

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

APPEAL No. 22/2011

18TH JULY, 2013

CORAM:

- 1. Hon'ble Shri Justice V.R. Kingaonkar
(Judicial Member)**
- 2. Hon'ble Shri Justice U.D. Salvi
(Judicial Member)**
- 3. Hon'ble Dr. P.C. Mishra
(Expert Member)**
- 4. Hon'ble Shri P.S. Rao
(Expert Member)**
- 5. Hon'ble Shri Bikram Singh Sajwan
(Expert Member)**

B E T W E E N:

1. Mahesh Chandulal Solanki
R/o Village Samagogha,
Taluka Mundra,
District-Kutch
Gujarat
2. Aniruddhsinh Kakubha Jethava
R/o Village Samagogha,
Taluka Mundra,
District- Kutch
Gujarat

....Appellants

A N D

1. Union of India
Through the Joint Secretary,
Ministry of Environment & Forests
Paryavaran Bhawan, C.G.O Complex,
Lodhi Road, New Delhi -110003
2. Member Secretary,
Gujarat Pollution Control Board,
Pariyavaran Bhavan, Sector 10-A,
Gandhinagar-382010
3. The Collector
Office of Collectorate,
Jilla Seva Sadan,
Bhuj, District: Kutch, Gujarat
4. State Level Expert Appraisal Committee,
Gujarat Pollution Control Board,
Pariyavaran Bhavan, Sector-10-A,
Gandhinagar 382010
5. Jindal SAW Limited
through General Manager/
Authorised Representative,
Village Samagogha,
Taluka Mundra, District Kutch
6. Samagogha Jooth Gram Panchayat,
Through its Sarpanch,
Village Samagogha,
Taluka Mundra, District KutchRespondents

(Advocates appeared: Mr. Abhimanue Shrestha and Mr. Abhas Mishra along with Ms. Sridevi Panikkar, Advocates for the Appellant, Ms. Neelam Rathore, Advocate for Respondent No. 1, Mr. Satyabrata Panda, Advocate for Respondents No. 2 to 4 and Mr. Arun Kumar Varma along with Mr. Ashish Bansal, Advocates for Respondent No. 5)

(Judgment)

1. Environmental Clearance (EC) granted by the State Level Environment Impact Assessment Authority ("SEIAA" in short) of Gujarat State vide Order No. SEIAA/ GUJ/ EC/ 3(a)/122/2011 dated 23.6.2011 permitting M/S Jindal Saw Limited, the Respondent No.5, for expansion of "Smaller Diameter Ductile Iron Pipe" Plant upon land bearing Survey Nos. 334/1,335,336/2 & 336/3, of Village Samaghogha, Taluka: Mundra, District: Kutch and incidental amendment thereto dated 9.8.2011, are assailed in the present Appeal.
2. The Appellants, residents of village Samaghogha, situated in the proximity of the proposed project site, claim that the environment, in which they live and make their living is going to be affected seriously as a result of the expansion of the said "Ductile Iron Pipe" Plant; and more so as the village Samaghogha is substantially polluted due to concentration of several industries including manufacturing unit of the Respondent No. 5 producing iron pipes, having come up within the limits of Village Samaghogha.
3. Facts leading to the impugned Environmental Clearance (in Short 'EC') and amendment thereto are as under:

The Respondent No. 5 established a Blast furnace and Ductile Iron (DI) Pipe manufacturing Unit at Village Samaghogha after

duly obtaining various governmental and regulatory clearances including Environmental Clearance dated 21.10.2004. DI Pipes were / are manufactured from the molten iron metal obtained from Blast furnace. The respondent No. 5 proposed expansion of the capacity of its existing Blast furnace with addition of new blast furnace of capacity of 2, 80,000 TPA in the year 2009, and for this purpose EC was obtained from the Government of India, Ministry of Environment & Forests (MoEF) on 26.11.2009. The Gujarat State Pollution Control Board issued 'consent to establish' the said project on 13.4.2010.

The Respondent No. 5 took a decision to establish a separate facility for producing smaller Diameter DI Pipes in its existing factory at Samaghogha, and pursuant thereto applied for necessary EC therefor to the Respondent No. 4 – State Level Expert Appraisal Committee (In short, 'SEAC') it being the project falling under category B- Activity No. 3(a)(c) in the schedule of Environment Regulation, 2006 issued vide Notification No. S.O 1533(E) dated 14.9.2006 (in short EC Notification).

In the meeting of SEAC held on 30.9.2010 the Application of the Respondent No. 5 for finalisation of Terms of Reference (in short 'ToR') for EIA study was considered. ToR dated 30.11.2010 were issued and communicated to the Respondent No. 5 thereafter. However, the EIA study was carried out between October 2010 and December, 2010. Based on this EIA study, a draft EIA Report and its summary were prepared by the Respondent No. 5 and the same were submitted to the Respondent No. 4- SEAC.

