

Item No. 05

Court No. 1

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

(By Video Conferencing)

Original Application No. 245/2021
(I.A. No. 195/2021, I.A. No. 77/2022 & I.A. No. 238/2022)

Vineet Sinha

Applicant

Versus

Union of India & Ors.

Respondent(s)

Date of hearing: 28.09.2022

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

Applicant: Mr. Vineet Sinha, Applicant in Person

Respondent(s): Mr. Pradeep Misra & Mr. Daleep Dhyani, Advocates for UPPCB
Mr. Ajay K. Sharma, Member Secretary with Ms. Priyanka Swami,
Advocate for SEIAA, UP
Ms. Tanya Mittal, Advocate for NOIDA Authority
Mr. Atmaram Nadkarni, Senior Advocate with Mr. Sanjay
Upadhyay & Mr. Sumeer Sodhi, Advocates for M/s Express
Builders Pvt. Ltd. (P.P)

ORDER

1. Grievance in this application is against violation of EC conditions by the Project Proponent (PP) - M/s Express Builders and Promoters Private Limited in constructing "Express Zenith" at Plot No. GH-2A, Sector-77, Noida, District Gautam Budh Nagar, Uttar Pradesh.
2. According to the applicant, EC was granted to the PP on 19.09.2011 subject to conditions mentioned therein to ensure compliance of the environmental norms in terms of air and water pollution, installing

requisite pollution control devices, leaving out necessary open spaces and maintaining green cover. In violation of the said conditions, the PP has exceeded the limit of construction with the connivance of the Noida Authority and failed to set up pollution control devices as required. The violations are set out as follows:-

“i. That the project proponent got the EC issued on the pretext that it will construct 804 dwelling units only. However in clear violation, the project proponent got the sanction for 835 dwelling units, out of which it has constructed 715 dwelling units and Occupancy Certificate in respect whereof has been issued, the construction of remaining 120 dwelling units is underway at Tower-A. It is submitted that the Respondent No. 5 has also sanctioned construction of 835 dwelling units in clear violation of conditions of EC.

ii. That the project proponent got the EC issued on the proposal that it will construct 5 rain water harvesting pits. The installation of rainwater harvesting system as per the design of Ground Water Department is a general condition of EC at Sr. No. 14 of general condition. However there is lack of effective rain water harvesting system/ pits and for want thereof the water in rainy season is flowing to the drainage system of the Respondent No. 5.

iii. That the project proponent got the EC issued on the proposal that in the housing society 254 KLD waste water will be generated and 18 KLD will be treated in STP of 154 KLD capacity. The project proponent also stated that 126 KLD waste water will be discharged for treatment in CSTP and treated water will be reused in flushing, cooling and horticulture. It is submitted that one of the general condition of EC as stated at Sr. No. 9 is that the measure shall be undertaken by the project proponent to recycle and reuse treated effluents for horticulture and plantation. A general condition at Sr. No. 54 states that the project proponent shall prepare a detailed plan for safe disposal of STP sludge. However the STP of the housing society is not functional. The Respondent No. 4 has conducted inspection jointly with Respondent No. 5 upon complaint dated 20.06.2021 (Annexure A-1) filed by the Applicant and found that the STP is not functional. The Respondent No. 5 has informed the Applicant under cover of letter dated 28.06.2021 that the STP installed in the said housing society constructed, developed and maintained by the Project Proponent is not functional and in respect whereof Respondent No. 4 is expected to take action, however no action has been taken till date. A copy of letter dated 28.06.2021 is filed herewith and marked as Annexure A-9.

iv. That one of the general condition of EC at Sr. No. 67 mandates that the green belt shall consist of 50% trees, 25% shrubs and 25% grass as per MoEF norms. In this regard it is submitted that the project proponent has failed to develop the green belt as mandated in EC. It is submitted that the green belt at outer periphery of housing society was used by the project proponent for storage of

construction material and has not been developed till date strictly in terms of EC.

v. That one of the special condition of EC at sr. No. 2 mandates provision of internal roads of not less than 9 mtr. width. However the project proponent has failed to construct and maintain internal roads strictly in adherence to the condition as stated in the EC. The internal road at the said housing complex is 6-7 meter wide only. The project proponent has converted the part of the space of internal road of width 2-3 meter into car parking space on the side of internal roads and sold it.

