Tree Authority NOC
8.	05.10.2013	Second NA Order PMH/NA/SR/1136/2012
9.	19.12.2015	PMC Revision Sanction CC/3023/15
10.	28.01.2016	PMC Revision Sanction CC/3613/16
11.	02.02.2016	PMC Occupancy Certificate OCC/1476/16
12.	12-15.01.2016	Minutes of 40^{th} SEAC-III Meeting
13.	25-29.04.2016	Minutes of 46^{th} SEAC-III Meeting
14.	19-23.09.2016	Minutes of 54^{th} SEAC-III Meeting

Sr.	Date	Event
15.	13-15.10.2016	Minutes of 56th SEAC-III Meeting
16.	09.12.2016	EIA Notification-2016
17.	14.03.2017	EIA Notification-2017 for regularization of violation case
18.	17.07.2017	Application for ex-post facto EC
19.	02.08.2017	order passed by the Hon'ble High Court at Bombay in W.P. No. 8402 of 2017
20.	04.12.2017	order passed by the Hon'ble High Court of Bombay in W.P. No. 13203 of 2017
21.	08.03.2018	EIA Notification-2018 for delegation of powers to SEAC & SEIAA for consideration of violation cases
22.	27.03.2018	Refusal of Consent to Establish by MPCB
23.	19.04.2018	Order passed by this Hon'ble NGT in O.A. No. 22/2016
24.	19.08.2018	Minutes of 67th SEAC-III Meeting
25.	10.09.2018	indemnity bond by PP
26.	28.09.2018	Minutes of 139th SEIAA meeting
27.	April-2019	Assessment for Environmental Damage and Estimation of Remediation Costs submitted by PP
28.	10.04.2019	Minutes of 85th SEAC-III Meeting
29.	10.04.2019	Presentation for compliance by PP
30.	17.07.2019	Minutes of 171st SEIAA Meeting
31.	09.08.2019	SEIAA Granted ex-post facto EC without recovering Environment Compensation for past violation of PP
32.	07.09.2019	Appellant filed present Appeal
33.	31.01.2020	*Ex-post facto* Consent to Establish (CTE) granted by the MPCB
34.	01.02.2020	Revocation of the stop work order
35.	19.01.2021	MPCB First Site Visit
36.	11.03.2021	MPCB Second Site Visit

37.	31.03.2021	*Ex-post facto* 1st Consent to Operate granted by MPCB
38.	01.09.2021	Amended Consent to Establish (CTE) granted by the MPCB
39.	02.09.2021	Amended Consent to Operate granted by MPCB

"

17. The remaining part of the said rejoinder contains nothing but reiteration of the facts, which have already been mentioned by him in the memo of appeal and the same has already been considered by us above.

18. First of all, we would like to give in brief the facts of this case that the present project, which has been constructed by the Project Proponent/respondent Nos.1, 2 & 8, is covered under the Amnesty Window, which is allowed by the Government of India vide Notification dated 14.03.2017, which is admitted fact to the parties. As far as the procedure, which was required to be followed for considering the grant of EC is concerned, the same is laid down in that very Notification. For the sake of convenience, relevant portion of the said Notification is quoted herein below:-

> *".....the Central Government hereby directs that the projects or activities or the expansion or modernization of existing projects or activities requiring prior environmental clearance under the Environment Impact Assessment Notification, 2006 entailing capacity addition with change in process or technology or both undertaken in any part of India without obtaining prior environmental clearance from the Central Government or by the State Level Environment Impact Assessment Authority, as the case may be, duly constituted by the Central Government under sub-section (3) of Section 3 of the said Act, shall be considered a case of violation of the Environment Impact Assessment Notification, 2006 and will be dealt strictly as per the procedure specified in the following manner: -*
>
> *(2) In case the projects or activities requiring prior environmental clearance under Environment Impact Assessment Notification, 2006 from the concerned Regulatory Authority are brought for environmental clearance after starting the construction work, or have undertaken expansion, modernization, and change in product- mix without prior environmental clearance, these projects shall be treated as cases of violations and in such cases, even Category B projects which are*

granted environmental clearance by the State Environment Impact Assessment Authority constituted under sub- section (3) Section 3 of the Environment (Protection) Act, 1986 shall be appraised for grant of environmental clearance only by the Expert Appraisal Committee and environmental clearance will be granted at the Central level.