Thereupon, the process of holding a Public Hearing was initiated and it was scheduled to be held on 29.3.2011. A public notice in that regard, as contemplated under the EC

Notification was published in issues dated 27.2.2011 and 2.3.2011 of 'Divya Bhasker' – a daily newspaper in vernacular language (Gujarati) and 'The Times of India' – a daily national newspaper in English, respectively. As scheduled the Public Hearing was held in the school- O.P. Jindal Vidhya Niketan School run by the Respondent No. 5 at village Samaghogha. Members of public gathered, numbering 275 persons, were heard and responded to by the project proponent in the presence of Additional District Magistrate and Additional District Collector, District Kutch and the Regional Officer of Gujarat Pollution Control Board, Bhuj. Ultimately, on appraisal of the final EIA Report and outcome of the Public Consultations the SEAC recommended grant of Environmental Clearance on certain terms and conditions to the said project, which resulted in grant of impugned Environmental Clearance by the SEIAA.

4. According to the Appellants, the entire process of grant of Environmental Clearance is tainted for the following reasons:
 1. Construction of the project was started prior to the grant of Environmental Clearance.
 2. ToR were issued on 30.11.2010. However, the EIA study was done between October 2010 and December, 2010 prior to the communication of ToR.
 3. Notice of Public Hearing was not adequate in terms of the mandate of EC Regulation.
 4. Summary of EIA Report was not supplied in vernacular language in stipulated time.
 5. Summary of EIA Report was inadequate and not as required by the EC Regulation.
 6. Public hearing was not held in neutral venue so as to permit free, fair and open participation of the members of public.
 7. Minutes of meeting were not prepared or read over to the participants as required.

8. There was no detailed scrutiny of final EIA Report and outcome of Public consultation for the purpose of appraisal as required under the said Regulation and the grant of EC was recommended mechanically by the SEAC; in violation of the mandate of the EIA Notification.
5. The Respondent No. 4 –SEAC Gujarat, resisted the appeal with an affidavit in reply dated 6.11.2012 and placed before us its version of events leading to the grant of EC in question.
6. The Respondent No. 5 controverted the appellant's case vide affidavit in reply dated 19.1.2012 and annexures thereto, and further offered explanation regarding the facts in controversy.
7. Counsel for the parties were heard at length. Ld. Adv. Sri Abhas Mishra for the appellant's tendered written submissions on 12.3.2013, and reiterated the prayers in the Appeal. He placed before us bunch of judicial precedents as follows:
1. T. Mohan Rao Vs. MOEF (Appeal No. 23/2011, Dt. 23.05.2012)
 2. M/s Vedanta Aluminium Ltd. Vs. UOI (WP(C) No. 19605 of 2010, Dt. 19.07.2011)
 3. Jagpal Singh Vs. State of Punjab in (2011) 11 SCC 396
 4. Akhil Bhartiya Upbhokta Congress Vs. State of Madhya Pradesh (2011) 5 SCC 29
 5. Noida Entrepreneurs' Assn. Vs. Noida (2011) 6 SCC 508
 6. Delhi Airtech Service Vs. State of UP (2011) 9 SCC 354

7. Humanity & Ors. Vs. State of WB (2011) 6 SCC 125
8. Utkarsh Mandal Vs. UOI (WP(C) No. 9340 of 2009)
9. Intellectual Forum Vs. State of AP (2006) 3 SCC 549

8. Inviting our attention to the record, Ld. Adv. Shri Arun Kumar Varma for the Respondent No. 5 submitted that the entire proceedings of the Public Hearing were videographed and nothing more needs to be scrutinised to ascertain the manner in which such proceedings of Public Consultation were held. He further submitted that the Respondent No. 5 had commenced the construction activities for setting up of the new blast furnace within the available open area of its factory premises at Village Samagoga in a bid to expand steel plant on the strength of EC granted dated 26.11.2009 and "Consent to Establish" dated 13.4.2010; and no sooner it was objected to vide notice dated 18.3.2011 issued under Sec. 33(A) of the Water (Prevention and Control of Pollution) Act, 1974, the Respondent No. 5 had stopped the said construction activities and given an undertaking dated 19.3.2011 to abide by such directions to the Respondent No. 4; and SEAC had appraised the project only after the construction work was stopped and given green signal to the grant of EC to the project upon due consideration of the final EIA Report and outcome of Public Consultation.

Ld. Adv. Verma for the Respondent No. 5 further pointed out that the Office Memorandum dated 19.8.2010 issued by the Ministry of Environment and Forests, Govt. of India restrained all the projects undertaken without Environmental Clearance from going on with the construction activity except fencing of the site to protect it from getting encroached and construction of temporary sheds for the guard(s).