vi. That the project proponent got the EC issued on the proposal that it shall provide 928 parking slots inside the housing society. However the project roponent has constructed 976 parking slots in the housing society by converting green area into parking slots alongside the internal roads of the housing society and has sold the said parking slots. By doing this, the project proponent has reduced the size of internal road from 9 meter to 6-7 meter and has also reduced the open green area. The project proponent has constructed/ is constructing 976 parking space as is evident from the counter affidavit filed by the Respondent No. 5 in the Hon'ble Allahabad High Court in WP -C No. 19614/2018. A true copy of counter affidavit dated 21.09.2018 filed by the Respondent No. 5 in the Hon'ble Allahabad High Court in WP -C No. 19614/2018 is filed herewith and marked as Annexure A-10.

vii. That one of the special condition of EC at Sr. No. 4 is that 100% waste water should be treated to the extent meeting discharge criteria of receiving body and the permission from the competent authority to discharge surplus treated water (after in house use) to public drainage system be taken and submitted. However the STP is not functional and the project proponent has failed to treat waste water and entire untreated waste water is flowing to the public drainage system.”

3. The applicant has also stated that the EC granted on 19.09.2011 was for five years. Application for extension of validity has been filed but not accepted. Without such extension, the PP is not only continuing with the project but is also raising additional constructions. EC having expired, constructions being raised are illegal and action is required to be taken for violation of EC conditions as laid down by the Hon'ble Supreme Court in *Goel Ganga Developers India Private Limited Versus Union of India* reported in (2018) 18 SCC 257.

4. Vide order dated 18.10.2021, the Tribunal constituted a four-member joint Committee of CPCB, State PCB, SEIAA and NOIDA to verify

the facts and take remedial action as per law and furnish a factual and action taken report in the matter.

5. In pursuance of above, the joint Committee has filed its report dated 19.02.2022 giving compliance status with reference to each of the allegations (which are in bold and comment is without bold)as follows:-

“i. That the project proponent got the EC issued on the pretext that it will construct 804 dwelling units only. However in clear violation, the project proponent got the sanction for 835 dwelling units, out of which it has constructed 715 dwelling units and Occupancy Certificate in respect whereof has been issued, the construction of remaining 120 dwelling units is underway at Tower A. It is submitted that the Respondent No. 5 has also sanctioned construction of 835 dwelling units in clear violation of conditions of EC.

The Project Proponent was issued partial completion certificate dated 05.11.2015 by the authority in respect of 438 units in tower D, E and F. However, as per the sanctioned site plan of 26.07.2011 by Noida Authority and the Environment Clearance granted on 19.09.2011, total units to be constructed in Tower D, E and F were 440 dwelling units.

The Project Proponent after grant of Environment Clearance has applied for purchase of additional FAR to Noida Authority and the same was granted by the Authority and accordingly revised plan was sanctioned on 15.11.2017 by Noida Authority wherein the total dwelling units were 835. Thereafter, vide letter dated 15.12.2017 the authority has issued partial completion certificate in respect of Tower B and C regarding 277 units. Thus, partial occupancy certificate has been issued in respect of 715 units in 5 towers B, C, D, E and F. Copy of approved site plans and occupancy certificate is annexed as Annexure-4 & 5.

During the site inspection by joint committee the following construction has been found:

<i>Tower A</i>	<i>Tower B</i>	<i>Tower C</i>	<i>Tower D</i>	<i>Tower E</i>	<i>Tower F</i>	
Under construction but no construction is going on at present	1 Basement + Ground + 19 floors.	1 Basement + Ground + 19 floors.	2 Basements + Ground + 19 floors.	2 Basements + Ground + 19 floors.	2 Basements + Ground + 19 floors.	Total dwelling units constructed are 715

As stated herein above at present no construction working is going on.

