

Item No.3:-

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

Monday, the 28th day of April 2025.

[Through Physical Hearing (Hybrid Option)]

**Original Application No.188 of 2021 (SZ) &
I.A. No.01 of 2024 (SZ)**

IN THE MATTER OF

SUO MOTU

*[Mr. S. Sakthivel / Applicant has been discharged
from this proceeding vide Order dt.07.12.2023]*

S. SAKTHIVEL
Environmental Protection & Anti-Pollution Group
S/o. P.K. Subramaniam,
Alagu Vinayakar Kovil Street,
Fairlands, Salem – 636 016.

... Applicant(s)

Versus

**1) MINISTRY OF ENVIRONMENT, FOREST & CLIMATE CHANGE
(MoEF&CC)**

Represented by its Secretary to Government,
Union of India, Indira Paryavaran Bhavan,
Jor Bagh Road, New Delhi – 110 003.

2) DIRECTORATE OF ENVIRONMENT AND CLIMATE CHANGE

Represented by its Secretary
4th Floor, K.S.R.T.C Bus Terminal,
Thampanoor,
Thiruvananthapuram – 695 001.

**3) STATE ENVIRONMENTAL IMPACT ASSESSMENT
AUTHORITY - KERALA**

Represented by its Chairman
K.S.R.T.C Bus Terminal Complex,
4th Floor, Thampanoor,
Thiruvananthapuram - 695 001.

4) KERALA STATE POLLUTION CONTROL BOARD,

Represented by its Chairman,
Plamoodu – Thekkamoodu Rd,
Pattom, Thiruvananthapuram,
Kerala - 695 004.

**5) SRI GOKULAM MEDICAL COLLEGE AND RESEARCH
FOUNDATION**

Represented by its Dean,
Aalamthara, Bhoothamadakki Road,
Venjarammodu, Travandram Dt,
Kerala - 695 607.

- 6) SREE UTHRADAM THIRUNAL ACADAMY OF MEDICAL SCIENCES & HOSPITAL,**
Represented by its Dean,
Vencod, Vattappara, Travandram,
Kerala - 695 028.
- 7) AMIRTHA SCHOOL OF MEDICINE,**
Represented by its Dean,
Amrita Vishwa Vidyapeetham,
AIMS Health Sciences Campus,
Ponekkara P.O., Kochi,
Kerala - 682 041.
- 8) KMCT MEDICAL COLLEGE CAMPUS**
Represented by its Dean,
Manassery P.O., Mukkam,
Kozhikode, Kerala - 673 602.
- 9) MALANKARA ORTHODOX SYRIAN CHURCH MEDICAL COLLEGE,**
Represented by its Dean,
Medical College, Medical College Road.
Kolenchery P.O., Ernakulam - 682 311, Kerala.
- 10) MES MEDICAL COLLEGE & HOSPITAL,**
Represented by its Dean,
Valanchery - Nilambur Road,
Palachode Post, Malaparamba,
Perinthalmanna, Kolathur,
Malappuram, Kerala - 679 321.
- 11) KARUNA MEDICAL COLLEGE**
Represented by its Dean,
Vilayodi, Chittur, Palakkad,
Kerala - 678 103.
- 12) AZEENIA MEDICAL COLLEGE,**
Represented by its Dean,
Diamond Hill, Meeyannoor PO,
Kollam - 691 537.
- 13) DR. SOMERVELL MEMORIAL CSI MEDICAL COLLEGE,**
Represented by its Dean,
Parassala Vellarada Rd,
Karakonam, Kerala - 695 504.
- 14) DM WAYANAD INSTITUTE OF MEDICAL SCIENCES**
Represented by its Dean,
Meppadi, Wayanad District,
Kerala - 673 577.
- 15) AL- AZHAR MEDICAL COLLEGE & SUPER SPECIALTY HOSPITAL**
Represented by its Dean,
Thodupuzha - Ezhalloor Road,
Kumaramangalam, Kerala - 685 605.
- 16) KANNUR MEDICAL COLLEGE**
Represented by its Dean,
Anjarakandy Integrated Campus,
Anjarakandy, Kannur,
Kerala - 670 612.

17) T.D. MEDICAL COLLEGE

Represented by its Dean,
Vandanam, Alappuzha,
Kerala, India.

...Respondent(s)

For Applicant(s): Suo Motu.