MoEF is vested with sufficient discretion to suspend or revoke the Terms of Reference (ToR) and also to invoke the Penal provisions. He further pointed out that the MoEF has not exercised the discretion so vested to suspend or revoke the proceedings for grant of Environmental Clearance but has opted for invoking penal provisions for initiation of prosecution of the Project Proponent for the lapses committed by it.

As regards to carrying out the EIA study prior to the communication of TOR, Learned Advocate for the Respondent No. 5 invited our attention to the minutes of the meeting in which the TOR were settled. He pointed out that the Project Proponent was present at the time of settlement of ToR and as such had the knowledge about the TOR on the basis of which EIA study was carried out before the ToR were issued or officially communicated. He submitted that there is nothing to point out that the EIA study thus carried out was contrary to Terms of Reference (ToR) as settled in the said meeting or that it did not meet the expectation for which such study is designed.

Learned Advocate for the Respondent No. 5 invited our attention to the Public Notice on Public Hearing published in Gujarati Daily Newspaper “Divya Bhasker” issue dated 27.2.11 vide Annexure-5 in Compilation II of the Appeal, and submitted that notice of Public Hearing was published in Vernacular language in time for the benefit of the public at large, particularly the local people, in as much as it was adequate in terms of the mandate of Environment Clearance Regulations/EIA Notification. Adverting to Annexure R-8 & R-9 Annexed to the reply filed by the Respondent No.5- the copy of the letter dated 1.3.2011 of Gujarat State Pollution Control Board (GSPCB) issued by its Regional Office and the acknowledgments obtained by Gujarat State Pollution Control Board (GSPCB) acknowledging the receipt of summary of EIA report, he submitted that the exception taken on the ground of

non- supply of summary of EIA report in Vernacular language is without any merit.

Further inviting our attention to the minutes of Public Hearing the Learned Advocate for the Respondent No. 5 submitted that all the issues raised in Public Hearing were suitably addressed and the same were duly considered by the SEAC before recommending the grant of EC. He submits that there is no violation of EIA Notification while granting the EC in question and the Appeal deserves to be dismissed.

Controversies thus raised calls for answering the following points:

- 1 Whether the construction of the project was started prior to the granting of Environmental Clearance in question.
- 2 Whether summary of EIA report was not furnished in Vernacular Language.
- 3 Whether summary of EIA report was inadequate and not as required by the Environmental Clearance Regulations /EIA Notification.
- 4 Whether the Public Hearing was not held in neutral venue.
- 5 Whether there is any contravention of the Environmental Clearance Regulations /EIA Notification.
- 6 Whether any such contravention would vitiate the grant of Environmental Clearance in question.

Reasons

Point No. 1. Admittedly, the Respondent No. 5, namely the Project Proponent, had commenced the construction activity for setting up of new Blast Furnace within the available open area of its factory premises at Village Samaghogha. Reply to the Appeal dated 19.1.2012 filed by the Respondent No. 5 reveals that it had commenced the said construction activity for setting up of the new Blast Furnace in a bid to expand steel

making plant on the strength of EC dated 26.11.2009 and during the continuance of the said construction activity decision was taken to expand its DI Pipe Plant within the said area which had resulted in making of Application for obtaining necessary EC in question. Respondent No. 5 further averred that since there were certain common technical features between the Steel making expansion plant and the DI Pipe expansion plant, construction continued for some time after the Application for grant of Environmental Clearance for the DI Pipe Plant i.e. Environmental Clearance in question was made. However such construction was stopped and undertaking dated 19.3.2011 not to undertake any excavation and foundation work relating to the plant expansion project was given on receiving notice/directions dated 18.3.2011 issued under section 33(a) of the Water (Prevention and Control of Pollution) Act, 1974, by the Respondent No. 4.

Photographs in Annexure-4 to the Appeal show excavation and foundation work and nothing beyond it. However, the Respondent No. 5 has not clarified in its Affidavit in reply as to what were those common technical features between the Steel making expansion plant and DI expansion Plant thereby clearly indicating the works involving such common technical features undertaken by it . As a result the point needs to be answered affirmatively.

Point No. 2. Perusal of the copy of the letter dated 1.3.2011 of Gujarat State Pollution Control Board and the acknowledgment obtained by GSPCB at Annexure R-8 & R-9 respectively to the reply filed by the Respondent No. 5 , irrefutably and vividly reveals delivery of draft and summary of EIA report (in English and Gujarati) to the local bodies /Authorities namely the

District Collector, District Development Officer, General Manager of District Industrial Centre, District, Kutch. Chief Conservator of Forest, Taluka Development Officer, Taluka Mundra District, Kutch as well as to the local Gram Panchayat between 3.3.2011 and 16.3.2011. Pertinently no grievance was raised by anybody in that regard in time prior to filing of the present Appeal much less at or before the Public Hearing in question. Grievance in that regard is, therefore, a far cry from the truth. The point is therefore answered negatively.