(3) In cases of violation, action will be taken against the project proponent by the respective State or State Pollution Control Board under the provisions of section 19 of the Environment (Protection) Act, 1986 and further, no consent to operate or occupancy certificate will be issued till the project is granted the environmental clearance.

(4) The cases of violation will be appraised by respective sector Expert Appraisal Committees constituted under sub-section (3) of Section 3 of the Environment (Protection) Act, 1986 with a view to assess that the project has been constructed at a site which under prevailing laws is permissible and expansion has been done which can be run sustainably under compliance of environmental norms with adequate environmental safeguards; and in case, where the finding of the Expert Appraisal Committee is negative, closure of the project will be recommended along with other actions under the law.

(5) In case, where the findings of the Expert Appraisal Committee on point at sub Para (4) above are affirmative, the projects under this category will be prescribed the appropriate Terms of Reference for undertaking Environment Impact Assessment and preparation of Environment Management Plan. Further, the Expert Appraisal Committee will prescribe a specific Terms of Reference for the project on assessment of ecological damage, remediation plan and natural and community resource augmentation plan and it shall be prepared as an independent chapter in the environment impact assessment report by the accredited consultants. The collection and analysis of data for assessment of ecological damage, preparation of remediation plan and natural and community resource augmentation plan shall be done by an environmental laboratory duly notified under Environment (Protection) Act, 1986, or a environmental laboratory accredited by National Accreditation Board for Testing and Calibration Laboratories, or a laboratory of a Council of Scientific and Industrial Research institution working in the field of environment.

(6) The Expert Appraisal Committee shall stipulate the implementation of Environmental Management Plan, comprising remediation plan and natural and community resource augmentation plan corresponding to the ecological damage assessed and economic benefit derived due to violation as a condition of environmental clearance.

(7) The project proponent will be required to submit a bank guarantee equivalent to the amount of remediation plan and Natural and Community Resource Augmentation Plan with the State Pollution Control Board and the quantification will be recommended by Expert Appraisal Committee and finalized by Regulatory Authority and the bank guarantee shall be deposited prior to the grant of environmental clearance and will be released after successful implementation of the remediation plan and Natural and Community Resource Augmentation Plan, and after the recommendation by regional office of the Ministry, Expert Appraisal Committee and approval of the Regulatory Authority.

> *14. The projects or activities which are in violation as on date of this notification only will be eligible to apply for environmental clearance under this notification and the project proponents can apply for environmental clearance under this notification only within six months from the date of this notification."*

19. Thereafter, we deem it appropriate to frame following issues for just disposal of this appeal-

(i). Whether the project was correctly considered as per the Notification of MoEF&CC dated 14.03.2017?

(ii). Whether environmental damage has been assessed as per relevant procedures and the requisite remediation plan was prepared by PP?

(iii). Whether due diligent was not observed at the end of SEAC/SEIAA while making appraisal of the grant of *ex-post-facto* EC?

20. **As regards issue No. (i):-** As per this issue, we have to decide as to whether the project in question was correctly considered as per the Notification of MoEF&CC dated 14.03.2017, in this regard, it would be appropriate for us to refer relevant provision of Notification 14.03.2017, which has already been quoted by us above in para no.18.

21. From the perusal of the respective pleadings of the parties, it is apparent that there is no apparent error to be there in regard to following the procedure, which is provided for grant of *ex-post-facto* EC in the Notification dated 14.03.2017. Therefore, we decide this issue accordingly.