For Respondent(s): Dr. Kuna Suryanarayana for R1.
Mr. G. Vignesh represented
Mr. E.K. Kumaresan for R2.
Mr. G. Prabhu for R3.
Mrs. V.K. Rema Smrithi for R4.
M/s. M. Abdul Razack, M.A. Arshad &
A. Dhamodaran for R5.
M/s. B. Radhakrishnan &
K. Sivasubramanian for R6.
Mr. P.B. Sahasranaman a/w.
Mr. S. Sai Sathya Jith for R8.
Mr. Najumal Husain for R9.
Mr. Babu Karukapadath for R10.
Mr. K. Gowtham Kumar for R11, R12, R14 & R15.
Mr. Adrian D. Rozario for R13.
M/s. Sarvabhauman Associates for R16.

Judgment Reserved on: 11th February, 2025.

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 Original Application is filed raising concerns regarding the non-compliance with environmental regulatory norms by several of the medical colleges and their associated hospitals which are located in the State of Kerala, alleging that Respondents No.5 to 17, which are the universities comprising of medical colleges with hospitals, are in operation without obtaining a statutorily mandated prior Environmental Clearance (EC) under the EIA Notification, 2006.

2. It is stated that Respondents No.5 to 17 are operating large-scale medical colleges and facilities with built-up areas exceeding the threshold of 20,000 Sq. Meters. As such projects fall squarely within the scope of Entry 8 (a) of the schedule to the EIA Notification, 2006, they are required to obtain prior Environmental Clearance before the commencement of the construction is undertaken.

3. According to the applicant, none of these respondent institutions has obtained such prior Environmental Clearance but continues to function in blatant disregard to the environmental laws. Since the operation of Respondents Nos.5 to 17 is contrary to the established principles of law and in violation of the mandatory provisions under the scheme of Environment (Protection) Act, 1986, the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981, the applicant is seeking for a declaration that their operations are illegal, unauthorized and restrain them from carrying on further activities without the Environmental Clearance and also to levy the environmental compensation that may be determined for the violations of the provisions of the environmental legislations.

4. Respondent No.1, which is the **MoEF&CC**, has stated that the EIA Notification, 2006 (vide S.O. 1533 (E) dated 14.09.2006) was issued superseding the EIA Notification, 1994. The EIA Notification, 2006 covered 38 projects/activities in the schedule which inter-alia include different types of infrastructure projects viz., airports, ports, highways and building and construction. Entry 8 (a) of the EIA Notification, 2006 mandates the Environmental Clearance for building and construction projects above 20,000 Sq. Meters and less than 1,50,000 Sq. Meters. Entry 8 (b) refers to townships and area development projects covering an area of greater than 50 Hectares and/or the built-up area of greater than or equal to 1,50,000 Sq. Meters, require Environmental Clearance. The MoEF&CC had issued a Notification in S.O.3252 (E) dated 22.12.2014, wherein the industrial shed, school, college, and hostel for educational institutions were exempted from obtaining prior Environmental Clearance. Thereafter, on 09.06.2015, a clarification was issued that in the

case of medical universities/institutions, components of hospitals shall continue to require prior Environmental Clearance. The MoEF&CC had issued yet another O.M./clarification dated 19.05.2022 for all educational institutions exempted under the Notification dated 22.12.2014, making the same applicable to all the educational institutions covered under the definition of 'Educational Institution' as mentioned in Noise Pollution (Control and Regulation) Rules, 2000.

5. The 3rd Respondent/ State Environmental Impact Assessment Authority (SEIAA – Kerala), in its reply, has stated that out of 15 medical colleges referred in the Original Application, only 3 of them applied for Environmental Clearance before the SEIAA – Kerala.

6. In the additional report filed by the SEIAA – Kerala, in the tabular column, it is stated that

6.1 **Respondent No.8 (KMCT Medical College)** applied for Environmental Clearance on 19.12.2017 and is under process since additional documents were sought for, which are yet to be submitted. This college had constructed 77,839.51 Sq. Meters which include hostels, residential buildings and educational institutions.

6.2 **Respondent No.10 (MES Medical College & Hospital)** applied for Environmental Clearance on 16.11.2022, which is under process. This college has a total built-up area of 1,37,479 Sq. Meters, of which, 96,475 Sq. Meters were in existence constructed prior to 2006 and the proposed built-up area is 41,004 Sq. Meters.