Point No. 3. Public consultation is one of the stages prescribed in the Environmental Clearance Regulations in the process of granting EC. It is the process by which concerns of local affected persons and others who have a plausible stake in the environmental impacts of the project or activity are ascertained with a view to taking into account all the material concerns in the project or activity design as appropriate. To facilitate effective Public Consultation summary EIA Report both in English and Vernacular language are prepared. The Environmental Clearance Regulations, 2006 at para 7, stage-3 Public consultation --- sub para (vi) refer to inviting of responses from other concerned persons by placing on the website of the concerned Regulatory Authority the summary EIA report prepared in the format given in Appendix (III-A) along with a copy of the Application in the prescribed form. Appendix (III) A describes the contents of summary EIA Assessment in following words:

The summary EIA shall be a summary of the full EIA report condensed to ten A-4 size pages at the maximum. It should necessarily cover in brief the following chapters of the full EIA report.

1 Project Description

- 2 Description of the Environment
- 3 Anticipated Environmental Impacts and mitigation measures
- 4 Environmental Monitoring programme
- 5 Additional Studies
- 6 Project Benefits
- 7 Environment Management Plan

Copies of the executive summary of the project (15 pages) in English and Gujarati languages are made available for our perusal by the Appellant at Annexure A-9 Compilation-II.

The relevant information about the project in question in brief is made available through the said report under the following heads and sub heads:

- 1 Introduction of the company, (2) Location of the project, (3) Legal requirement, (4) Project review, (5) EIA methodology, (6) Project details
 - (i) Purpose of the project, (ii) Location and salient features of the project, (iii) Resource requirement:, (iv) Water requirement, (2) Fuel requirement, (3) Raw Material requirement, (4) Man power
- 7 Base line status of study area (1) Meteorology, (2) Rainfall (3) Temperature.
- 8 Onsite meteorology (1) Wind speed and direction, (2) Temperature, (3) Relative humidity, (4) Rainfall, (5) Ambient air quality, (i) Suspended particulate matter (PM10), (ii) Suspended particulate matter (PM 2.5), (iii) Sulfur dioxide (SO₂), (iv) Oxide of Nitrogen (NO₂), (6) Soil Environment, (7) Water Environment (8) Noise Environment, (9) Land use pattern (10) Demography of

Socio Economic Status, (11) Impact Assessment and Environmental Management Plan, (11)(i) Air Pollution and Mitigation Measures, (11)(ii) Noise Pollution and Mitigation Measures, (11)(iii) Water Pollution and Mitigation Measures, (11)(iv) Land Pollution and Mitigation Measures, (12) Social Welfare Activities and Green Belt, (13) Risk Assessment.

Environmental Clearance Regulations, 2006 casts duty on the Project Proponent to address all the material environmental concerns. Thus, the focal point of EIA report is anticipated environmental impact and mitigation measures. We find in summary EIA report reference to assessment of air pollution, noise pollution, water pollution and land pollution at Para No. 8(11)(1) to 8(11)(4) and mitigation measures to be adopted by the Project Proponent. Except a statement nothing has been pointed out by the Appellant to show how this EIA report was inadequate so as to thwart public response as contemplated in EC Regulations. The point is, therefore, answered negatively.

Point No. 4. Admittedly, the Public Hearing in the present case was held in the premises of the O. P. Jindal Vidhya Niketan school run by the Respondent No. 5 company in Village Samaghogha. According to the Learned Counsel for the Appellant the venue of holding of Public Hearing was not a neutral one the same being within the premises of the school run by the Respondent No. 5 company and, therefore, such venue was not conducive to free, fair and open participation of the locals as well as other persons who were likely to be affected by the proposed project. In this context our attention was invited to para 7 stage-3 (iii) of the Environmental Clearance Regulations, 2006, by the Learned Counsel for the Respondent No. 5. According to him, there was no legal impediment for holding Public Hearing in the premises under

the control of Project Proponent. Environmental Clearance Regulation, 2006 mandates at the said provision as follows :-

The Public Hearing at 'or in close proximity to' the site(s) in all cases shall be conducted by the SPCB or the UT Pollution Control Committee concerned in the specified manner and forward the proceedings to the Regulatory Authority concerned within 45 days of request to the effect from the Applicant.

Nowhere Environmental Clearance Regulations, 2006 abjures the use of premises in control of the Project Proponent but in fact chooses the very site of the project which is in control of the Project Proponent, for holding a Public Hearing.