22. **As regards issue No.(ii)**:- As per this issue, we have to decide as to whether environmental damage has been assessed as per relevant procedures and the requisite remediation plan was prepared by Project Proponent. In this regard, we would like to rely upon the Approach Paper (annexed at page nos. 345-373 of the paper book) by the name Approach for the Assessment of Environmental Damage and Estimation of

Remediation Costs for Building Construction Projects initiated without Obtaining Mandatory Environmental Clearance (Violation Case), which has been prepared by the Committee appointed by the SEIAA- Maharashtra. The said approach paper provides as follows:-

" (i). *It is in line with MoEF&CC Notification dated 14/03/2017 applicable for 06-month amnesty window for such proponents who violated prior Environmental Clearance (EC) requirement and takes into account of ecological damage and economic benefit derived due to violation and remediation plan and natural and community resource augmentation plan preparation & implementation thereto for building construction projects violation cases.*

(ii). *Environmental damage cost assessment considering various project related attributes (air pollution, water pollution, soil environment, noise & vibration, green belt and Occupational Health & Safety) and their recurring & non-recurring cost.*

(iii). *Assessment of economic benefits derived due to violation inclusive of the following:*

a) *costs saved or/and not taking appropriate environmental protection measures and also, the benefits derived by going ahead with project to gain commercial gains. The same have been considered as 10% of Ready reckoner cost of the construction under violation if it is already occupied (fully or partially) or reasonably in advance stage of completion (more than 50%). In case, the construction is still not in advance stage of completion (less than 50%) and no occupation is given, then the benefits can be taken as 5% of the Ready reckoner cost for the construction in violation;*

b) *environmental track record of the project proponent of Rs. 10,00,000/- (Rs. Ten lakhs) for each of earlier or similar other environment clearance violation in other projects being developed by project proponent and/or any one of its directors.*

(iv). *Preparation of remediation plan and natural and community resource augmentation plan as Environmental management plan (EMP) equivalent to the above-mentioned environmental damage cost and economic benefits, as at (i) and (ii) above, or the amount equivalent to the CER amount as per the MOEF&CC's office Memorandum No: F NO 22-65/2017-IA-III dated 01/05/2018, whichever is higher. Areas identified for resource allocation through such EMP cost are as below:*

Sr. No	Description of Activity	% allocation	Implementing agency	Remarks
1	Afforestation (can Include plantation, garden	25	Social forestry and Local body	The afforestation can be either through social

	development)			forestry or the Local body. Preferably within 50 km from project site
2	Water conservation Program (Jalyukt shivar, etc.)	25		Preferably within 50 km radius of project site
3	Urban environment and sanitation (can include Swachh Bharat, playground development, urban ground-water recharge schemes etc.)	20	Local body	
4	Sewerage lines and STP, solid waste management,	20	Local body	

"

23. The said procedure, which has been laid down for assessment of environmental damage and estimation for remedial cost, is to be followed in the State of Maharashtra, as environmental scientist, Government of Maharashtra had issued a letter dated 31.01.2019 to the Chairman, SEAC- I, II & III, where-in it is informed that it has been decided to follow the provisions of the MoEF&CC dated 14.03.2017 and the reference is made of the above report.

24. We find that the Project Proponent has submitted environmental damage cost assessment at page nos. 551 to 555 of the paper book, which is as follows –

Assessment of Environmental Damages

"

Attributes	Scope of saving on account of environmental protection measures	EMP cost	
		Recurring cost, per day (Rs.)	Non-recurring Cost (Rs.)