6.3 **Respondent No.15 (Al-Azhar Medical College & Super Speciality Hospital)** applied for the Terms of Reference (ToR) on 29.07.2020 and the same was rejected by the SEIAA – Kerala on 19.02.2021, as the application was not submitted during the window period for a violation case. After the rejection, they again applied on 28.06.2021 and the same was also de-listed. Once again, it made an application for ToR on 25.05.2022 after

the issuance of the SOP dated 07.07.2021 and the authority directed the Project Proponent to apply for regularization of the existing violation only as per O.M. dated 28.01.2022. Hence, they again submitted an application on 10.03.2023, which is under process. This college has a built-up area of 56,881.81 Sq. Meters, including educational institutions, hospitals, STP, staff quarters, etc.

7. Barring the above three respondent institutions (Respondents Nos.8, 10 and 15), the rest of the respondent institutions have not even applied for the Environmental Clearance.

8. The **4th Respondent**, which is the **Kerala State Pollution Control Board (KSPCB)**, in their report, has given the details of the consent /authorization to the hospital establishments. All the respondent institutions seem to have obtained consent for operating the Sewage Treatment Plants (STPs) of various capacities and have been periodically renewing the same.

9. Now, the question that has to be gone into is whether the respondent medical institutions are in compliance with the provisions of the environmental laws.

10. The S.O. 3252 (E) dated 22.12.2014, which temporarily exempted the educational institutions from the requirement of prior Environmental Clearance received judicial scrutiny in the State of Kerala. The Hon'ble High Court of Kerala stayed the operation of the S.O. granting exemption within the state, making it abundantly clear that those educational institutions which may have qualified for the exemption elsewhere in the country would nonetheless be required to obtain prior Environmental Clearance within the territorial limits of Kerala. Despite the aforesaid legal position, the respondent institutions have continued to operate without obtaining Environmental Clearance and there has been a consistent failure on the part of the regulatory bodies also.

11. A similar issue [**Original Application No.07 of 2022 (SZ)**] was brought before this Tribunal for one of the medical colleges situated in Tamil Nadu, wherein this Tribunal had an occasion to deal with the Statutory Orders and Office Memorandums issued by the MoEF&CC and their judicial journey of the same. As the issue in hand is also identical to the same, the findings therein are extracted below:-

30. Admittedly, the 4th Respondent had not obtained Environmental Clearance or Consent before the commencement of construction of the project, which exceeds the built-up area of 20,000 Sq. Meters under Category 8 (a) of the EIA Notification, 2006. This non-compliance places the project under the 'violation' category, requiring additional obligation, including payment of environmental compensation.

31. The main contention of the learned counsel for the 4th Respondent is that the buildings constructed for educational institutions such as schools, colleges and hostels are exempted from obtaining a prior Environmental Clearance, placing his reliance on **S.O. 3252 (E) dated 22.12.2014**. The above S.O. granted an exemption for educational institutions, including schools, colleges and hostels only. It did not exempt the hospital component which requires prior Environmental Clearance, as the exemption did not specifically mention the applicability to hospital facilities.

32. In this regard, the MoEF&CC issued an **O.M. dated 09.06.2015**, confirming and clarifying that the exemption granted to educational institutions under S.O. 3252 (E) dated 22.12.2014 did not extend to hospital facilities associated with medical colleges. This clarification affirms that the 4th Respondent was obligated to obtain a prior Environmental Clearance for its hospital operations. Therefore, the continued functioning of the 4th Respondent hospital without a prior Environmental Clearance is a direct violation of the EIA Notification, 2006.

33. In the meanwhile, a notification viz., **S.O. 804 (E) dated 14.03.2017** was issued, which provided a mechanism for regularizing the projects that had commenced the construction without obtaining prior Environmental Clearance by applying under the 'violation' category. The 4th Respondent took advantage of this and filed an application under the notification of S.O. 804 (E) dated 14.03.2017, thus, acknowledging its non-compliance.

34. Meanwhile, the MoEF&CC has issued a notification vide **S.O. 5733 (E) dated 14.11.2018**, delegating the powers to the Local Bodies such as Municipalities, Development Authorities and District Panchayats to ensure compliance with environmental conditions for building construction projects. This applies specifically to the project with built-up area exceeding 20,000 Sq. Meters but less than 1,50,000 Sq. Meters. The categories covered under this delegation included industrial sheds, educational institutions, hospitals and hostels.