Answer to the question as to why this is so can be easily found in the purpose of holding a Public Hearing. A Public Hearing is one of the components of Public consultation and is the process by which concerns of local affected persons who are likely to suffer due to the environmental impact of project or activity, are ascertained. Naturally, therefore it is expected to hold a public Hearing at or in close proximity to the project site in order to ensure and facilitate wide participation of the Public particularly those who are likely to be affected by the project, being in close proximity. Needless to say that the environmental impact of any project or activity is likely to be felt or perceived immediately and pronouncedly by the local persons living in close proximity of the project site and as such they richly deserve participation in Public Consultation with ease. As a corollary to the mandate of the Environmental Clearance Regulation, 2006 as aforesaid it can be seen that holding of Public Hearing at the project site implies holding of Public Hearing at a place under the control of the Project Proponent. Legally, therefore there can be no sustainable legal exception to holding of a Public Hearing at the premises controlled by the Project Proponent more so when there is no case that the Public Hearing was not held in close proximity

to the project and as such it posed inconvenience to the members of the public particularly the local persons in attending the proceedings of Public consultation

Perusal of the record, both documentary and video graphic, reveals that the Public Hearing was held in the presence of Additional District Magistrate and Additional District Collector, District Kutch, the Regional Officer of PCB, Bhuj and was attended by 275 persons from various villages including the village Samaghogha situated around the said site. It is clearly demonstrated that the Members of the Public were provided with the platform for free, fair and open participation at the said venue. Nothing was pointed from the record that anything was amiss in holding of Public Hearing at the said venue which could be construed as violation of Environmental Clearance Regulations 2006. The point is, therefore, answered is negatively.

Point No. 5 Environmental Clearance Regulations is essentially the product of exercise of power conferred by sub-section (1) and Clause (v) of sub Section (2) of Section (3) Environment (Protection) Act, 1986 read with Clause (d) of sub Rule (3) of Rule (5) of the Environment(Protection) Rules, 1986. Thus, it is a piece of delegated Legislation stipulating the requirements of prior EC from the Central Government as the case may be by SEIAA duly constituted by the Central Government under the said Act, for construction of new projects or activities or the expansion or modernization of existing projects or activities listed in the Schedule there under, anywhere in India. Besides categorization of the projects or activities based on the spatial extent of potential impacts on human health and natural and manmade resources and classifying authorities empowered to grant prior EC, the said regulations charter a course to be adopted in the process of granting EC. Substantially, it governs the matters of procedure relating to grant or rejection of prior EC.

Keeping this in mind one has to apply the standards stipulated therein to evaluate the process of grant of EC. Evidently a public notice in respect of Public Hearing scheduled to be held on 29.3.2011 was duly published in issues dated 27.2.2011 and 2.3.2011 of "Divya Baskar" daily newspaper in vernacular language (Gujarati) and the "Times of India" daily newspaper in English respectively. The Respondent No. 5 have categorically averred that requisite numbers of hard and soft copies of EIA report including the summary of EIA report in English and in Gujarati were communicated after scoping as per Clause- 2.2, Appendix 4 of EC Regulations/EIA Notification, 2006. It is also revealed that the Respondent No. 4 had forwarded a copy of EIA Report and summary EIA Report in English and in Gujarati to the local authorities with request to display the same and to make them available to the public at large. It is also evident that the Respondent No. 4 had also directly supplied the summary of EIA Report to as many as 16 Gram Panchayats in the vicinity. The Respondent No. 5 averred that the EIA and its summary were available on the website of Respondent No. 4 where anybody could get a copy of the same.

If one looks into the Appendix -IV to the Environmental Clearance Regulations, 2006 it is not difficult to find that the Applicant seeking EC is required to forward to the SPCB a letter of request to arrange the Public Hearing along with ten hard copies and equivalent numbers of soft copies of draft EIA Report including the summary of EIA Report in English and in state/Local Language and to make arrangements to forward such copies that is one hard and one soft of the draft EIA Report along with summary EIA Report to the authorities namely District Collector/ Magistrates/Zilla Parishad or Municipal Corporation, Panchayat Union, District Industries Office, Urban Local Bodies and Concerned Regional Officer of MoEF, who are obliged to make available the draft EIA Report

for inspection electronically or otherwise to the public during normal office hours. The Concerned SPCB is also required to make similar arrangement for giving publicity about the project in question. Pertinently, no outer limit of time is given for such publicity prescribed under sub Para 2.2 Appendix-IV of Environmental Clearance Regulations, 2006. However, sub Para 3.1 of the said Appendix speaks of the advertising of the notice of Public Hearing in news media and further stipulates a minimum notice period of 30 days to the public for furnishing their responses. Pertinently, this concerns Public Hearing which is one of the component of the Public consultation process devised to ascertain concerns of local affected persons.

