

Item No.3:-

**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI**

Dated this the 08th day of August, 2024.

(Through Video Conference)

Appeal No.29 of 2020 (SZ)

IN THE MATTER OF

S.K. Vijayakumar

Aged about 53 years,
S/o. Late S.N. Krishna Kumar,
R/o. 852, Cinema Road,
Doddaballapur – 561 203
Bangalore Rural District.

...Appellant(s)

Versus

**1. Karnataka State Level Environment Impact Assessment
Authority**

Through the Member Secretary
Room No.706, Ecology and Environment Department,
4th Floor, Gate No.4, M.S. Building,
Bangalore – 560 001.

2. M/s. Resonance Laboratories Private Limited,

Through the Director
Plot No.8C & 9A, KIADB Industrial Area,
Bashettihalli, Doddaballapur Taluk,
Bangalore Rural District – 561 203.

3. Karnataka State Pollution Control Board

Through the Member Secretary
Parisara Bhawan, 1st to 5th Floor,
No.49, Church Street, Bengaluru – 560 001.

4. State of Karnataka

Through the Chief Secretary,
Room No.110, Gate II,
M.S. Building, Ambedkar Veedhi,
Bengaluru, Karnataka – 560 001.

5. Karnataka Industrial Area Development Board,

Through the Chief Executive Officer,
No.49, East Wing, 4th & 5th Floor,
Khanija Bhavan, Race Course Road,
Bangalore – 560 001.

6. The Deputy Commissioner

Beerasandra Village – 562 110
Devanahalli Taluk
Bangalore Rural District.

7. Union of India

Through the Secretary
Ministry of Environment, Forests & Climate Change,
Jor Bagh Road, Ali Ganj, Lodi Colony,
New Delhi – 110 003.

...Respondent(s)

For Appellant (s): Mr. Ritwick Dutta &
Mr. G. Stanly Hebzon Singh.

For Respondent(s): Mr. H.K. Vasanth for R1.
Mr. K.M. Vijayan, Senior Advocate a/w.
Mr. R. Suresh Kumar
For M/s. K.M. Vijayan Associates for R2.
Mr. Mohammed Salihu represented
Mr. M.R. Gokul Krishnan for R3.
Mr. Rajat Jonathan Shaw represented
Mr. K.M. Darpan for R4 & R6.
Mr. B. Dhanaraj for R5.

Judgment Reserved on: 09th February, 2024.

CORAM:

HON'BLE SMT. JUSTICE PUSHPA SATHYANARAYANA, JUDICIAL MEMBER

HON'BLE DR. SATYAGOPAL KORLAPATI, EXPERT MEMBER

JUDGEMENT

Delivered by Smt. Justice Pushpa Sathyanarayana, Judicial Member.

1. The appellant, who is directly affected by the project of the 2nd Respondent, a bulk drug manufacturer, has filed this appeal challenging the impugned Environmental Clearance dated 24.08.2020 granted by the State Environmental Impact Assessment Authority – Karnataka (*hereinafter referred to as 'SEIAA – Karnataka'*) to the 2nd Respondent.

2. The appellant has stated that the industrial area was established in the year 1983-84 in Doddaballapur Industrial Area which is a unique and highly eco-sensitive surrounded by several ecologically sensitive areas. However, due to rapid industrialization, without following due procedure under law, the entire region is polluted.

3. The Project Proponent/2nd Respondent had obtained Consent to Establish on 08.05.1992. Subsequently, the Department of Ecology, Government of Karnataka issued the Environmental Clearance dated 20.08.1992 with a specific capacity. The Consent to Operate was also issued on 12.04.1994. However, between 1997 and 2004, the 2nd Respondent had expanded the area under operation by purchasing private lands around the allotted site. Though originally the project was established in an area of 7,382 Sq.M., the Project Proponent is having more than 8 Acres (i.e. 32,374.89 Sq.M.) at present.