35. On the very next day, another **S.O. 5736 (E) dated 15.11.2018** was issued by the MoEF&CC, granting an exemption from obtaining prior Environmental Clearance for both educational institutions, buildings and hospitals with a built-up area exceeding 50,000 Sq. Meters but less than 1,50,000 Sq. Meters.

36. While the notification mentioned above exempted the educational institutions, buildings and hospitals with a built-up area between 50,000 Sq. Meters and 1,50,000 Sq. Meters from obtaining prior Environmental Clearance, will not have retrospective application. Admittedly, the construction and operational activities for the hospital component of the 4th Respondent commenced well before the issuance of the above

notification in 2008. In other words, the 4th Respondent had commenced the construction and its operation when the prior Environmental Clearance was mandatory under the EIA Notification, 2006. To be noted is that the 4th Respondent had obtained CTE from the TNPCB on **14.02.2008** and application in Form – I was submitted for Environmental Clearance on **25.03.2009** before the SEIAA – Tamil Nadu.

37. As per *Assistant Excise Commissioner, Kottayam's* case, referred supra, retrospective applicability is not presumed unless specifically mentioned in the notification, which is not the case here. Therefore, the notification does not exempt the 4th Respondent from obtaining Environmental Clearance for the hospital component of their project and their continued operation without requisite approvals constitutes a violation of environmental regulations.

38. On **07.07.2021**, the MoEF&CC issued another Office Memorandum which provided a Standard Operating Procedure (SOP) for identifying and handling violation cases under the EIA Notification, 2006. This SOP was issued in compliance with the order of the National Green Tribunal, Western Zone Bench in **Appeal No.34 of 2020 (WZ) [Tanaji B. Gambhire Vs. Chief Secretary Government of Maharashtra & Ors.] dated 24.05.2021**.

39. The **O.Ms. dated 07.07.2021** and **28.01.2022** introduced the procedural changes for processing violation category cases. However, their operations were stayed by the Hon'ble Supreme Court of India in **Vanashakti Vs. Union of India & Ors. [W.P. (C) No.1394 of 2023] dated 02.01.2024**. Subsequently, on **02.02.2024**, the Hon'ble Supreme Court in the same case clarified its order passed on 02.01.2024, which is usefully extracted below:-

"**5.** We clarify that our orders dated 02nd January, 2024 would not come in the way of the component authorities in considering the proposals for modifications/alterations in the Environmental Clearances if area of such projects had any valid Environmental Clearances prior to 07th July, 2021.

6. Needles to state that such applications for modification/alteration would be considered by the competent authorities strictly in accordance with law as it existed prior to 07th July, 2021."

40. There was another challenge to the O.M. dated 07.07.2021 before the Hon'ble High Court of Madras at Madurai Bench in **W.P. (MD) No.11757 of 2021 [Fatima Vs. Union of India]**. The Hon'ble High Court, on **15.07.2021**, granted an interim stay, on the ground that the concept of ex-post facto approval is alien to environment jurisprudence and it is an anathema to the EIA Notification, 2006. In its final order dated **30.08.2024**, the Hon'ble High Court of Madras held as follows:

"**29.**Ergo, the sequitur is,

(i) captioned three W.P.s, namely W.P. (MD) Nos.8866 of 2021, 11757 of 2021 and W.P. No.18829 of 2021 are allowed in the aforesaid manner, impugned OMs dated 19.02.2021 and 07.07.2021 issued by MoEF are quashed / set aside but prospectively albeit with a window to three ongoing / completed projects as set out elsewhere supra in this order. Consequently, connected Writ Miscellaneous Petitions thereat are closed. There shall be no order as to costs; (ii) Contempt Petition No.56 of 2022 is closed and the respondent is purged of contempt vide Rule of contempt issued on 08.03.2022. Consequently, connected Sub application is closed."

41. Aggrieved by the aforementioned final order, the writ petitioner therein preferred an appeal before the Hon'ble Supreme Court. In **Special Leave Petition (Civil) Diary No.49103 of 2024 [Fatima Vs. Union of India]**, the Hon'ble Supreme Court passed an interim order on **06.01.2025**, which is reproduced below:-

"We direct that if any applications are pending for grant of ex post facto clearances on the basis of OMs dated 19th February, 2021 and 7th July, 2021, the same shall be processed. However, final order granting approval shall not be passed till further orders."

