

Item No. 04

(Court No. 1)

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

(By Video Conferencing)

Original Application No. 236/2020
(Earlier O.A. No. 24/2018 (WZ))
(I.A. Nos. 106/2020 & 107/2020)

Ram Baban Borkar

Applicant

Versus

M/s. Paranjape Construction & Ors.

Respondent(s)

Date of hearing: 24.05.2021

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MR. JUSTICE M. SATHYANARAYANAN, JUDICIAL MEMBER
HON'BLE MR. JUSTICE BRIJESH SETHI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Applicant: Mr. Brajesh Kumar, Advocate

Respondents: Mr. T.N. Subramanian, Senior Advocate with Mr. Neeraj Uday Godbole,
Advocate for M/s PSC Pacific
Mr. Rahul Garg, Advocate for MoEF & CC
Ms. Manasi Joshi, Advocate for MPCB
Mr. Sameer Khale, Advocate for PMRDA
Ms. Gayatri Bopat, Advocate

ORDER

1. Shri Subramanian, Senior Advocate, for the project proponent (PP) points out that description of the PP as Respondent No. 1 M/s. Paranjape Construction Schemes Ltd. is not correct. Correct name of the PP is 'PSC Pacific' as described in impugned Environmental Clearance. Since it is a matter of erroneous description not causing any prejudice in proceeding with the matter, we direct the Registry to carryout necessary correction of name of respondent No.1 as PSC Pacific with same address. Subject to the said correction, we proceed to deal with the matter on merits.

2. In this application, construction of the project beyond the validity period of the Environmental Clearance (EC) has been alleged. It is also alleged that the EC conditions have not been adhered to and that the PP has undertaken constructions in deviation of the approved plans. It is contended that the project proponent could not have proceeded with the construction without the EC and the consent to establish being revalidated. Additional construction could not have been undertaken without obtaining appropriate EC.

3. Vide order dated 19.09.2019, on consideration of the matter, the Tribunal directed SEIAA, Maharashtra and the State Pollution Control Board (State PCB) to jointly inspect the project in question, verify the factual aspects set out in the Original Application and submit a report. In the event the allegations are found to be correct, appropriate action in accordance with law be instituted against the Respondent No. 1. Action taken report in this regard may also form part of the report.

4. The matter was further considered on 18.03.2020, in the light of the report submitted in pursuance of order dated 19.09.2019. It was held that certain clarifications/explanations were required by the joint Committee as follows:

“1&2. xxx.....xxx.....xxx

3. A perusal of the report indicates that there are certain inconsistencies which require clarification by the SEIAA as well as the Project Proponent.

4. As per the first date of the chronology provided in the table, the total construction area for which Environment clearance was granted is 46040.46 m². According to the report 46040.46 m² is the FSI area excluding the Non-FSI area of the project which is 25140.54 m². Curiously though in the note appended to the first column it is stated that only the net plot area is considered for the Environment Clearance and the rest which is 4953 m², is of the amenity plot. This does not appear to be in consonance with the requirement as the amenity plot also forms a part of the project and, therefore,

would be necessary for consideration for grant of the Environment Clearance.

5. It is also indicated that on 13.12.2012 and 06.02.2015, building permission was revised which would naturally imply changes in the project plan. This naturally would further lead to the question as to whether Environmental Clearance was sought for the purpose of such changes which would amount to expansion in terms of the EIA Notification, 2006. The third aspect which we find necessary for consideration is with regard to the payment of Environmental Compensation. The proceedings under the MRTP Act cannot be taken as proceedings under the NGT Act and the Environmental Clearance Act, 1986. Apart from the penalty imposed under the MRTP Act, the project proponent would also be liable for payment of environmental compensation against the infractions of the environmental laws.

6. In view of the above, we direct the Committee to consider the aforesaid aspects also and submit a fresh report.

7. Let the responses to the Joint Committee Report and, report of the Joint Committee on the above aspects, be filed before the next date with advance copies on the other side.”

5. Accordingly, the joint Committee filed its further report which came up for consideration on 19.08.2020. The applicant wanted to file objections for which the matter was deferred and transferred to the Principal Bench.

6. Accordingly, we have heard learned Counsel for the parties and perused the record. The report of the joint Committee is reproduced below:

“1. xxx.....xxx.....xxx

2. In compliance thereof the Joint Committee had submitted a report which is as follows:

Sr. No.	Particulars	Remarks
1.	Environmental compensation	1.1 PP had obtained EC from MoEF, New Delhi dated 04.03.2008 for Total plot area — 31451 sqm and Total Built up Area — 46,040.96 sqm. 1.2 The architect's certificate elaborates the area of plot that had been considered for the EC as under:

		<table border="1"> <tr> <td>Total Plot Area</td> <td>35750 sqm.</td> </tr> <tr> <td>Deductions on account of owner's plot & R.P. Road widening</td> <td>04299 sqm.</td> </tr> <tr> <td>Plot Area under consideration for EC</td> <td>31451 sqm.</td> </tr> </table> <p><i>This 31451 sqm. area includes the amenity plot area of 4953.04 sqm.</i></p> <p><i>1.3 At that time there was a practice of mentioning FSI area on the drawings [it is prevailing even today at various places] of building designs and it used to be approved by the development control authorities. The FSI area in conjunction of the non FSI area makes the total construction area. The clarity on this issue is brought by the Notification of the MoEF, New Delhi dated 04.04.2011 which says at clause (III)-(III), "the built up area for the purpose of this Notification is defined as "the built up or covered area on all the floors put together including basement(s) and other service areas, which are proposed in the building/ construction projects"."</i></p>	Total Plot Area	35750 sqm.	Deductions on account of owner's plot & R.P. Road widening	04299 sqm.	Plot Area under consideration for EC	31451 sqm.
Total Plot Area	35750 sqm.							
Deductions on account of owner's plot & R.P. Road widening	04299 sqm.							
Plot Area under consideration for EC	31451 sqm.							
2.	<i>Various Consents issued on the basis of the EC</i>	<p><i>2.1 PP had obtained Consent To Establish Dated 01.08.2008 for Total plot area — 31451 sqm and Total Built -up Area — 46,040.96 sqm.</i></p> <p><i>2.2 Thereafter, PP has obtained revalidation of Consent to Establish dated 08.02.2018 for the same area as mentioned in point no. 1</i></p> <p><i>2.3 PP has obtained Consent To Operate (Part I) Dated 30.05.2018 for Total Plot Area — 31451 sqm and FSI Area — 28511.03 sqm, This consent was valid up to 31.01.2020</i></p> <p><i>2.4 Thereafter, PP has obtained renewal of Consent to Operate dated 29.07.2020 for Total Plot Area — 31451 sqm and FSI Area — 28511.03 Sqm, This consent is valid up to 31.01.2021.</i></p>						
3.	<i>Salient features of the project</i>	<p><i>3.1 PP had got approval for the FSI area -19393 sqm from the District Collector, Pune on 13.12.2012.</i></p> <p><i>3.2T Thereafter, PP had got the revised plan approved from the District Collector, Pune for the change in building configurations that has increased the FSI area to 28510.92 sqm. on 06.01.2015. However, the change was done prior to this approval.</i></p> <p><i>3.3 PP has obtained partial occupation certificates [on the basis of the self declaration regarding the</i></p>						

		<p>completion stage of the project] from PMRDA dated 26.06.2015, 16.09.2015 and 18.09.2015 for Total Plot Area -35750 sqm.</p> <p>3.4 PP has paid penalty charges of Rs. 39,41,060/- on 30.10.2012 and Rs. 1,17,90,990/- on 18.12.2014 to the District Collector, Pune towards carrying out construction activity prior to the approval of the increase in the FSI area due to change in the building configurations. 3.5 Area statement with respect to the area mentioned in EC [46040.46 sqm]:</p> <p>3.6 To calculate the FSI on the total plot area the amenity plot area has been deducted with the mandatory open space area and the road area [as per the norms of computing the FSI] and the FSI of 28510.92 sqm had been sanctioned by the District Collector, Pune on 06.01.2015.</p> <p>3.7 Later on this amenity plot area of 4953.04 sqm has been separated on 07.05.2015 and a separate 7/12 extract has been created after the expiry of Environmental Clearance i.e. 03.03.2013. Thus, the amenity plot has its own FSI for its development</p>
4.	Submissions from Project Proponent	<p>4.1 PP has submitted the architect's certificate regarding the total extent of construction carried out as on date and clarification regarding the total plot area 31451 sqm. as per the EC as against 35750 sqm. as per the sanctioned plans. Copy of Architect letter is attached herewith.</p>
5.	<p>Summary/Conclusion:</p> <ul style="list-style-type: none"> ➤ The plot area of 31451 sqm. considered for Environment Clearance includes the plot for Amenity space admeasuring 4953.04 sqm. ➤ Amenity plot area of 4953.04 has been subdivided and separated on dated 07.05.2015 and separate 7/12 extract has been created after the expiry of Environment Clearance i.e. 03.03.2013. ➤ The building footprints have not been changed, but the configurations. There is addition and reduction in the floors of various building blocks; but more addition and proportionately less reduction has increased the FSI area from 19393 sqm to 28510.92 sqm. ➤ With reference to the remarks at 1.3, 1.4 [architect's certificate], and 3.5 it appears that the current FSI area does not exceeds 46,040.96 sqm; the limit specified by the EC. However, the PP should have informed to the MoEF & CC about the amendments done in the building configurations. ➤ With reference to the remarks at 1.2, 3.6, 3.7 and 4.1, the committee concludes that the need for appraisal and assessment of the development on the amenity plot does 	

	<i>not arise as the FSI of the said amenity plot has not been considered for calculating the FSI for this building project.</i>
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7. The applicant has, however, filed objections to the report which are contested by the project proponent.

8. On due consideration of the matter, we find it appropriate to direct the joint Committee to look into the objections of the applicant and response of the project proponent thereto and take such further action as may be found necessary in accordance with law as far as possible within three months. The parties are free to put forward their respective viewpoints to the Committee within two weeks.

The application is disposed of.

In view of order in the main matter, I.A. Nos. 107/2020 and 107/2020 also stand disposed of.

A copy of this order be forwarded to SEIAA, Maharashtra and the State PCB by e-mail for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

M. Sathyanarayanan, JM

Brijesh Sethi, JM

Dr. Nagin Nanda, EM

May 24, 2021
Original Application No. 236/2020
(I.A. Nos. 106/2020 & 107/2020)
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