4. According to the appellant, the Project Proponent had illegally expanded the project area and also changed the product mix and capacity without obtaining prior Environmental Clearance under the EIA Notification, 2006. The Karnataka State Pollution Control Board (*hereinafter referred to as 'Karnataka SPCB'*) had granted the post facto Consent to Operate from 01.07.2016 to 30.06.2021. However, the 2nd Respondent had not obtained prior Environmental Clearance when there was a change in the product mix as well as expansion.

5. While so, the Project Proponent applied for a grant of Terms of Reference (ToR) from the SEIAA – Karnataka under the Violation Notification in April 2018 under the One-time Window Notification dated 14.03.2017 for regularization of violation cases by the MoEF&CC. The State Expert Appraisal Committee – Karnataka (*hereinafter referred to as 'SEAC – Karnataka'*) may prescribe appropriate ToR for undertaking the Environmental Impact Assessment (EIA) and preparation of the Environment Management Plan (EMP). The Expert Appraisal Committee will prescribe specific ToR 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 EIA Report.

6. The appellant states that the project is located in Thippagondanahalli Reservoir (**TGR**) which is a notified Eco-Sensitive Area. Therefore, it is contended that owing to the

location of the project within the area notified under the TGR and also outside the notified industrial area, the project should have been appraised under Category – A Project by the Sector Specific EAC and the Environmental Clearance should be granted only by the MoEF&CC. Admittedly, the Project Proponent had expanded the plant area outside the notified industrial area, falling within the Category - A project.

7. When the Project Proponent applied for a grant of Environmental Clearance under the violation category, the condition precedent is that the Project Proponent has to suspend its production activities till the grant of Environmental Clearance. However, it is alleged that the Project Proponent was operating the project throughout the appraisal period which is in violation of the ToR. There were several objections raised during the public consultation which were also not considered by the authorities. Without verifying the compliance of the ToR and also meeting the objections raised in the public hearing, the SEAC – Karnataka had appraised the project in question in a summary manner.

8. The main objection of the appellant is that though the project was started in the 1990's and continued to operate based only on the Consent to Establish and Consent to Operate issued by the Karnataka SPCB, it has been operating till date without obtaining Environmental Clearance as per the EIA Notification, 2006. However, it is stated by the Project Proponent that all the parameters are within the permissible norms and hence, no damages have been caused due to the operation of the plant in the absence of the Environmental Clearance and offered to earmark Rs.15 Lakhs towards remediation measures and agreed to submit a detailed damages caused due to the plant as per the Kyoto Protocol. The Project Proponent also offered to contribute a sum of Rs.10 Lakhs to the PM Care account.

9. Based on the above, the SEAC – Karnataka had recommended the proposal for issuance of Environmental Clearance and accordingly, issued the Environmental Clearance

dated 24.08.2020. The said Environmental Clearance is now under challenge in the appeal on the following grounds:

- a. The SEAC and SEIAA – Karnataka did not have jurisdiction to appraise the proposal for grant of Environmental Clearance, as the project has to be appraised under Category – A owing to the fact that it is located outside the notified industrial area and also within the notified ecologically sensitive area. Therefore, according to the appellant, the Environmental Clearance ought to have been issued only by the MoEF&CC.
- b. As the project is within the notified ecologically sensitive zone, the impact assessment ought to have been conducted. The SEIAA – Karnataka had not considered the critical issues pertaining to the project in question and the appraisal is not done in accordance with the '*Precautionary Principle*' and the principle of '*Sustainable Development*'.
- c. The SEAC – Karnataka had accepted the statements made by the Project Proponent and its consultant without verifying the statements and had not made any independent application of mind.
- d. The Environmental Clearance was also assailed on the ground that the recommendation of the SEAC – Karnataka and the assessment of the damages were carried out as per the Kyoto Protocol at the request of the Project Proponent.