Air Pollution	Water requirement for sprinkling (KL/day): 5 KL/day(average)	250 /-	Nil
Water Pollution	A. Cost of water requirement: a). Construction phase: 5017 KL for curing and approx 5 % for plastering only for commercial area which is 255 KL together 5362 KL @ Rs. 50 per KL b). Operation phase No water connection obtained. B. Cost of sewage treatment, reuse & disposal: a). Construction phase: b). Operation phase: C. Quantity of water pumped out during excavation and a lumpsum cost of Rs. 50 per cum for such unauthorized water extraction and disposal D. Cost of Construction & maintenance of recharge well:	232 Nil Nil 410/- Nil Nil 137 /-	Nil Nil Nil 45 Lacs Nil Nil 4.50 Lacs
Soil environment	In case of demolition has carried out, the cost of demolition waste	No	Nil

Attributes	Scope of saving on account of environmental protection measures	EMP cost	
		Recurring cost, per day (Rs.)	Non-recurring Cost (Rs.)
	management plan needs to be discussed and finalized as non-recurring cost		
	In case there is some hazardous waste like asbestos or the site is located on industrial area where hazardous chemical or waste was handled, the cost based on due diligence of the project site, as given by consultants. (the report must include soil analysis, water analysis, MPCB consent copies, manifest of HW if any). This requires critical examination from SPCB.	NA	Nil

	Cost of preservation of top soil & excavated earth to be considered. Cost of preservation of top soil & excavated earth to be considered. The top soil layer of approx. 300 mm is considered. The lumpsum cost for 828 cum is considered.	Nil	1.00 Lac
Noise and Vibration	For damage due to noise pollution & vibration, the cost of barricades around the project site should be considered. For damage due to noise pollution & vibration, the cost of barricades around the project site should be considered. The Cost of 402 running meters with 10 feet	Nil	15.07 Lacs
Green Belt	In case of any tree cutting without EC cost of Rs. 10000/- per tree apart from any statutory action for such tree cutting if any, Cost of planting & maintaining trees (Number of trees as per the byelaws) Cost of compensatory tree plantation (5 trees for each tree cut)	115/-	1.79 Lacs

Attributes	**Scope of saving on account of environmental protection measures**	**EMP cost**	
		Recurring cost, **per day (Rs.)**	**Non-recurring Cost** (Rs.)
RI-I/OHS	Cost of workers benefit to be considered in view of Building and Other Construction Workers Welfare Cess Act, 1996	In Contractors Scope	In Contractors Scope
	A. cost of health checkup of workers: **B.** cost of safety measures including PPEs	Nil Nil	2.90 Lacs 1.20 Lacs
	Total Cost per working day	**1144/-**	**71.46 Lacs**

Calculation of Cost of Remediation Plan and Natural & Community Resource Augmentation Plan

Sr	Description	Details	Amount
A	Assessment of Environment Damages		
1	Total of recurring cost	Cost arrived from above table per day X number of days in violation	1144*1155)— 13,21,320/-

2	Non-recurring cost	Cost as arrived from above table	71,46,000/-
	Sub Total **(1+2** above)	(Subject to minimum Rs. 1 crore)	(1+2)=84,67,320 < **1,00,00,000/- Therefore** **Rs. 1,00,00,000/-**
B.	Economic benefits accrued due to violation		

1.	Economic benefits	1% of Total Project cost including land,as declared by PP before SEAC, subjection maximum Rs. 10 Cr.	Rs. 95,00,000/-
2.	Track Record of Project proponent	Incremental cost of Rs. 10 lakhs for each EC violation by PP observed atany other projects in last 3 years	
C.	Cost of remediation plan and natural &community resource augmentation plan	Sum of A and B above or amount equivalent to the CER amount as per the MOEF&CC's Office Memorandum No: F N022 65/2017-IA-Ill dated 01/05/2018, whichever is higher.	(A+B)=Rs. 1,95,00,000/- CER Value= Rs. 1,90,00,000/- **Higher Value = Rs. 1,95,00,000/-**

A

Based on discussions with stakeholders, following areas have been identified for resource allocation through such EMP cost, which are subject to final decision, for both activities and allocation, by SEIAA and Govt. of Maharashtra;

Sr. No	Description of Activity	% allocation	Implementing agency	Remarks
1	Afforestation (can include plantation, garden development)	25	Social forestry and Local body	The afforestation can be either through social forestry or the Local body. Preferably within 50 km from project site
2	Water conservation program (Jalyukt shivar, etc)	25		Preferably within 50 km radius of project site