The Environment Clearance granted was valid for five (5) years however as per Notification F. No. 22-27/2015-IA-III, MoEF&CC Government of India dated 12th April, 2016 the EC validity was extended for seven (7) years. Copy of the notification is annexed as Annexure 6. However, the Project Proponent has applied for extension of Environment Clearance on 28.08.2018 but SEAC in its 373rd meeting (MoM annexed as Annexure-7) held on 27.11.2018 raised clarification as-

“RESOLUTION AGAINST AGENDA No. 02

A presentation was made by the project proponent along with their consultant M/s Ind. Tech House Consult. The committee discussed the matter and directed the project proponent to submit following information:

1. Compliance report in previous EC conditions. 2. Photographs with date and time alongwith monitoring data. The matter will be discussed only after submission of online request on prescribed online portal.”

Further the project proponent applied for expansion of the project in year 2021 with SEIAA, the application is under consideration with SEIAA, UP and as per the minutes of 619th SEAC-1 meeting (MoM annexed as Annexure-8) dated 27-01- 2022-

“RESOLUTION AGAINST AGENDA NO-06

The committee noted that the environmental clearance for the above proposal was issued by SEIAA, U.P. vide letter no. 2065/PARYA/SEAC/439/AAS/10 dated 19/09/2011 for plot area 21,700 m² and built-up area 94,477.578 m².

A presentation was made by the project proponent along with their consultant M/s Ind Tech House Consult. The committee discussed the matter and noted that the project proponent failed to produce certified compliance report for the earlier environmental clearance issued by SEIAA. The committee directed the project proponent to submit certified compliance report issued by Regional Office, MoEE&CC, Lucknow for further consideration of the matter.”

Thus, there is clear violation of the condition of Environment Clearance as against G + 18 floors, G + 19 floors were constructed by the project proponent.

Hence for violation of terms and condition of Environment Clearance, Hon'ble NGT may direct project proponent to pay Environmental Compensation as per order of the Hon'ble Supreme Court in Goel

Ganga Developers India Private Limited Versus Union of India reported in (2018) 18 SCC 257.

The total project cost as per document on record (Annexure-9) is Rs. 149.30 Cr.

ii. That the project proponent got the EC issued on the proposal that it will construct 5 rain water harvesting pits. The installation of rainwater harvesting system as per the design of Ground Water Department is a general condition of EC at Sr. No. 14 of general condition. However there is lack of effective rain water harvesting system/ pits and for want thereof the water in rainy season is flowing to the drainage system of the Respondent No. 5.

During inspection it has been found that the Project Proponent has constructed four rain water harvesting pits which are functional and one more rain water harvesting pit is to be constructed along with Tower-A, construction of which is not going on. The sample collected from the rain water harvesting pits has been analyzed and as per the report it is conforming to the standards. True copy of the analysis report is annexed as Annexure-10.

iii. That the project proponent got the EC issued on the proposal that in the housing society 254 KLD waste water will be generated and 18 KLD will be treated in STP of 154 KLD capacity. The project proponent also stated that 126 KLD waste water will be discharged for treatment in CSTP and treated water will be reused in flushing, cooling and horticulture. It is submitted that one of the general condition of EC as stated at Sr. No. 9 is that the measure shall be undertaken by the project proponent to recycle and reuse treated effluents for horticulture and plantation. A general condition at Sr. No. 54 states that the project proponent shall prepare a detailed plan for safe disposal of STP sludge. However the STP of the housing society is not functional. The Respondent No. 4 has conducted inspection jointly with Respondent No. 5 upon complaint dated 20.06.2021 (Annexure A-1) filed by the Applicant and found that the STP is not functional. The Respondent No. 5 has informed the Applicant under cover of letter dated 28.06.2021 that the STP installed in the said housing society constructed, developed and maintained by the Project Proponent is not functional and in respect whereof Respondent No. 4 is expected to take action, however no action has been taken till date. A copy of letter dated 28.06.2021 is filed herewith and marked as Annexure A9.

The Project Proponent has obtained consent to establish from the U.P. Pollution Control Board on 22.05.2013. The CTO was granted to the Project Proponent from 01.01.2018 to 31.12.2019. On inspection conducted on 27.12.2017 it has been found that STP was functional and conforming the norms. Report Annexed as Annexure-11.

