

Item No. 08

Court No. 1

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

(By Video Conferencing)

Original Application No. 837/2018

Sandeep Mittal

Applicant(s)

Versus

Ministry of Environment, Forests &
Climate Change & Ors.

Respondent(s)

Date of hearing: 31.07.2020

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S. P. WANGDI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Respondent(s): Mr. Divya Prakash Pandey, Advocate for MoEF&CC

ORDER

1. The question for consideration is the steps to be taken for effectiveness of monitoring mechanism for compliance of conditions of Environmental Clearance (EC) as per Notification dated 14.09.2006 under the Environment (Protection) Act, 1986. Environment Impact Assessment is an essential component of the 'Precautionary' as well as the 'Sustainable Development' principles. Laying down conditions for EC based on appraisal is not enough unless compliance thereof is duly monitored and ensured with a view to achieve the said object.

2. Faced with the grievance that there was flagrant violation of conditions of Environmental Clearance and adequate monitoring was not taking place, vide order dated 30.10.2018, the Tribunal observed that

compliance of conditions of Environmental Clearance must be monitored on periodical basis, atleast once in a quarter. Accordingly, the Ministry of Environment, Forest and Climate Change (MoEF&CC) was directed to review and strengthen the mechanism for the purpose and furnish a report.

3. The matter has thereafter been considered on several dates including 29.04.2019, 23.07.2019 and 22.11.2019. It has been repeatedly found that the mechanism for monitoring environmental norms is inadequate, as a result of which there is rampant violation of Environmental Clearance (EC) conditions, as noted by this Tribunal in several cases. The Tribunal also noted the observations in the Judgments of the Hon'ble Supreme Court in *T.N. Godavarman Thirumulpad Vs. Union of India & Ors. (2014) 4 SCC 61* and *Lafarge Umiam Mining Private Limited Vs. Union of India, (2011) 7 SCC 338* that power of the regulator under Section 3(3) of the Environment (Protection) Act, 1986 is coupled with duty and **there is a need for effective monitoring mechanism.** The Hon'ble Supreme Court also observed that there is poor monitoring and there are huge gaps in laying down of conditions and enforcement thereof. Such observations have also been made by the Comptroller and Auditor General of India (CAG), pointing out deficiencies on this aspect.

4. Vide order dated 22.11.2019, the Tribunal *inter-alia* observed:

9. The present scenario of monitoring once in 4.5 years and planned modification resulting in monitoring in 2.5 years is farce and does not meet the requirement of law by any standards. As already observed monitoring has to be, as far as possible, quarterly and in no case less than twice a year.

10. Data of environmental degradation in the form of air, water and soil pollution reflected in the form of 351 polluted

river stretches, 122 non-attainment cities and 100 polluted industrial clusters is eloquent testimony of such degradation and failure of monitoring mechanism. Statistics of deaths and diseases on account of such degradation are well known and need not be elaborated here.

11. On being asked, **learned counsel for MoEF&CC is unable to even mention the percentage of compliance as according to him there is no such data available, which is shocking.** With a view to plan such monitoring, the percentage of compliance must be ascertained. **Trend over a period of time in terms of increase in compliance or otherwise must be studied so that there can be corresponding review of mechanism based on correct data.** Experience so far shows that with the increasing developments, in absence of adequate monitoring mechanism it would be difficult to check such violations thereby defeating 'precautionary' principle.

12. In view of the above, remedial action may be planned at the earliest. **The plan should cover all the sub categories of projects, including B category. Monitoring mechanism needs a also to be evolved for SEIAAs, regional offices of the MoEF&CC and the regional offices of CPCB. Since these steps are inalienable constitutional obligations, steps need to be taken to suitably augment the requisite manpower in these establishments for effective monitoring by MoEF&CC, CPCB and SEIAAs.**

13. There is no information about the result of steps taken in terms of 'six monthly action plan' so far. Making of such plan may be of no value unless it is resulting in improvement of the ground situation in terms of strengthening of monitoring, which is not shown to be happening. Expressing difficulties in improving the situation is not a solution. If there is an EC regime, compliance has to be monitored. **The principle of Sustainable Development and the Precautionary principle, which have been held to part of 'Right to Life' require that EC conditions are fully complied.**

14. No satisfactory mechanism exists at present, as shown by the above affidavit itself. It is stated that, at present, **it takes 4.5 years for monitoring which means that for such long period the non-compliance continues making mockery of law.** There has to be speedy monitoring and speedy action, wherever necessary. There has to be a robust plan for the purpose which is the responsibility of the concerned Government Departments. We place on record our disapproval for the present sorry state-of-affairs and expect meaningful improvement.

15. *We are, thus, of the view that for meaningful monitoring, all Category A projects are monitored not less than twice in a year and all Category projects are monitored not less than once in a year.*

16. ***Let the Secretary, MoEF&CC and Chairman, CPCB hold a meeting with such other experts as may be found necessary and establish and/or augment the institutional setups in MoEF&CC, CPCB and SEIAAs for meaningful monitoring of Category A and B projects in the light of the above observations.*** *Compliance report may be filed before this Tribunal by e-mail at judicial-ngt@gov.in by MoEF&CC and CPCB. The MoEF&CC may also furnish compliance status by SEIAAs."*

5. In pursuance of above, an affidavit has been filed by MoEF&CC on 01.02.2020 annexing the minutes of meeting dated 20.01.2020 which only mentions that there are certain proposals to strengthen the monitoring mechanism. This only shows insensitivity to the vital constitutional obligation despite repeated directions. Repeated plea of merely having such proposals, without effective enforcement on the ground can hardly be held to be satisfactory. Learned Counsel for the MoEF&CC states that there has been further meaningful steps, after filing of the affidavit but the same could not be brought on record. We cannot accept such a statement. If steps have been actually taken, we fail to understand why the same could not be produced at least during the hearing. We record our dissatisfaction at the attitude of the MoEF&CC on the subject.

6. Let the MoEF&CC now take effective steps to discharge its Constitutional obligation to advance "Precautionary" and "Sustainable Development" principles and also the "Public Trust Doctrine". We need not repeat the observations with regard to the acknowledged deficiencies in the existing mechanism which urgently needs to be remedied. Let affidavit of compliance be filed before the next date by e-mail at judicial-

ngt@gov.in preferably in the form of searchable PDF/OCR Support PDF and not in the form of Image PDF.

A copy of this order be sent to the Secretary MoEF&CC by email.

List for further consideration on 17.12.2020.

Adarsh Kumar Goel, CP

S. P. Wangdi, JM

Dr. Nagin Nanda, EM

July 31, 2020
Original Application No. 837/2018
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