A

Sr. No	Description of Activity	% allocation	Implementing agency	Remarks
3	Urban environment and sanitation (can include swatccha Bharat, playground development, urban groundwater recharge schemes etc)	20	Local body	
4	Sewerage lines and STP, solid waste management,	20	Local body	
5	Urban air /noise pollution control initiatives	10	Local body	

"

25. From the above details pertaining to the damage cost assessment, we find that while SEAC seems to have appraised and accepted cost of remediation plan and natural & community resource augmentation plan as Rs.195 Cr., PP has not submitted any concrete time bound and specific plan as seen from above table at 'A' which is clearly a reproduction of table from Approach Paper format with no specific figures. Hence, even though BG was submitted by PP to MPCB, we simply fail to understand how this amount was to be utilized. Neither PP nor MPCB has submitted any document on how the remediation plan and natural & community resource augmentation plan was to be implemented.

26. We further find that as per the EC letter dated 09.08.2019 under specific conditions at serial nos.(VI) & (IX), annexed at page no.22 of the paper book, following has been mentioned:-

> *"VI. Cost of Ecological Damage as assessed by the PP and discussed in the SEAC is 33.34 Crore. In general the damage caused in construction period is 5% of the total damage. Therefore, committee decided to put Bank Guarantee of Rs.1.55 Crore (5% of the total damage assessment value).*
>
> *(IX). The committee noted that Cost of remediation plan and natural & community resource augmentation plan as per revised approach paper*

is estimated Rs.1.95 Cr. The Committee also noted that the amount of CER as per MoEF&CC is Rs.1.90 Cr. which is less than the remediation/augmentation plan. Therefore committee decided to obtain Bank Guarantee of Rs. 1.95 Cr. for the project completion period."

27. Based on above stipulations in specific conditions, it is not clear as to whether the Project Proponent was asked to submit B.G. of Rs.1.55 Crore and Rs.1.95 Crore separately or only Rs.1.95 Crore, which is said to have been deposited. The SEAC has not made it clear as to how the said figures find mention in the specific conditions in final letter issued by the SEIAA.

28. We also find that it is not clear from the remediation plan submitted by the Project Proponent as to what was required to be done at their end, in order to remedy environmental damage, for which it is said that Bank Guarantee of Rs. 1.95 Cr. has been asked to be deposited by the SEIAA. The SEIAA appears to be not vigilant in ensuring that the work, which was required to be performed by the Project Proponent by way of remediation plan, whether the same was narrated as specific time bound action plan in the remediation plan in *extenso* and yet they proceeded to grant the *ex-post-facto* EC. Therefore, we decide this issue holding that the lacuna in the consideration for grant of EC compels us to think of remanding the matter to be decided again by the SEIAA afresh after giving opportunity of hearing to the parties. The said plan must be reproduced in EC letter to ensure that the same is implemented in letter & spirit.

29. **As regards issue No.(iii)**- In view of above finding at issue no. (ii), we are of the view that this appeal deserved to be allowed and *ex-post-facto* EC granted is set aside with the direction to the SEIAA to consider its issuance again after giving opportunity of hearing to the parties concerned,

in the light of the observations made by us, within a period of two months from the date of uploading of the Judgment.

30. With the above directions/observations, we dispose of this appeal.

31. All pending applications, if any, also stand disposed of.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

ORDER

32. After pronouncement of the Judgment, the learned Counsel for respondent Nos.1, 2 & 8/PPs has prayed that four weeks' time may be allowed to enable him to file an appeal against this Judgment and till then, the implementation of this Judgment may be kept on hold.

33. We allow his prayer and grant four weeks' time as prayed for. Thereafter only, the implementation of this Judgment would be made by the authorities concerned.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

August 09, 2023
Appeal No. 68/2019(WZ)
I.A. No. 237/2019 (WZ), I.A. No. 73/2023 (WZ),
I.A. No. 74/2023 (WZ) & Caveat No. 12/2019(WZ)
P.Kr.