A joint inspection by UPPCB and NOIDA Authority in compliance of the order of Hon'ble NGT in O.A. No. 1002/2018 Abhishth Kusum Gupta Vs. State of Uttar Pradesh & Ors. was conducted on 06.10.2021 when it was found that STP was functional but not achieving the norms. Report annexed as Annexure-12.

During inspection by the Joint Committee on 01.02.2022, it was found that STP was functional and achieving the norms. A copy of the said report is annexed as Annexure-13.

The Project Proponent has applied for consent to operate (Air & Water) on 10.02.2022 which is under consideration.

*Thus, for violation of not taking the consent and non-achieving effluent discharge, Environmental Compensation @ Rs. 10,000/- per day from 01.01.2020 to 10.02.2022 amounting to **Rs. 77,10,000/-** is recommended.*

Further, Prosecution against the project proponent is filed in the Hon'ble Special Court (Pollution) Lucknow under the provision of Water (Pollution Prevention and Control) Act 1974.

iv. That one of the general condition of EC at Sr. No. 67 mandates that the green belt shall consist of 50% trees, 25% shrubs and 25% grass as per MoEF norms. In this regard it is submitted that the project proponent has failed to develop the green belt as mandated in EC. It is submitted that the green belt at outer periphery of housing society was used by the project proponent for storage of construction material and has not been developed till date strictly in terms of EC.

During inspection it has been found that the Project Proponent has planted trees all along the boundary wall. Besides this, some plants and grass also exist in the project.

v. That one of the special condition of EC at sr. No. 2 mandates provision of internal roads of not less than 9 mtr. width. However the project proponent has failed to construct and maintain internal roads strictly in adherence to the condition as stated in the EC. The internal road at the said housing complex is 6-7 meter wide only. The project proponent has converted the part of the space of internal road of width

2-3 meter into car parking space on the side of internal roads and sold it.

As per the sanctioned plan by Noida Authority, the internal roads were 6 meters wide. However, in the Environment Clearance it has been mentioned that internal road should not be less than 9 meters wide. At site internal roads are 6 meters wide.

vi. That the project proponent got the EC issued on the proposal that it shall provide 928 parking slots inside the housing society. However the project Proponent has constructed 976 parking slots in the housing society by converting green area into parking slots alongside the internal roads of the housing society and has sold the said parking slots. By doing this, the project proponent has reduced the size of internal road from 9 meter to 6-7 meter and has also reduced the open green area. The project proponent has constructed/ is constructing 976 parking space as is evident from the counter affidavit filed by the Respondent No. 5 in the Hon'ble Allahabad High Court in WP – C No. 19614/2018. A true copy of counter affidavit dated 21.09.2018 filed by the Respondent No. 5 in the Hon'ble Allahabad High Court in WP – C No. 19614/2018 is filed herewith and marked as Annexure A-10.

In the Environmental Clearance total proposed parking for the project is 928, however, as per revised plan sanctioned on 15.11.2017 the total equivalent car space was increased to 953. At present there are total 746 equivalent car space are provided in the project as per the completion plan issued by Noida Authority which is annexed as Annexure-14.

vii. That one of the special condition of EC at Sr. No. 4 is that 100% waste water should be treated to the extent meeting discharge criteria of receiving body and the permission from the competent authority to discharge surplus treated water (after in house use) to public drainage system be taken and submitted. However the STP is not functional and the project proponent has failed to treat waste water and entire untreated waste water is flowing to the public drainage system.”

During inspection it was informed by the Project Proponent that part of treated waste water is used for horticulture purposes and rest is discharged in the sewer line of the authority for which sewer connection has been taken from NOIDA Authority and that sewerage line is treated in Sector-123 Terminal STP of Noida Authority with capacity 35 MLD. The Terminal STP is having valid Consent to Operate from UPPCB and is achieving norms. Analysis Report of STP is annexed as Annexure-15.

Noida Authority informed wide email dated-19-02-2022 (annexed as Annexure-16) that a separate report will be field by Noida Authority in the matter.”

6. State PCB has filed its supplementary report dated 08.08.2022. Response has been filed by the PP followed by further affidavit dated 23.08.2022. The Noida Authority has filed its report dated 02.05.2022.