10. The 1st Respondent / SEIAA – Karnataka, in its reply, had stated that the application of the 2nd Respondent was duly considered by the SEIAA – Karnataka in accordance with law and based on the information furnished by the Project Proponent in the statutory application, Pre-Feasibility Report, EIA Report, Public hearing, etc. As the project was operating without Environmental Clearance, it was categorized as a violation proposal and appraised in accordance with the violation notification and recommended to the SEIAA – Karnataka for

issuance of ToR for conducting the EIA Study and submission of the EIA Report. The SEIAA – Karnataka considered the recommendation of the SEAC – Karnataka and issued the ToR. After the EIA Study was conducted and the report was filed and the public consultation was held, the proposal was considered by the SEAC – Karnataka for issuance of the Environmental Clearance. The 1st Respondent considered the recommendation made by the SEAC – Karnataka and granted the Environmental Clearance on 24.08.2020.

11. With respect to the adoption of the Kyoto Protocol method, the SEIAA – Karnataka has submitted that the Kyoto Protocol for assessing carbon footprint during the violation period was adopted not only for the 2nd Respondent but for several other projects also under similar circumstances. During the appraisal, the SEAC – Karnataka had observed that the project in question had obtained the Environmental Clearance on 20.08.1992 and also necessary approval from the Karnataka SPCB for manufacturing active pharmaceutical ingredients. For the change in the product mix in the year 2012, the Project Proponent also obtained Consent to Operate from the Karnataka SPCB. As there were no environmental damages caused during the violation period as per the EIA Report and no economic benefit was derived by the Project Proponent due to the violation and since the change in product mix without modified Environmental Clearance was not covered under the cases considered for levying environmental compensation by the Pollution Control Board's Committee, the method of adopting Kyoto Protocol for assessing the environmental damage due to carbon footprint was considered appropriate by the SEAC – Karnataka after due deliberations instead of applying the CPCB formula. As the SEIAA – Karnataka found that the Project Proponent had obtained the Consent to Operate and other necessary approvals, there was no damage to the environment during the violation period as per the EIA Report and the project was running under loss, it would be appropriate to assess the damages caused to the environment by adopting Kyoto Protocol.

12. The 2nd Respondent who is the Project Proponent stated that their unit has been in operation in the present site from 1992 after obtaining Consent to Establish, Consent to Operate and required Environmental Clearance. Though initially the land for the project was obtained on lease from the 5th Respondent (KIADB), the Project Proponent acquired lands adjacent to the project area from the 5th Respondent and private parties with the specific land denomination as industrial land. The 2nd Respondent is operating in the area of bulk drugs and intermediates and provided employment to several individuals in the neighbouring area. The Project Proponent also produced the assessment of ecological damage in the EIA Report based on the impact on environment attributes taking into consideration the preventive measures adopted by the 2nd Respondent as prescribed in the Consent to Operate. The baseline EIA data were also considered to understand whether any impact was reflected in the data collected on the surrounding environment. The Project Proponent also had furnished the EMP and Bank Guarantee as quantified by the 1st Respondent and was deposited by the 2nd Respondent, only after which, the Environmental Clearance was issued. According to the Project Proponent, the product mix changes that were undertaken by the 2nd Respondent are now permissible without fresh Environmental Clearance as per the decision of the Central Government. It is stated that the Office Memorandum dated 28.12.2021 issued by the MoEF&CC permits granting Environmental Clearance for bulk drug/ pharmaceuticals units without limiting to specific products.

13. Regarding the damage assessment in the EIA Report, the same was based on the impact of company activity on several environmental attributes such as air, surface and groundwater, noise, and soil/land cover among others. The Expert Appraisal Committee required the Project Proponent to conduct the damage assessment as per the Kyoto Protocol and the calculation resulting in an estimate of Rs.10 Lakhs. The SEIAA – Karnataka had determined a sum of Rs.15 Lakhs as an amount for the remediation plan and natural and community

resource augmentation plan, for which also, a Bank Guarantee was furnished by the Project Proponent.

