

## EASTERN ZONE BENCH, KOLKATA

O.A. 114/2017/EZ  
&  
M.A. 301/2017/EZ

TAKAM XAVIER

VS

UNION OF INDIA &amp; Ors

CORAM: Hon'ble Mr. Justice S.P.Wangdi, Judicial Member

**PRESENT:**

<b>Applicant</b>	<b>:</b>	<b>Mr. Tapen Roy Chowdhury, Sr. Advocate</b> <b>Mrs. Arpita Chowdhury, Advocate</b>
<b>Respondent No. 1</b>	<b>:</b>	<b>Mr. Gora Chand Roy Chowdhury, Advocate</b> <b>Mrs. S. Roy, Advocate</b>
<b>Respondents No. 2</b>	<b>:</b>	<b>Mr. Ashok Prasad, Advocate</b>
<b>Respondent No. 3</b>	<b>:</b>	<b>Mr. Ashok Prasad, Advocate proxy for</b> <b>Mr. Anil Shrivastava, Advocate</b>
<b>Respondent No. 4</b>	<b>:</b>	<b>Mr. Surendra Kumar, Advocate</b>
<b>Respondents No. 6 &amp; 7</b>	<b>:</b>	<b>Mr. Mainak Bose, Advocate</b> <b>Mr. Amitabh Ray, Advocate</b> <b>Mr. Risabh Karnani, Advocate</b>
<b>Other Respondents</b>	<b>:</b>	<b>None</b>

Date & Remarks	Orders of the Tribunal
Item No. 3 25 <sup>th</sup> January, 2018.	<p>Affidavits filed on behalf of the SEIAA, Arunachal Pradesh, the Respondent No. 3, by Mr. Ashok Prasad, Ld. Advocate, and the one by Mr. Surendra Kumar, Ld. Advocate for the State PCB are ordered to be taken on record.</p> <p>Mr. Surendra Kumar prays for further time to file the report as directed earlier. Considering the past</p>

defaults, the prayer is allowed subject to payment of Rs. 50,000/- as cost. We also direct the Chairman and Member Secretary, of the State PCB to appear in person on the next date.

The rejoinders filed on behalf of the Applicant to the reply of the Respondent No. 4 and 6 & 7 are ordered to be taken on record.

Upon perusal of the report of the SEIAA, it would appear that out of the three industries i.e. Respondents No. 5, 6 and 7, only the Respondent No. 7, M/s SMS Smelters Ltd. was established prior to EIA Notification, 2006, with production capacity of 1000 MTA. The Respondent No. 5, M/s Satyam Group of Industries and the Respondent No. 6, M/s Shree Salasar Industries, were, however, established after publication of EIA Notification, 2006 and that the three industries are primary metallurgical industries that fall under category A of the Schedule to the EIA Notification, 2006 and, therefore, would require to obtain Environmental Clearance (EC). These informations have been apparently furnished by the SEIAA on the basis of a report submitted by the Director of Industries, Govt. of Arunachal Pradesh, vide letter dated 26.10.2017. It appears that the SEIAA had sought for opinion from the AP State PCB regarding the details of the project, certificate of incorporation, first consent granted by the Board and the category of the industries i.e., whether

they fall under category A or category B, which information has not yet been received by the SEIAA despite reminders.

Mr. T.K.Roy Chowdhury, Ld. Sr. Counsel appearing with Mrs. Arpita Chowdhury, Ld. Advocate for the Applicant, would submit that the records would reveal that the respondent industries had increased their capacity as originally established and, therefore, in terms of clause (2)(ii) of the EIA Notification, would require to obtain EC.

Per contra, Mr. Mainak Basu, Ld. Advocate for the Respondents 6 and 7 would submit that the provision of EIA Notification, 2006 has been clarified by the MOEF in their notification issued on 19.1.2009 as per which the Respondents 5 to 7 being secondary metallurgical processing units, would fall under sub-clause (ii) to Clause (iv) to the main clause VII to the notification. Further that such industries would require to obtain Environmental Clearance only if the capacity of production is more than 5 tonnes per heat and that, the capacity of the Respondents being 8800 MTA, it would not be necessary for them to obtain EC.

While making these submissions, Mr. Basu adumbrated on the industrial standard practice applied for arriving at the unit 'heat" and the method of calculation in respect of the Respondent industries.

At this stage, Mr. Gora Chand Roy Chowdhury,

Ld. Advocate for the MOEF, the Respondent No. 1 intervened to submit that the notification referred to by Mr. Basu is a draft notification of which the final one was issued subsequently on 1.12.2009 and. as per that quantum of production prescribed in the draft notification (supra) has been modified to be in terms of weights to 3000 TPA.

Mr. Roy Chowdhury, Ld. Sr. Counsel for the applicant, submits that the facts placed in the court today on behalf of the Respondents would require consideration at greater depth which is conceded to on the other side by Mr. Basu, who prays that he be permitted to file response to the affidavits-in-opposition taken on record today.

We find substance in the submission of the Ld. Counsel and accordingly direct the Respondents No. 6 and 7 to file their affidavit-in-opposition to the reply of SEIAA **within 7.2.2018** with advance copies on other side, particularly the applicant.

None has appeared even today for the Respondent No. 5, M/s Satyam Group of Industries, despite several dates. Therefore, they are ordered to be proceeded ex parte.

Mr. Ashok Prasad, Ld. Advocate appearing on behalf of Mr. Anil Srivastava, Ld. Advocate for the Respondent No. 2, SEIAA, prays for further time to file affidavit-in-opposition on behalf of the State

Respondent No. 2.

Similar prayer is made by Mr. Surendra Kumar, Ld. Advocate for the Respondent No. 4, AP State PCB on the ground that the work of study on the ambient air quality of the area has been outsourced to a private agency which requires further time to complete the work.

The State of Arunachal Pradesh has been found to be recalcitrant and playing truant with the court right from the inception. The primary responsibility to furnish information on the various allegations pertaining to the incorporation and the category of the industries lies with the Directorate of Commerce & Industries, Govt. of AP. Unfortunately, the Director of Industries has not been impleaded as a respondent but notwithstanding that, the State of Arunachal Pradesh has been impleaded through the Secretary, Deptt. of Environment and Forest, and therefore, ought to have responded to the notice issued upon them promptly. Apart from responding to the various questions raised in the OA , the issue pertaining to the constitution of the Appellate Authority under the Air and Water Acts ought also to have been addressed which is also under consideration in OA No. 154/2017/EZ. It is also quite curious to note that the State PCB should outsource one of its primary function to a private agency. The State PCB ought to have established their own

laboratory with trained personnel to deal with this.

In view of this, we direct the Chief Secretary, Govt. of Arunachal Pradesh to file an affidavit to state as to why the State Respondent has not responded to the orders of the Tribunal.

The Secretary, Deptt. of Environment, the Respondent No. 2, shall on his part, file show cause as to why action under Sec. 26 read with Sec. 28 of the NGT Act,2010, be not instituted against him.

The show cause and the affidavit shall be filed before the next date. Failure to do so shall entail coercive orders being issued.

A copy of this order be transmitted to the Chief Secretary, Arunachal Pradesh for compliance.

**List on 13.2.2018 when OA 154/2017/EZ is fixed.**

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Justice S.P.Wangdi, JM

25-1-2018