42. Therefore, the application as per O.M. dated 07.07.2021 can be availed to the 4th Respondent subject to '*Fatima case*' referred supra.

43. To be noted is that in **Original Application No.65 of 2019 (WZ) [Ajay Jayvantrao Bhosale Vs. Union of India & Ors.] dated 29.11.2024**, the National Green Tribunal of Western Zone Bench, has held that the Project Proponent had applied for ex-post facto clearance prior to the date of judgment passed by the Hon'ble High Court of Madras as well as prior to the date of order passed by the Hon'ble Supreme Court staying the operation of the O.M. dated 07.07.2021. Therefore, till these judgments/orders were pronounced, position of law would be taken to be that the SOP provided under O.M. dated 07.07.2021 was in force as per the order of the Hon'ble Supreme Court delivered in **Electro Steel's case (Civil Appeal Nos. 7576-7577 of 2021)**.

44. The O.M. dated 07.07.2021 is now before the Hon'ble Supreme Court in the cases of *Vanashakti* and *Fatima*, which have been clubbed together. However, the subsequent order in the *Fatima* case, which permits processing of the application but restricts the passing of final orders, shall prevail. This is because it is the later order and arises from an SLP originating from the State of Tamil Nadu, which falls within the jurisdiction of the Madras High Court, the same jurisdiction as that of the 4th Respondent."

12. In the present case, only three of the medical institutions, as referred to above, have applied for Environmental Clearance under the violation category, seeking exemption for an education and hospital building project under Entry (8) of the EIA Notification, 2006. However, none of these colleges have obtained the valid Environmental Clearance till today.

13. The particulars about each of the institutions, as furnished in their counter affidavits, are as follows:

Respondent No. 5 – Sri Gokulam Medical College and Research Foundation (Counter dated 22.02.2022)

14. Respondent No. 5 submitted that the EIA Notification dated 14.09.2006 is not applicable to them, as the construction of the college and hospital was completed in 2004 and operations commenced in the academic year 2006–2007. It was contended

that the Notification applies only to new projects, activities, expansions or modernisations undertaken post-issuance, and does not have retrospective effect. The respondent also submitted that it possesses valid statutory approvals, including initial biomedical waste authorisation from the KSPCB dated 26.12.2006, which was subsequently renewed, with the latest consent (Consent No. PCB/HO/TVM/ICO-R/11/2018), dated 05.11.2018) valid until 30.06.2023. Reference was made to the KSPCB's report dated 23.09.2021 acknowledging the validity of the consent. The respondent also submitted that permission had been obtained from the Ministry of Health and Family Welfare on 17.08.2005, and provisional affiliation from the University of Kerala on 22.09.2005.

Respondent No.6 – Sree Uthradam Thirunal Academy of Medical Sciences (Reply dated 25.03.2022)

15. Respondent No.6 submitted that the application is based solely on an incomplete RTI reply, which merely stated that out of 12 medical colleges referred to, two had been issued EC, without implying non-compliance by the others. The respondent submitted that it had applied for Consent to Operate long ago and, after rectifying the defects pointed out by the KSPCB and paying the requisite fee, the 4th Respondent issued Consent to Operate on 19.03.2022 (Consent No. PCB/HO/TVM/ICO/03/2022), valid up to 28.02.2027. The consent covered operation of a 500-bed hospital and authorisation for biomedical waste management. The respondent referred to the KSPCB's inspection report dated 21.01.2022, which recorded that the college had installed STP, ETP, and waste treatment systems and was found to be in compliance at the time of inspection.

Respondent No.8 – KMCT Medical College (Reply dated 23.03.2022)

16. Respondent No. 8 submitted that there had been no violation of the EIA Notification or of the Environment (Protection) Act, 1986. It relied on Notification S.O. 3252 (E) dated 22.12.2014, which exempted educational institutions from EC requirements, and stated that the clarification issued through Office Memorandum dated 09.06.2015, requiring EC for hospitals

not forming part of medical institutions, did not apply to them as their hospital is part of a medical college. The respondent further submitted that the built-up area of the hospital was only 19,135.60 sq. m, which falls below the 20,000 sq. m threshold under the EIA Notification. A detailed breakdown of the plinth area by floor was provided, and a copy of the approved building plan from Mukkam Grama Panchayat dated 29.10.2010 was annexed as proof. It was also stated that no additional constructions had been undertaken, and hence, no EC was required.