14. The 3rd Respondent / Karnataka SPCB, in their reply, stated that the Consent to Establish was issued on 08.08.1992 for five products, for which, the Environmental Clearance has been obtained from the Department of Ecology and Environment, Government of Karnataka. The Project Proponent is carrying out the manufacturing activity in the KIADB allotted land while using the privately purchased lands for installing ETP, STP and storage yard. The CFE Expansion Application of the Project Proponent was placed before the Technical Advisory Committee and the CFE Expansion approval was issued by the 3rd Respondent on 08.08.2012 with the condition that the respondent shall inform the MoEF&CC about the modification program and along with the claim with respect to no additional pollution load. Only based on the directions given during the technical presentation, the Karnataka SPCB had granted the Consent to Operate on 28.02.2018 for five products for the period up to 30.06.2021. The Project Proponent also deposited a Bank Guarantee equivalent to the amount of remediation plan and natural and community resources augmentation plan with the Karnataka SPCB. The Bank Guarantee has been deposited by the Project Proponent prior to the grant of Environmental Clearance for 19 products with the SEIAA – Karnataka. In fact, the order stipulated the Project Proponent must deposit a Bank Guarantee with the Karnataka SPCB. The Karnataka SPCB also has stated that all the objections raised during the public consultation have been considered. However, the Karnataka SPCB is not an authority to issue the clearance.

15. The 5th Respondent/KIADB, in its reply, stated that it had obtained the Environmental Clearance on 28.03.2016 for its industrial area. The **Original Application No. 180 of 2017 (SZ)** and **Appeal No.20 of 2019 (SZ)** were preferred against the same, which were dismissed by this Tribunal and the review applications viz., **R.A. No.11 of 2022 (SZ)** in Appeal

No.20 of 2019 (SZ) and **R.A. No.12 of 2022 (SZ)** in Original Application No. 180 of 2017 (SZ) were also dismissed.

16. The MoEF&CC / 7th Respondent has stated that the 2nd Respondent Company was established in 1985 prior to the EIA Notification. Further, the project was reportedly expanded including a change in product mix in the year 1997 without prior Environmental Clearance. The proposal was considered by the SEIAA – Karnataka as a case of violation in the light of the Notification S.O.804 (E) dated 14.03.2017 and S.O.1030 (E) dated 08.03.2018. According to the MoEF&CC, developmental activities in Ecologically Sensitive Areas are regulated as per the provisions contained in the respective notifications as determined by the MoEF&CC, after considering the recommendations of the concerned State Governments and specifically designated Expert Committee for this purpose. Further, the Eco-Sensitive Zone may refer to an area that is declared to provide a buffer around legally designated protected areas like National Park, Biosphere Reserve, Wildlife Sanctuary, Tiger Reserve, etc. Both the Eco-Sensitive Area and Eco-Sensitive Zone are equally important from ecological and biodiversity conservation points of view. Considering the importance of the Eco-Sensitive Zone, the MoEF&CC has issued O.M. dated 08.08.2019, to all the States regarding the procedure for consideration of developmental projects located within 10 Kms of National Park/ Wildlife Sanctuary seeking Environmental Clearance under the provisions of the EIA Notification, 2006. Therefore, the notification of the Eco-Sensitive Zone is associated with the boundaries of the protected areas such as National Parks and Wildlife Sanctuaries which were started to be issued only from the year 2010 onwards. It is specifically stated that the Thippagondanahalli Reservoir (TGR) is not a notified Eco-Sensitive Zone as on date.

17. Heard the learned counsel appearing for the appellant as well as the respondents.

18. The above appeal is challenging the grant of ex-post facto Environmental Clearance dated 24.08.2020 granted by the SEIAA-Karnataka to the 2nd Respondent for the change in

product mix within the existing manufacturing facility in KIADB Industrial Area, Doddaballapur Taluk, Bangalore.

19. Admittedly, the 2nd Respondent had applied for a grant of Environmental Clearance under the violation category. It is also admitted that the unit was operating even pending the process. The Project Proponent also expanded the plant area outside the notified industrial area by purchasing additional lands. It is not in dispute that the KIADB/5th Respondent had earlier obtained an Environmental Clearance which was challenged by the very same appellant herein in **Original Application No. 180 of 2017 (SZ)** and **Appeal No.20 of 2019 (SZ)** which were dismissed. Further, the **R.A. No.11 of 2022 (SZ)** in Appeal No.20 of 2019 (SZ) and **R.A. No.12 of 2022 (SZ)** in Original Application No. 180 of 2017 (SZ) filed against them also met the same fate.

