

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

**Appeal No. 01/2017  
(M.A. No. 02/2017)**

**Vidya Shandil V/s. State of HP & Ors.**

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

**Present:** Appellant: MR. Bipin Negi, Sr. Adv., Ms. Gunjan Ahuja, Adv.  
Respondents: Mr. Pradeep Chandel, Adv. for State of  
H.P. i.e. R-1,2,3 & 5  
Mr. Divya Prakash Pande, Adv. HPPCB  
Mr. Rambilari Sharma, Adv., R-6

	<b>Date and Remarks</b>	<b>Orders of the Tribunal</b>
	<b>Item No. 01 October 22, 2018 dv&amp;rv</b>	<p>1. This appeal has been preferred against grant of Environmental Clearance on 15.10.2016 by the State Environment Impact Assessment Authority (SEIAA) Himachal Pradesh, Shimla to Dr. Shyam Lal Kaushik, Chairman, IGMC Doctor's Cooperative Housing Society Limited, Himachal Pradesh.</p> <p>2. According to the impugned order, the Project Proponent (PP) filed application dated 16.12.2015 in terms of the Environment Impact Assessment (EIA) Notification, 2006. The project is for construction of residential colony at Shimla and built up area is 21057.931 m<sup>2</sup> at a cost of Rs. 32.48 crores.</p> <p>3. According to the appellant, the construction is within the municipal limits of Shimla town. The plan was approved on 06.02.2010 by the Municipal Corporation, Shimla. However, no approval was taken from the Town and Country Planning Department, as required under Rule 12 of the Himachal Pradesh Town and Country</p>

	<p><b>Item No. 01</b></p> <p><b>October 22, 2018</b></p> <p><b>dv&amp;rv</b></p>	<p>Planning Rules, 2014. In Notification dated 14.09.2006, under the provisions of the Environment (Protection) Act, 1986, item no. 8(a) of the Schedule, require a project pertaining to building and construction in excess of the 20,000 sq. m. to obtain prior Environmental Clearance. In the present case, such clearance was not taken. The PP applied for such clearance only on 16.12.2015. Massive construction has been raised resulting in huge impact on the environment on account of effluents discharged, construction of road, traffic congestion, solid waste generation, slope in stability. Such impact is required to be studied. The State Expert Appraisal Committee (SEAC) could not have granted clearance without consideration of the relevant issues and also in case of violation assessment is required by the Central Govt.</p> <p>4. The State Environment Impact Assessment Authority (SEIAA) filed reply stating that while granting clearance, conditions have been imposed for installation of Sewage Treatment Plant (STP) or taking sewage connection from M.C. Shimla. The PP has been required to submit a credible action plan on account of violations already committed. Such action taken report was submitted on 17.05.2016 and thereafter on 4<sup>th</sup> and 5<sup>th</sup> October, 2016, recommendations for grant of Environmental Clearance were made and EC was granted on 15.10.2017.</p> <p>5. When the matter came up for hearing on the last date on 16.07.2018, reference was made to the judgment dated 07.07.2015 of this Tribunal in <i>S.P. Muthuraman Vs. Union of India &amp; Ors.</i><sup>1</sup>, laying down that if the project</p>
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<sup>1</sup> 2015 ALL (I) NGT REPORTER (2) (DELHI) 170

	<p><b>Item No. 01</b></p> <p><b>October 22, 2018</b></p> <p><b>dv&amp;rv</b></p>	<p>commences without prior EC, options are either to demolish such project or permit such a project with stringent safeguards necessary for protection of environment. The PP renders itself liable to penalties.</p> <p>6. Accordingly, in terms of the last order, the respondents were required to clarify whether procedure laid down in the Notification dated 14.03.2017 issued by the Ministry of Environment, Forest and Climate Change (MoEF&amp;CC) has been followed. The said Notification applies cases of violation of requirement of seeking prior Environmental Clearance, as in the present case.</p> <p>7. In spite of grant of adjournment for a period of three months, it is not the case of the respondents that procedure in terms of the Notification dated 14.03.2017 has been followed. If so, there is requirement of appraisal by the Expert Appraisal Committee at the Central level. The relevant part of the Notification is as follows:</p> <p><i>“13 (1). Now, therefore, in exercise of the powers conferred by sub-section (1) and sub clause (a) of clause (i) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986, read with clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986; the Central Government hereby directs that the projects or activities or the expansion or modernisation of existing projects or activities requiring prior environmental clearance under the Environment Impact Assessment Notification, 2006 entailing capacity addition with change in process or technology or both undertaken in any part of India without obtaining prior environmental clearance from the Central Government or by the State Level Environment Impact Assessment Authority, as the case may be, duly constituted by the Central Government under sub-section (3) of Section 3 of the said Act, shall be considered a case of violation of the Environment Impact Assessment Notification, 2006 and will be dealt strictly as per the procedure specified in the following manner:-</i></p> <p><i>(2) In case the projects or activities requiring prior</i></p>
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<sup>2</sup> 2018 NGTR (1) PB 250