Respondent No.9 – Malankara Orthodox Syrian Church Medical College (Reply dated 23.05.2022)

17. Respondent No. 9 submitted that the hospital was established on 14.09.1970 and became a medical college in 2002. It stated that the total constructed area of 1,05,116.23 sq. m was built between 1970 and 2006 and that a later addition — an atrium of 4,353.33 sq. m — was constructed in 2019. The respondent contended that the EIA Notification of 2006 does not apply to constructions completed prior to its enforcement, and the 2019 addition did not require EC as per the local authorities. It submitted that it had obtained and regularly renewed consents from the KSPCB since 1998, and has in place approvals from the competent medical and governmental authorities. The respondent also claimed to have implemented environmental measures, including waste management and rainwater harvesting, and that it is not situated in an eco-sensitive area.

Respondent No.10 – MES Medical College (Reply dated 03.10.2023)

18. Respondent No. 10 submitted that all constructions were completed prior to 2006 and that no new projects, expansions, or modernisations have been undertaken thereafter. It submitted that it is functioning in accordance with environmental laws and holds valid consents from statutory authorities, including an Integrated Consent to Operate issued on 13.02.2019 (Consent No. PCB/HO/MLPM/ICOR/03/2019), valid up to 30.06.2023. It further submitted that it had applied for renewal of consent on 25.04.2023 and paid the prescribed fee of

₹11,50,000, which was acknowledged by the KSPCB. It was also submitted that the respondent has applied for Environmental Clearance for expansion via Application No. SIA/KL/INFRA2/404063/2022 dated 16.11.2022 on the Parivesh Portal, has provided all information sought by SEIAA and it is under process.

Respondent No. 11 – Karuna Medical College (Reply dated 04.08.2023)

19. Respondent No. 11 submitted that the hospital was established in 2004 and the medical college commenced in 2006, with requisite approvals from the Medical Council of India and the University of Calicut. It was stated that the building was constructed pursuant to approvals from the Perumatty Grama Panchayat in 2001 and 2005, and at that time, the Panchayat was not governed by building regulation rules mandating EC. It was submitted that the college had obtained Integrated Consent to Operate from KSPCB, which was valid up to 30.06.2023 and had applied for renewal. The respondent stated that it operates a 200 KLD STP with ultrafiltration, and that biomedical waste is managed through the IMAGE system of the Indian Medical Association. An affidavit was submitted before the Pollution Control Board regarding waste treatment, and reference was made to a communication from the Board in 2022 acknowledging the same.

Respondent No.14 – DM Wayanad Institute of Medical Sciences (Counter dated 25.04.2022)

20. Respondent No. 14 submitted that the medical college was established in 2013 with the approval of the Medical Council of India. It was stated that applications for EC under the EIA Notification, 2006 were filed on 14.03.2011 and 11.07.2011 for construction at the present site. The Ministry of Environment and Forests granted Environmental Clearance on 29.08.2011 vide proceedings No. 21-24/2011-I.A.III, prior to the commencement of construction. The respondent affirmed that no further construction or expansion has been undertaken in violation of the terms of the EC.

Respondent No.15 – Al-Azhar Medical College (Reply dated 24.02.2023)

21. Respondent No. 15 submitted that it had applied to SEIAA for Terms of Reference on 29.07.2020. The application was rejected on 19.02.2021 as a 'violation case' filed after the permissible window. The respondent continued to pursue the matter, including correspondence with MoEF&CC in April 2021 and submitted a fresh application for ToR. In December 2022, SEAC approved the ToR for the proposed expansion; however, SEIAA directed the respondent to first apply for regularisation of the existing violation before expansion could be considered. The respondent has undertaken not to commence construction prior to the grant of EC. As on the date of filing, the expansion proposal remained under consideration, and SEIAA has required the institution to assess the damage caused and seek regularisation in terms of OM F.No. 22-2/2020-IA.III dated 28.01.2022.

Respondent No.16 – Kannur Medical College (Reply dated 25.02.2023)

22. Respondent No. 16 submitted that the institution was established in 2006 after obtaining approvals from the Central and State Governments, the Medical Council of India, and the Kerala University of Health Sciences. It was submitted that the built-up area of the hospital is 18,000 Sq.m., which is below the 20,000 Sq.m. threshold prescribed under Notification S.O. 3252(E) dated 22.12.2014, and therefore EC is not required. It was further stated that Consent to Operate was obtained from 2015 onwards and had been periodically renewed. The institution has installed a 175 KLD STP with ultrafiltration, and the treated water is used in compliance with environmental norms. An online application for monitoring and management was submitted to MoEF on 09.05.2022, which was stated to be pending. The respondent also relied on the inspection report dated 21.01.2022 filed by the 4th respondent to assert compliance.