20. The primordial objection raised by the appellant is that the SEAC – Karnataka failed to check for compliance with the violation notification dated 14.03.2017 and failed to specify whether the Project Proponent suspended its activities pending the process.

21. As far as the damages due to the violation by the Project Proponent are concerned, it is found that all the parameters are within the permissible norms and hence, no damages have been caused due to the operation of the plant in the absence of the Environmental Clearance. Nevertheless, the 2nd Respondent came forward to earmark Rs.15 Lakhs towards remediation measures and agreed to submit detailed damages caused due to the plant as per the Kyoto Protocol. The Project Proponent also had agreed to contribute Rs.10 Lakhs to the PM Care account. Based on the above, the SEAC – Karnataka recommended for issuance of the Environmental Clearance which was issued and is now impugned in this appeal.

22. Therefore, the question that has to be determined in this appeal is whether any damages caused to the environment by operating the unit without obtaining the Environmental Clearance is computed. If so, whether the procedure adopted for

the same under the Kyoto Protocol is permissible, omitting the CPCB norms?

23. It is not in dispute that the SEIAA – Karnataka has adopted the Kyoto Protocol in preference to the CPCB Guidelines. Assessing the environmental damage involves calculating the carbon footprint of the 2nd Respondent illegal activities. This requires measuring both direct and indirect greenhouse gas emissions associated with unauthorized expansion and changes in the product mix. Direct emissions encompass those directly linked to the Project Proponent's operations such as increased energy consumption and production process. Indirect emissions include those from related activities like transportation and supply chain operations. Establishing a pre-violation baseline is crucial to quantify the increase in emissions due to the violations providing a clear reference point for comparison. The Kyoto Protocol was adopted on 11.12.1997. The aim of the Kyoto Protocol is to seek commitment from industrialized countries and economies in transition to limit and reduce greenhouse gases in accordance with the agreed individual targets. The Convention itself only asks those countries to adopt policies and measures on mitigation and to report periodically. The Convention binds only the developed countries and places the burden on them under the principle of '*Common but differentiated responsibility and respective capabilities*'. Currently, there are 192 parties to the Kyoto Protocol.

24. A comprehensive greenhouse gas inventory should be compiled following internationally recognized standards to ensure accuracy and completeness. This inventory will form the basis for determining the extent of environmental damage and setting specific reduction targets for the Project Proponents. These targets should aim to revert the Project Proponent's emission to pre-violation levels or lower ensuring that the environmental impact is mitigated. The Government of India had ratified the convention in 2002, however, India is a Non-Annex I party to the Kyoto Protocol, meaning that India is not bound by the provision of the convention in determining the compensation and implementing emission reduction requirements and investing in mitigation projects.

25. The Kyoto Protocol mechanisms such as the Clean Development Mechanism (CDM) and Joint Implementation (JI) offer viable pathways for this. Through the Clean Development Mechanism, the Project Proponent can invest in emission reduction projects earning certified emission reductions to offset their increased emissions. Similarly, the Joint Implementation allows the company to earn emission reduction units by funding projects that reduce emissions in industrialized countries. These mechanisms provide flexibility and incentivize the company to contribute to sustainable development projects that have a positive environmental impact. The viability of using the Kyoto Protocol lies in its standardized approach which ensures a consistent and internationally recognized methodology for quantifying emissions and assessing the environmental damage. This framework promotes accountability by providing measurable and verifiable data on the company's environmental impact.