Undoubtedly, in the instant case, the object of giving clear notice of 30 days of the proposed Public Hearing to the local persons could be said to have been very well achieved by publication of the notice in State/ Vernacular language i.e. Gujarati Daily News Paper "Divya Bhaskar" issue dated 27.2.2011. This can also be discovered from the material placed before us i.e. the responses received in Gujarati as well as in English from the locals and others as well as responses to the publication of draft EIA Report electronically. A little delay in publication of the notice of Public Hearing in the 'The Times of India' has made any difference with the process of ascertaining the concerns of local affected persons.

The Respondent No. 5 has not disputed the fact of having commenced EIA study in October, 2010 and having completed it in December, 2010. Thus, the EIA study was commenced prior to final communication of ToR dated 30.11.2010. Reading of Affidavit in reply of Respondent No. 4 dated 6.11.2012 and the Annexures thereto clearly reveals that the Respondent No. 5 (Project Proponent) was present in the meeting dated 30.9.2010 of State Level Expert Appraisal Committee(for short 'SEAC') when the issue of ToR was

deliberated upon and ToR dated 30.11.2010 were duly settled. Thus the Respondent No. 5 (Project Proponent) did gather the knowledge of the ToR and, therefore, could embark upon the EIA study in October, 2010 Official Communication of ToR vide letter dated 30.11.2011 of State Level Expert Appraisal Committee therefore has worth only of creating official record of the communication of the ToR and nothing more. Commencement of EIA study in October, 2010 therefore cannot be regarded contravention of Environmental Clearance Regulations by embarking upon the EIA study before the communication of ToR.

So far as the commencement of the construction of project is concerned the Respondent No. 5 did over step the limitation imposed by EC Regulations. However it is also a fact that the construction activity was undertaken and was halted, on an undertaking given to abide by the directions issued by the Respondent No. 4 SEAC. Cognizance of this fact was taken by the State Level Expert Appraisal Committee in its meeting dated 9.5.2011 vide minutes of the meeting at Annexure -2 to the Affidavit in the reply of Respondent No. 4 (SEAC) dated 6.11.2012. The Affidavit of the Respondent No. 4 further reveals that the Gujarat State Pollution Control Board's officials had visited the project site on 19.5.2011 and noticed that the excavation and foundation work was stopped by the Project Proponent and no construction equipment or activity was seen at the site vide Annexure R-3 Affidavit in reply of the Respondent No. 4, SEAC.

Reading of Annexure R-3 to the Affidavit in reply of the Respondent No. 4 (SEAC) reveals that the SEAC in its 103rd meeting dated 31.5.2011 did examine whether the proposed project or activity was appropriately categorized or not, examine its competence *vis. a. vis* the categorization of project or activities undertaken as per the Schedule of the said Notification, and thereafter considered the following points:

1. Developments leading to the appraisal of the proposed project.
2. Concerns of the local villagers namely closing of the cart track and alternative arrangement made therefor.
3. Construction work undertaken by the Project Proponent prior to the grant of Environmental Clearance.
4. Technical issues raised during the Public Hearing.
5. Project Profile including the water requirements, and effluent generation and measures to counter them.
6. Environmental study and the impact on the ambient air quality due to the proposed project.
7. Solid /Hazardous Waste disposal

Ultimate para of the minutes of the SEAC dated 31.5.2011 which is quoted hereunder brings forth the mind of the members of the SEAC in recommending the case for EC.

“During the meeting, various issues raised during the public hearing were discussed at length. The main concerns during the public hearing were regarding starting construction work before prior environmental clearance, depriving farmers from their right to use existing cart track passing in between the proposed survey numbers, ground water extraction by the company, local employment, noise pollution etc. The project proponent explained that earlier they had planned to set up Steel Melting Shop at the place where the new DI Pipe Plant is proposed. He quoted that they obtained environmental clearance from the MoEF on 26/11/2009 for the Steel Melting Shop and they were to transfer molten metal from the new Mini Blast Furnace (2,80,000 TPA) to the Steel Melting Shop, which was to set up on other side of the existing cart track. He added that due to the market considerations, they have now planned to set up DI Pipe Plant at the same place where Steel Melting Shop was to be set up but in either case the molten metal had to be transferred from the new Mini Blast Furnace (2,80,000 TPA) and hence the existing cart road has to be

closed in view of safety of the farmers passing through the track. The project proponent submitted (i) Extracts from the minutes of meeting of Board of Directors held on 12th May, 2011 and (ii) Notarized undertaking stating that they have provided an alternate new track for free and safe movement of people and it is hardly 400m from the existing track, new proposed track land will be dedicated for use of villagers and the company will not claim the ownership of the cart track land in future and they shall abide by the decision of the Court. However, the committee insisted the project proponent to get permission from the Mamlatdar, Mundra for the new proposed track. While asking by the committee, the project proponent clarified that due to the proposed expansion, production of hot metal/ pig iron shall not exceed 5,80,000 TPA for which EC was obtained from the MoEF on 26/11/2009. The committee felt that one of the reasons for agitation during the public hearing was failure of the company to fulfill the commitments made during the earlier public hearing and hence asked the project proponent to submit the CSR action plan for the year 2011-12 including the details on the proposed activities along with the budget allocation for the same. After deliberation on various issues, the committee decided to recommend the case to SEIAA for grant of environmental clearance after submission of following:

- 1). Permission from the Mamlatdar, Mundra allowing use of the alternate cart track.
- 2). Detailed CSR Action Plan for the year 2011-2012 including the details on the proposed activities along with the budget allocation for the same.”

Thus, the minutes of the meeting of the SEAC clearly reveal that SEAC had not recommended the grant of EC mechanically and had applied its mind to the final EIA report and outcome of Public consultation for the purpose of appraisal as required under the said EC Regulations. Nothing

has been pointed that the Minutes of the meeting were not recorded as per the EC Regulations. The point is, therefore, answered accordingly.

Point No. 6 Before arriving at the final conclusion it is necessary to consider the judgments cited on behalf of the Applicant. In T. Mohana Rao's Case this Tribunal, while allowing the Appeal, concluded that the public was deprived of the relevant information which formed the basis of grant of EC and , therefore , directed the MoEF to revisit EIA report from the stage of Public Hearing. It appears that the EIA study was carried out earlier to the settlement of ToR and the EIA did not contain the finding of the special studies thereby giving rise to the cloud of suspicion with regard to due application of mind by the EAC. It further appears that EIA Report was not available to anyone till the time of Public Hearing. Facts in the present case do differ from the facts of T. Mohana Rao's case as discussed above. In M/s Vedanta Aluminum Ltd. case the Hon'ble High Court of Orissa declined to reverse the decision of the MoEF to withdraw the TOR and consequently the Public Hearing organized in the process of grant of EC for expansion of Aluminum refinery on the ground that the Project Proponent had completed 50 to 55 per cent construction of the project prior to grant of EC. In the said case due opportunity was given to the Project Proponent by the MoEF to explain its conduct and only there after the impugned decision to withdraw the ToR was taken. The Hon'ble High Court of Orissa found justification in MoEF's view to hold the process for Environmental Clearance *de novo* and at Para 36 of its judgment made passing reference to settled legal proposition based on legal maxim "*Expressio Uniusest exclusion alteris.*" What weighed most in the mind of Hon'ble High Court was the justifiable view of the MoEF to hold process of EC *de novo vis. a. vis 50 to 55 % construction of the project prior to grant of EC.*

In Jagpal Singh's case the Hon'ble Apex Court while striking down the regularization of Gram Sabha Land in favour of unauthorized and illegal occupants observed that illegalities must not be permitted and condoned. In Akhil Bhartiya Upbhokta Congress's Case the Hon'ble Apex Court reiterated that perpetuation of illegality is not sustainable and nepotism was not to influence the discretion of the authority.

In Noida Entrepreneurs Assn. case the Hon'ble Apex Court while dealing with the matter of Judicial Review of the process of tendering commented with reference to Legal Maxim: "whenever a thing is prohibited, it is prohibited whether done directly or indirectly" and there was need for strict compliance with applicable norms.

In Delhi Airtech Service Case the Hon'ble Apex Court observed that the condition precedent under Section 17 (3-A) of the Land Acquisition Act, 1894 must be strictly construed as the expression "shall" in said provision primarily indicates mandatory compliance and this is more so considering expropriatory character, nature and the design of the said legal provisions. In Humanity and Another Case the Hon'ble Apex Court observed that the ends do not justify the means and state must not be arbitrary.

In Utkarsh Mandal's case the Hon'ble High Court of Delhi noticed flaw in the Public Hearing and proceeded to *set aside* the Environmental Clearance granted to two groups of mines and remanded the issue to the MoEF for fresh consideration of each of the objections raised at the Public Hearing and to render reasoned decision thereon. It appears that as many as six Public Hearings were scheduled in regard to the various projects including the mining projects in question by the SPCB on the same date, time and the venue and an executive summary was received by the Gram Panchayat of Village Rivona only nine days prior to the date of Public Hearing and the notice of Public Hearing declaring the availability of EIA

Report and its summary was published in Indian Express dated 18.12.2006. All this the Hon'ble High Court observed can possibly result in avoidable chaos of such hearing and reduced the whole exercise to empty formality.

In Intellectual Forum Vs State of AP Case the Hon'ble Apex court reiterated the "Principle of Sustainable Development" with observations that balance is to be maintained between the development needs asserted and Environmental degradation alleged.