7. Objections of the applicant are reiteration of the original grievance. Report of the Noida Authority does not provide any further information beyond the report of the joint committee.

8. Stand of the PP is that there is no violation of EC conditions and no construction has been carried out since 2018 i.e. after expiry of EC which was initially for 5 years but validity was extended by 2 years i.e. upto 2018. There is no increase in number of floors as PP is permitted to construct 126 floors [6 buildings x 21 floors (2B+G+18)] whereas at present there are 119 floors which are constructed [5 buildings x 22 floors building x 9 (1B+G+7 floors)]. Stay against construction was granted by the Allahabad High Court on 30.05.2018 in WP-C No. 19614/2018 but construction of Towers B, C, D, E and F was completed much prior to the stay, as shown by the Occupancy Certificates dated 03.11.2015 and 15.12.2017. STP is treated at Terminal STP of NOIDA (having valid CTO) and there is no environmental damage by the PP. STP was meeting the norms as on 01.02.2022. In *Keystone Realtors Pvt. Ltd. vs. Anil V. Tharthare & Ors.*¹, the Hon'ble Supreme Court set aside the amendment to EC on the ground that the subsequent EC was granted without following the procedure as per the EIA, 2006. In *Goel Ganga Developers Pvt. Ltd. vs. Union of India & Ors.* (2018) 18 SCC 257, compensation was awarded on account of constructions without EC which judgements are not applicable. The Hon'ble Supreme Court in

¹ (2020) 2 SCC 66

Electro Steel Ltd. vs Union of India & Ors. has deliberated on the applicability of SOP dated 07.07.2021 in cases of activities without prior EC. Further, the PP has not and will not do any construction till prior EC for expansion of the project is granted by SEIAA. There remains no question of demolition, since there is no violation of EC. Name of "Express Builder (P) Ltd." in EC is just an inadvertent error.

9. The applicant submitted that in view of report of the joint Committee which has not been rebutted by the PP, there are violations of EC conditions particularly in construction G+19 floors as against permitted G+18 floors, extra floor constructed is liable to be demolished. The stand of the applicant is supported by learned counsel for the SEIAA and State PCB.

10. Supplementary report of State PCB dated 08.08.2022 is that compensation of Rs. 7,46,54,000/- was levied against the PP and consent to operate under the Water (Prevention and Control of Pollution) Act, 1974 (Water Act) and Air (Prevention and Control of Pollution) Act, 1981 (Air Act) was declined on 03.06.2022.

11. We are informed during the hearing that against compensation of Rs. 7.5 Crores for illegal construction and denial of consent by the State PCB, Writ (C) No. 5559/2022, *M/s Express Builders And Promoters Pvt. Ltd. vs. State of UP & Ors.* has been filed in Allahabad High Court at Lucknow Bench wherein an interim order has been passed on 26.08.2022 as follows:-

“As regards the order impugned in Annexure No. 1 we stay the same for the reasons already discussed, but, we make it clear that if any authority is competent to levy the environmental compensation as per law in pursuance to any orders of the NGT or the NGT itself is to levy such compensation our order

shall not come in the way and the said authorities of the Tribunal shall be free to proceed and impose such compensation upon the petitioner as may be leviable, subject of course to the rights of the petitioner, if any, to raise objection or challenge in this regard as per law.

The pendency of this writ petition and the stay of Annexure No. 1 shall not be made a ground for denying consent under the aforesaid provisions of the Act, 1974 and the Act, 1981, if other parameters are satisfied.”

12. Learned counsel for the State PCB submitted that reason for grant of stay by the High Court is that learned Counsel for the State PCB appearing in the High Court could not show the mandate of law in permitting levy of environmental compensation (which was wrongly alleged by the PP to be penalty) under Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981. The power to levy such compensation was implicit in the powers of the State PCB under Section 33A of the Water Act and 31A of the Air Act read with judgment of the Hon'ble Supreme Court in *Vellore Citizen (1996) 5 SCC 647*. The Hon'ble Supreme Court held that polluter pays principle is to be treated as part of common law of India i.e. it can be applied by concerned regulator even without statute. It is to be noted that compensation is not penalty or tax which require legislative support but restoration of loss caused to the environment and authorities empowered to pass orders for protection or restoration of pollution can prevent or restore such loss, following due process. Exercise of such powers of State PCBs throughout India is well known fact which has never been disapproved by the Hon'ble Supreme Court or this Tribunal. Statutory appeal against orders of the State PCB is provided to this Tribunal. It is further submitted that in any case the High Court has made it clear that this Tribunal can levy compensation, as it is specifically provided under the NGT Act.