26. Additionally, the Kyoto Protocol's flexibility through mechanisms like Clean Development Mechanism and Joint Implementation encourages investment in sustainable projects aligning the local environmental remediation efforts with global climate change mitigation goals. However, implementing the Kyoto Protocol also presents challenges. Accurately measuring the emissions and establishing a reliable baseline can be complex and resource-intensive. Ensuring robust monitoring and independent verification is essential to maintain transparency and effectiveness of compensatory measures. The Kyoto Protocol primarily addresses greenhouse gas emissions and may not fully capture the other environmental impacts such as biodiversity loss, water pollution or soil degradation.

27. To effectively implement the Kyoto Protocol, a detailed environmental audit conducted by independent experts is necessary to assess the Project Proponent's emission and environmental impact. A compensation plan should be developed outlining the specific emission reduction targets, timelines and compensatory projects.

28. Therefore, as the Kyoto Protocol only focuses on carbon emissions and does not address other areas such as soil, air and water pollution, the Kyoto Protocol mechanism cannot be applied, as the same addresses only the greenhouse gas emissions and mechanism to limit carbon emissions and offset them. Besides, in the absence of a detailed environmental audit conducted by independent experts, the environmental impact caused by the Project Proponent cannot be assessed.

29. The Kyoto Protocol sets binding emission reduction targets for 37 industrialized countries and economies in transition and the European Union. On 08.12.2012, the Doha amendment to the Kyoto Protocol was adopted for a second commitment period starting in 2013 and lasting until 2020. India is a party to the Kyoto Protocol. However, India did not find a place in Annex –I countries since it is not a developed country nor was it in 'economics in transition'. Therefore, India was not under any commitment under the Kyoto Protocol. **Hence, developing countries like India have no mandatory mitigation obligations or targets under the Kyoto Protocol.**

30. The said agreement which entered into force in 2005 and was ratified by 192 parties has since been superseded by the Paris Agreement of 2015. The Kyoto Protocol committed industrialized countries to reduce their greenhouse gas emissions in accordance with agreed individual targets. Under the principle of '*Common but differentiated responsibility and respective capabilities*', the protocol mandated that 37 industrialized nations plus the European community cut their greenhouse gas emissions by an average of 5% below 1990 levels and established a system to monitor the countries' progress.

31. The Kyoto Protocol only binds developed countries, as they are largely responsible for the high levels of greenhouses in the atmosphere. In December 2012, after the first commitment period of the protocol ended, the parties to the Kyoto Protocol met in Doha, Qatar to adopt an amendment to the original Kyoto agreement. This amendment added new emission reduction targets for the second commitment period 2012-2020 for participating countries. In 2015, however, the

countries agreed on yet another legally binding climate treaty the Paris Agreement, which entered into force in November 2016 and effectively replaced the Kyoto Protocol.

32. While so, in the Proceedings of the 242nd SEAC Online Meeting held on 7th & 8th May 2020, the SEAC – Karnataka has recorded whatever the Project Proponent and its consultant had stated. The relevant portion of the Minutes of the Meeting is usefully extracted below:-

"The proponent and consultant attended 242nd SEAC meeting held on 07.05.2020 for EIA appraisal.

As seen from the records the project was started in 90s and continues to operate based on the CFE and CFO issued by the KSPCB and the plant is operating till today. This has been categorized under violation category for the fact that the proponent has not obtained EC as per the EIA Notification, 2006.

As per the EIA report the proponent is proposed to take effluents to CETP and for this he has agreed to convert into ZLD. The proponent has also agreed that he will go for alternatives to toluene solvent.

As far as damage due to violation the proponent has stated that all the parameters are within the permissible norms and hence he reiterated no damages have been caused due to the operation of the plant in the absence of EC.

However in this regard he came forward to earmark Rs.15 Lakhs towards the remediation measures and he has also agreed to submit the detailed damages caused due to this plant as per Kyoto Protocol.

As far as CER is concerned the proponent has stated that he will contribute Rs.10 Lakhs to PM care account."

33. From the above Minutes of the SEAC – Karnataka, it is evident that the SEAC – Karnataka has accepted the environmental damage assessment report submitted by the Project Proponent based on the Kyoto Protocol.