Respondents Nos. 7, 12, 13, and 17

23. No reply has been filed by Respondent No.7 (Amrita Institute of Medical Sciences), Respondent No.12 (Azeezia Medical College), Respondent No.13 (Dr. SM CSI Medical College), and Respondent No.17 (T.D. Medical College) in the present proceedings.

ANALYSIS

24. The central issue for determination in the present matter is whether the respondent institutions (Respondents Nos. 5 to 17) commenced and continued operations without obtaining prior Environmental Clearance (EC) as required under the EIA Notification, 2006, and, if so, whether such operations are in violation of the Environment (Protection) Act, 1986.

25. As already outlined, Entry 8 (a) of the Schedule to the EIA Notification, 2006, requires prior EC for all "Building and Construction Projects" with a built-up area exceeding 20,000 square metres. The Notification, issued under Section 3 of the Environment (Protection) Act, 1986, is mandatory in nature, and any construction activity commenced without prior EC would amount to a continuing violation of the said Act.

26. From the record of this case, it is evident that the majority of the respondent institutions fall squarely within the ambit of Entry 8(a). These are large-scale medical colleges with attached hospitals, constructed and operated with built-up areas that exceed the prescribed threshold. That fact is not in dispute. The question that remains is whether these institutions were required to obtain EC under the applicable legal framework - and, if so, whether they did.

27. The respondent institutions have sought to defend themselves on various grounds. Some (e.g., R5, R9, R10, R11) claim that their constructions were completed before the issuance of the EIA Notification in 2006, and therefore no EC was required. Others (e.g., R8, R15, R16) have claimed exemptions under Notification S.O. 3252(E) dated 22.12.2014, which temporarily exempted certain categories of educational institutions from the

EC requirement. Still others (e.g., R6, R10) point to the existence of valid Consents to Operate and operational pollution control systems as evidence of compliance.

28. However, the legal position in the State of Kerala is materially distinct. The Hon'ble High Court of Kerala, in W.P.(C) No. 3097 of 2016, passed an interim order dated 17.09.2020 staying the operation of Notification S.O. 3252(E) within the State. Thereafter, the Hon'ble High Court of Kerala has quashed and set aside the Notification dated 22.12.2024 vide its final order dated 06.03.2024. The effect of this order, as correctly submitted by SEIAA Kerala, is that the exemption introduced through the 2014 Notification ceased to have effect in Kerala from the date of the stay. Accordingly, even those institutions that may have been exempted under the central notification were no longer entitled to that benefit post 17.09.2020. From that date onwards, all educational and medical institutions with qualifying built-up areas were bound to obtain prior EC before undertaking any new construction or continuing existing operations without regularisation.

29. In this context, the question of timing becomes critical. The regulatory scheme requires that projects be assessed on the basis of the date of commencement of construction or expansion:

- If construction was completed prior to 14.09.2006, i.e., before the EIA Notification came into force, EC may not be required.
- Projects commenced after 14.09.2006 and before 15.11.2018 are subject to the EC requirement under the general rule.
- Projects initiated after 15.11.2018 but before the Kerala High Court's stay on 17.09.2020 may claim exemption only if they qualify under S.O. 3252(E) - though this remains uncertain.
- Any project commenced on or after 17.09.2020 requires EC without exception, due to the operation of the stay in Kerala.

30. Applying this framework to the facts on record, the following position emerges:

- Only Respondent No. 14 (DM Wayanad Institute of Medical Sciences) has obtained prior EC, granted on 29.08.2011.
- Respondents Nos. 9 and 15 filed applications before SEIAA, but no EC has been granted to them as yet.
- The remaining respondents (R5-R7, R10-R13, R16, R17) neither obtained EC nor filed for regularisation under S.O. 804(E), and have continued operations for several years.