13. We have heard learned counsel for the parties and perused the record.

14. Main issue for consideration is whether there are violations of EC conditions by the PP and if so how accountability for the violations are to be dealt with. We are considering only the violations found by the Committee in the light of response of the PP. Out of violations so pointed out, we are considering more serious violations i.e. construction beyond and in violation of EC, leaving other violations to be dealt with by the statutory regulators as per law.

15. According to PP, there is no violation in constructing 19th floor in Towers B to F which were completed before permitted timeline for validity of EC till 19.9.2018 and total floors constructed do not exceed those permitted under the EC. As against this, stand of the applicant, SEIAA and PCB is that the PP applied for expansion on 28.08.2018 which was rejected on 10.12.2018. It applied for expansion of the project on 29.11.2021 which has not been recommended by the SEAC. The PP thereafter applied for amendment of EC on 22.02.2022 on which no further order has been passed. Thus, 19th floor has been constructed illegally in 5 towers in violation of EC which only permitted G+18. Explanation of the PP that total floors are within the permissible limit as Tower A has been constructed only upto 6th Floor though it is permitted to be constructed upto 18th floor cannot be accepted as a justification for illegal construction of 19th Floor in five Towers. Thus, illegally constructed floors have either to be demolished or the PP is to be held accountable for deterrent compensation on 'Polluter Pays' principle for raising construction in violation of EC conditions.

16. We have duly considered the rival contentions on the issue. There is no dispute that as per EC only G+18 floors could be constructed. It is undisputed that G+19 floors have been constructed in 5 towers. Mere fact that total floors are within limit of EC cannot justify G+19 floors. Thus, to that extent violation stands established. Question is of accountability for such violation. Needless to say that construction of extra floors places extra pollution load on environment. Thus, either the illegal construction has to be demolished or deterrent compensation levied from the PP. We are unable to accept the plea of the PP that extra construction has not caused any damage to the environment.

17. Having regard to the fact situation that the 19th Floors in five Towers have been sold and occupied and the demolition will affect third party rights, we consider it appropriate to levy compensation with deterrent element. Following the principles of law laid down *inter-alia* in *Goel Ganga Developers India Pvt. Ltd. v UOP*², *Keystone Realtors Pvt. Ltd. v. Anil v. Tharthare and Ors.*³, *Sterlite Industries (India) Ltd. v. Union of India*⁴ and *M. C. Mehta & Anr. v. Union of India*⁵, we quantify the same at Rs. 15 crores being 10% of the project cost as per estimate in the EC, though actual value may be more. The amount is certainly far less than the value of the said 5 floors.

18. The compensation may be deposited with the District Magistrate, Gautam Budh Nagar, within one month, failing which the PP will stand restrained from creating any further third party right and raising any further construction in Tower A and even if he gets EC. After expiry of one month recovery may be effected by permissible coercive measures.

² (2018) 18 SCC 257

³ (2020) 2 SCC 66

⁴ (2013) 4 SCC 575

⁵ (1987) 1 SCC 395

Further, the PP will be required to reduce 5 floors in sixth tower (tower A) on account of illegal construction of 5 floors in 5 other towers. The PP may also take remedial action in terms of report of the Committee which may be overseen by the statutory regulators as per law. The recovered compensation may be utilized for restoration of environment in terms of District Environment Plan of the concerned District with the approval of District Environment Committee in terms of order dated 08.02.2022 in 360/2018, *Shree Nath Sharma v. UOI & Ors.*

The application is disposed of.

A copy of this order be forwarded to the CPCB, State PCB, SEIAA, NOIDA and District Magistrate, Gautam Budh Nagar.

All pending I.As. also stand disposed of.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Prof. A. Senthil Vel, EM

Dr. Afroz Ahmad, EM

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