Taking cite from the aforesaid Judgments, the nature, character and design of the Environmental Clearance Regulations need to be examined. From the form and its content, Environmental Clearance Regulations can be seen as set rules governing the procedure of the grant or rejection of Environmental Clearance to the projects and activities enumerated therein. It has been so designed to dispense justice to the local affected persons, public at large and the Project Proponent keeping in mind all the material Environmental concerns. It is therefore, a tool to dispense justice and not the justice itself. Such being the position of the procedure and methodology expressed therein, the use of mandatory words therein may be construed as directory keeping in mind the course of justice.

From the facts it is disclosed before us that there is nothing to demonstrate or suggest that any lapse in strict compliance of the procedure prescribed in Environmental Clearance Regulations has in any way prejudicially affected the course of justice keeping in mind the material Environmental Concern. It is nobody's case that draft EIA report and its summary were not made available when asked for except saying that the same were received on 16.3.2011. Making available things and receiving it have different connotations. The word 'available' means able to be used or obtained whereas the word "receipt" has a connotation as

what has been obtained. There is nothing before us to show that anyone was disabled for any reason to use or obtain draft EIA report or its summary after publication of notice of Public Hearing in Vernacular Daily Divya Bhaskar issue dated 27.2.2011. The amount of response i.e. placed before us is sufficient to demonstrate the publicity which was given to the draft EIA Report and its summary in Vernacular. No prejudice is seen to have been caused to the course of justice in the present case.

Perusal of the recommendation made by SEAC at Annexure R-4 to the affidavit reply of the Respondent No. 4 SEAC reveals conditions imposed for grant of such Environmental Clearance. No irrationality or procedural impropriety has been pointed out in making of such recommendations. The recommendations are exhaustive and the conditions stipulated, cover not only the general concerns of the locals but also govern the environmental parameters like water, air, noise, solid/ hazardous waste and green belt. Amendment to the Environmental Clearance done at later stage is incidental one made only to correct the description of the project. The point is, therefore, answered negatively.

9. Nevertheless, the Project Proponent did over step the limitation imposed by the Environmental Clearance Regulations by starting with the construction before grant of Environmental Clearance. Regarding construction activities undertaken prior to the grant of EC, we do not agree with the contention of the Project Proponent that the alleged construction work relates to the grant of earlier EC. It may not be proper to accept such contention in view of the fact that the Project Proponent, as revealed from the record, has been in the habit of flouting the procedure of Law by undertaking construction work during 2004 before the relevant EC was granted. Thus, the Respondent No. 5 (Project Proponent) was not the novice to procedure prescribed for grant of

Environmental Clearance in as much as it had obtained Environmental Clearance before the Environmental Clearance in question.

10. It is also necessary to prescribe a safeguard for checking indiscriminate use of groundwater. The Gujarat State Pollution Control Board is directed to monitor the ground water levels and TDS of the water from bore wells within the premises of the Project Proponent every six months and also to take measures to check the depletion of ground water levels or TDS levels from going beyond the dangerous level.

11. Considering the fact that previously the project was subjected to grant of EC before expansion and that even though there was no EC issued by the MoEF yet the Project Proponent had started the construction activity, such conduct of the Project Proponent shows that he has no sense of impunity. The construction work had been started because the Project Proponent perhaps believed that the EC will be granted. The Project Proponent started such construction activity in 2004 also. It has been again repeated when the EC was sought in 2011. It is but natural to assume that the Project Proponent has no compunction in repeating the same kind of dereliction and proceeded to undertake the construction activity although prior EC was not granted for expansion of the project. The conduct of the Project Proponent is, therefore, reprehensible. The tendency to proceed with the project activity in spite of absence of the EC order has to be dealt with stern hand.

12. In this view of the matter, we are of the opinion that the Project Proponent (Respondent No. 5) shall be directed to deposit Rs. 1,00,00,000/- (Rupees One Crore only) with this Tribunal which may be remitted to Environment Relief Fund. The Registry shall ascertain to whom the fund may be transferred and shall do accordingly.

13. In the result, the Appeal is dismissed with direction that the Respondent No. 5 (Project Proponent) shall deposit Rs. 1,00,00,000/- (Rupees One Crore only) with the office of the NGT within four (4) weeks and the same shall be disbursed as directed above. The Gujarat State Pollution Control Board shall make six-monthly monitoring of Ground Water Level and TDS content of ground water within the premises of the project and take necessary steps to check the water level and TDS content before reaching dangerous level.

....., JM
(V. R. Kingaonkar)

....., JM
(U. D. Salvi)

....., EM
(Dr. P. C. Mishra)

....., EM
(P. S. Rao)

....., EM
(B.S. Sajwan)

NGT