31. From the above, it is clear that at least eleven of the respondent institutions (R5 to R7, R9 to R13, R15 to R17) have either claimed exemption from the requirement of Environmental Clearance, admitted to not obtaining it, or failed to provide any documentary proof to the contrary. This position is confirmed both by the affidavits of SEIAA and the consolidated compliance report of the KSPCB dated 22.07.2023. The argument of exemption based on the 2014 Notification is no longer tenable post the Kerala High Court's stay as well as the final order dated 06.03.2024, and no respondent has contested the applicability of the said order.

32. It is true that some institutions claim that their constructions were completed before 2006. However, these claims are vague and unsupported by relevant documentation in most cases. Moreover, even if certain parts of the premises were constructed prior to 2006, the continuing expansion and operation of large hospital infrastructure post-2006 and post-2020 would trigger the EC requirement, unless a valid exemption is proven - which has not been done.

33. As regards the possibility of regularisation, Notification S.O. 804(E) dated 14.03.2017 and subsequent Office Memoranda of 2021 and 2022 provided a structured mechanism for violation cases to apply for post-facto clearance. However, very few respondents availed of this opportunity. The respondent institutions did not apply under the violation regime within the time prescribed. Given the decisions in *Fatima v. Union of India* and *Vanashakti*, and the pendency of appeals before the Hon'ble

Supreme Court, the permissibility of such ex post facto approvals remains uncertain. In any event, failure to avail of even the limited mechanism provided under law further weakens the case of the respondents.

34. In view of the foregoing, it is clear from the material on record - including the inspection reports of the KSPCB, the affidavits of the regulatory authorities, and the admissions and omissions in the respondents' own replies - that the vast majority of the respondent institutions commenced and continued construction and operation without obtaining the mandatory prior Environmental Clearance under the EIA Notification, 2006. In several cases, this continued for more than a decade. In some cases, there were also periods of non-compliance with the consent regime under the Water and Air Acts.

35. While the precise determination of the duration and extent of violation - particularly for the purpose of environmental compensation - will depend on the final regulatory assessment by SEIAA or KSPCB, this Tribunal has no hesitation in concluding that the operations of the said respondents are in violation of Paragraph 2 of the EIA Notification, 2006, and consequently, in breach of the Environment (Protection) Act, 1986. The continuance of such operations without EC, particularly after 17.09.2020, is patently illegal and unsustainable in law.

36. The Hon'ble Supreme Court, in its interim order dated 06.01.2025 in **Fatima Vs. Union of India**, has directed that pending applications for ex-post facto clearances based on the O.M.s dated 19.02.2021 and 07.07.2021 may be processed, but no final order granting such approval shall be passed until further orders. In light of this, the Project Proponent's application for ex-post facto clearance, if in order, can only be processed by the authorities, but no final order can be issued.

37. We make it clear that until Environmental Clearance is obtained, the Project Proponent shall be deemed as a violator. If the respondents discontinue their operations till the decision of the Hon'ble Supreme Court, it would be deemed as a violator till the date of order of the Hon'ble Supreme Court i.e. 06.01.2025. The authorities are thus directed to compute and recover the

compensation from the respondents. In any case, Environmental Clearance cannot be granted to the respondents until the entire compensation amount, as calculated by the authorities, is recovered.

38. In the result, the MoEF&CC / SEIAA – Kerala is directed to comply with the following directions, after providing an opportunity to the concerned parties and ensuring adherence to due process of law:-

- (i) Compute the number of days of violation in operating the medical college, hostel and hospital without obtaining Environmental Clearance for those institutions, which are required to have the Environmental Clearance.
- (ii) Compute the number of days of violation concerning air and water pollution, the cost of sewage treatment, disposal of biomedical waste, etc. for each of the respondent institutions, if applicable.
- (iii) Arrive at the environmental compensation payable by each of the respondent institutions, if applicable.
- (iv) Recover the same from them in the manner known to law.
- (v) Utilize the recovered sum for the effective implementation of the remediation plan and natural and community resource augmentation, which shall be implemented within a period of six (6) months.

39. With the above directions, the Original Application [O.A. No.188 of 2021 (SZ)] is disposed of.

40. In view of the above, the interlocutory application [I.A. No.01 of 2024 (SZ) in O.A. No.188 of 2021 (SZ)] is closed.

Sd/-
Smt. Justice Pushpa Sathyanarayana, JM

Sd/-
Dr. Satyagopal Korlapati, EM

Internet – Yes/No

All India NGT Reporter – Yes/No

O.A. No.188 of 2021 (SZ)
I.A. No.01 of 2024 (SZ)
28th April, 2025. Mn & AM.