34. The Karnataka SPCB in its report has stated that though there is no formula for calculating or assessing the environmental damages with respect to the economic benefit derived due to the violation as a condition precedent for Environmental Clearance, the formula available (CPCB Guidelines) for levying environmental compensation is already in place.

35. As per our direction, a comparative statement of assessment of damages was done and furnished in the report dated 08.07.2023. The damage assessed as per the Kyoto

Protocol is Rs.7.63 Lakhs (which is done by the Project Proponent through their consultant). Applying the formula available, the Karnataka SPCB has assessed the compensation which is Rs.11,68,87,500/-. It is stated that there is no environmental damage caused by the Project Proponent while operating the unit without Environmental Clearance, however, it is only a procedural violation. As there is no non-compliance or non-adherence to the action plan submitted, etc., the environmental compensation calculated by the Project Proponent as per the Kyoto Protocol was accepted by the SEIAA – Karnataka.

36. The Karnataka SPCB has given a formula and the factors for calculating the damages as per the CPCB Guidelines, the quantum arrived at as per the Kyoto Protocol is not explained either by the Project Proponent or by the SEIAA – Karnataka or even by the Karnataka SPCB.

37. As stated supra, for the effective implementation of the Kyoto Protocol, a detailed environmental audit has to be conducted by independent experts. In this regard, even the Project Proponent has not mentioned as to how and on what basis, the assessment was done based on the Kyoto Protocol and the said sum of Rs.7.63 Lakhs was arrived at. Even presuming that it is only a procedural violation and there is no non-compliance or non-adherence to the conditions resulting in the environmental damage, it would have been appropriate on the part of the Project Proponent to furnish the details of arriving at the said sum.

38. Admittedly, the Project Proponent had initially applied for the Environmental Clearance for change in product mix on 20.07.2017 as per the Notification S.O.804 (E) dated 14.03.2017. The said S.O. relates to the requirement of prior Environmental Clearance under the EIA Notification, 2006 from the Regulatory Authority for the projects which had already started construction work or have undertaken expansion, modernization and change in product mix without prior Environmental Clearance, including 'B' Category projects. These projects shall be appraised for grant of Environmental Clearance

only by the Expert Appraisal Committee and the Environmental Clearance will be granted at the Central level.

39. Subsequently, the S.O.804 (E) was modified in S.O.1030 (E) dated 08.03.2018. As per the above S.O., since the MoEF&CC had received a number of proposals relating to all sectors covered under 'A' and 'B' Category and based on the representations from the industrial association, it was decided to delegate the appraisal and approval with the State/Union Territory Level Expert Appraisal Committee for issuance of Environmental Clearance. The above S.O. 1030 (E) dated 08.03.2018 had substituted the following for sub-para (5) in the S.O.804 (E) dated 14.03.2017:-

"(5) In case, where the findings of the Expert Appraisal Committee or State or Union territory level Expert Appraisal Committee on point at sub-paragraph (4) above are affirmative, the projects will be granted the appropriate Terms of Reference for undertaking Environment Impact Assessment and preparation of Environment Management Plan and the Expert Appraisal Committee or State or Union territory level Expert Appraisal Committee, will prescribe 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, and 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 the Environment (Protection) Act, 1986, or a environmental laboratory accredited by the National Accreditation Board for Testing and Calibration Laboratories, or a laboratory of the Council of Scientific and Industrial Research institution working in the field of environment."

40. As per the above, the SEAC should prescribe the specific Terms of Reference for the project on assessment of ecological damage, remediation plan, etc. which shall be prepared as an independent chapter in the EIA Report by the accredited consultants and the preparation of remediation plan and natural and community resource augmentation plan shall be done by an environmental laboratory duly notified under the Environment (Protection) Act, 1986 or environmental laboratory accredited by the National Accreditation Board for Testing and Calibration Laboratories, or a laboratory of the Council of Scientific and Industrial Research institution working in the field of environment.