	<p><b>Item No.</b> <b>01</b></p> <p><b>October</b> <b>22, 2018</b></p> <p><b>dv&amp;rv</b></p>	<p>Government and other stakeholders.</p> <p>The Tribunal had appointed a Committee of Experts to analyze hazards of risk and vulnerability based on data and field visits. After considering the said report, the Tribunal issued directions to regulate construction in SPA in view of amended Town and Country Planning Act, 1977.</p> <p>The Tribunal also placed restriction on power of regularizing the illegal structures already built, retrofitting of the existing structures to minimize earthquakes. The directions issued include restriction of storeys to be constructed, changes required in the existing structures, procedure for grant of clearance in future, restriction on constructions on slopes of more than 45<sup>0</sup> gradient for areas with hard sub-surface stratum in 35<sup>0</sup> in soft rocky areas.</p> <p>To implement the judgment, a direction was issued for interim development plan being prepared. The Tribunal constituted a High Powered Committee for carrying out the directions. The said Committee was to have two wings (i) Supervisory Committee and (ii) Implementation Committee, as follows:</p> <p><b>I. <u>SUPERVISORY COMMITTEE:</u></b></p> <ol style="list-style-type: none"> <li>i) Secretary, Urban Development, State of Himachal Pradesh.</li> <li>ii) Director, Wadia Institute of Himalayan Geology, Dehradun.</li> <li>iii) Director, Town and Country Planning, Govt. of H.P. shall be the Member Secretary of the Committee</li> <li>iv) Professor from relevant field nominated by the Director, Punjab Engineering College, Chandigarh.</li> <li>v) Nominated officer from NDMA not below the rank or equivalent to the Joint Secretary or above.</li> <li>vi) Member Secretary, H.P. Pollution Control Board.</li> </ol> <p><b>II. <u>IMPLEMENTATION COMMITTEE:</u></b></p>
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	<p><b>Item No.</b> <b>01</b></p> <p><b>October</b> <b>22, 2018</b></p> <p><b>dv&amp;rv</b></p>	<p>Chairman: Director, Deptt. Town and Country Planning, Govt. of H.P.</p> <p><b><u>MEMBERS:</u></b></p> <p>i) State Town Planner, Govt. of H.P.</p> <p>ii) Director, Department of Urban Development, Govt. of H.P.</p> <p>iii) Municipal Commissioner, Shimla.</p> <p>iv) Nominated officer from Wadia Institute of Himalayan Geology, Dehradun not below the rank or equivalent to Director in Govt. of India.</p> <p>v) Nominated officer from NDMA not below the rank or equivalent to Director in Govt. Of India.</p> <p>vi) State Geologist, Department of Industries, Govt. of H.P.</p> <p>vii) Director, Department of Environment, Science &amp; Technology, H.P.</p> <p>viii) Architect in-Chief, H.P. PWD.</p> <p>ix) Member Secretary, H.P. Pollution Control Board.</p> <p>9. In view of undisputed facts in the present case that neither the Environmental Clearance was sought before commencement of the project as required under the Notification dated 14.09.2006, nor the procedure applicable for evaluation as laid down by the MoEF&amp;CC in Notification dated 14.03.2017 has been followed, nor there is any report of the Supervisory Committee constituted by this Tribunal in <i>Yogindra Mohan Sengupta (supra)</i>, the project proponent is liable to either demolish the project or deposit penalty and also to take further remedial steps.</p> <p>10. Accordingly, we direct respondent no. 6 to forthwith stop the construction activities or the project till 10% of the project cost is deposited as penalty with the State Pollution Control Board to the extent of 75% and with Central Pollution Control Board to the extent of 25%. The project can be continued only after further orders are passed by this Tribunal on being satisfied that remedial measures have been taken for protection of the</p>
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