41. The said S.O. further empowers the SEAC to stipulate the implementation of the EMP, comprising a remediation plan and natural and community resources augmentation plan corresponding to the ecological damage assessed and economic benefit derived due to the violation as a condition of the Environmental Clearance. Therefore, the assessment should have been done by the notified environmental laboratory or accredited environmental laboratory by the National Accreditation Board. Thereafter, the Bank Guarantee equivalent to the amount of the remediation plan, etc. as quantified by the EAC shall be furnished, which shall be prior to the grant of Environmental Clearance after the successful implementation of the remediation plan.

42. When the S.O.1030 (E) dated 08.03.2018 is self-contained in terms of the procedure for assessing the damage and deposit of the same, it is surprising to note that the SEAC - Karnataka has accepted the calculation made by the Project Proponent, wherein it was accepted by the Project Proponent to earmark Rs.15 Lakhs towards remediation measures and agreed to submit a detailed damage caused due to the project as per the Kyoto Protocol.

43. The Minutes of the SEIAA – Karnataka, held on 29.05.2020, does not state that the damages arrived at are based on the assessment done by the environmental laboratory or any environmental laboratory accredited by the National Accreditation Board for Testing and Calibration Laboratories or a laboratory of the Council of Scientific and Industrial Research institution working in the field of environment. Therefore, there is a deviation in the procedure by the SEIAA/SEAC – Karnataka in assessing the damages. That apart, the Bank Guarantee equivalent to the amount of remediation plan and natural and community resource augmentation plan should have been deposited prior to the grant of Environmental Clearance. When the assessment itself is not done as per the statutory order of the MoEF&CC and adopting the calculation of damages caused due to the project as per the Kyoto Protocol, is incorrect and unacceptable. The assessment as accepted by the Project Proponent to furnish an amount of Rs.15 Lakhs with the State

Pollution Control Board and offered to deposit an amount of Rs.10 Lakhs to the PM Care account is not acceptable. Even presuming that the same is correct, till such time the same is deposited, the Environmental Clearance should not have been granted.

44. In fact, the additional ToR Condition No.(8) refers to the ecological damage. It specifically directs the assessment of the ecological damage with respect to air, water, land and other environmental attributes. The collection and analysis of data shall be done by an environmental laboratory duly notified under the Environment (Protection) Act, 1986 or an environmental laboratory accredited by the NABL or the laboratory of Council of Scientific and Industrial Research (CSIR) institution working in the field of environment. If the above additional ToR was dully followed by the SEIAA – Karnataka, there would not have been an opportunity to adopt the assessment under the Kyoto Protocol.

45. As referred supra, the Kyoto Protocol only deals with greenhouse gas emissions and will not have a comprehensive environmental impact, including biodiversity loss, water pollution or soil degradation, which is replaced by Paris Agreement, 2015. Therefore, in the absence of the environmental audit conducted by the independent experts as referred to in the ToR, the environmental damage assessed by the SEIAA – Karnataka is baseless and cannot be accepted.

46. In view of the above, it would be appropriate to set aside the assessment of damages as per the Kyoto Protocol and direct the SEAC/SEIAA – Karnataka to follow the procedure prescribed in S.O.1030 (E) dated 08.03.2018 and calculate the said amount for the implementation of the remediation plan, natural and community resource augmentation plan, etc. within a period of 4 (Four) months. The said assessment has to be done till the date of inspection to be fixed, as the unit is continuing its operation. As the unit is functional and providing employment for many, cancelling the Environmental Clearance would be disastrous. Therefore, the Project Proponent and the SEIAA – Karnataka are directed to assess the damages as

directed within the stipulated time. As and when the same is assessed and deposited with the Karnataka SPCB, the same may be reported for compliance.

47. In the result, the appeal is disposed of to the extent indicated above.

Sd/-
Smt. Justice Pushpa Sathanarayana, JM

Sd/-
Dr. Satyagopal Korlapati, EM

Internet – Yes/No

All India NGT Reporter – Yes/No

Appeal No.29/2020 (SZ)
08th August, 2024. Mn.

