

**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI**

Appeal No. 121 of 2016 (SZ)

IN THE MATTER OF:

1. Shri M.D. Yogesh,
S/o Shri M.S. Deve Gowda,
Aged Major,
Makavalli Village,
Krishnarajpet Taluk,
Mandya District – 571426, Karnataka.
2. Shri Thamme Gowda
S/o Channegowda,
Aged Major,
Karoti Village,
Krishnarajpet Taluk,
Mandya District – 571426, Karnataka.

...Appellants

Vs.

1. Union of India,
Through the Secretary,
Ministry of Environment and Forests,
Paryavaran Bhawan, CGO Complex,
Lodhi Road, New Delhi - 110003.
2. Karnataka State Pollution Control Board,
Through the Member Secretary,
Karnataka State Pollution Control Board,
Parisara Bhawan, Church Street,
Bangalore - 560001, Karnataka.
3. M/s Coramandel Sugars Limited,
Through its Director,
Registered office at Coramandel Towers,
93, Karpagam Avenue,
Santhome High Road,
R.A. Puram, Chennai - 600028,
Tamil Nadu

4. Deputy Commissioner,
Mandya District, Karnataka.
5. The Krishnarajapet Taluk Cane Growers Association,
Regn. No Dey/Societies/42-151/2016-17,
Rep. by its Secretary,
Sri Veerabhadreswara Complex,
B.M. Road, Kikkeri,
Krishnarajapet Taluk, Mandya, Karnataka**Respondents**

(R5 impleaded as per order dated 07.09.2016 in M.A 144/2016)

Counsel appearing for the Appellants :

M/S.Clifton D.Rozario & Maitreyi Krishnan & A.Yogeshwaran

Counsel appearing for the Respondents :

Mr. G.M.Syed Nurullah sheriff for R1.

M/S.R.Thirunavukkarasu & M.Swarnalatha for R2

Mr.P.S.Raman , Senior Advocate for M/s. R.Parthasarathy,
Rahul Balaji & Rohan Cherian for R3.

Mr.V.Prakash, Senior Advocate for
M/S.Kamalesh Kannan and Sai Sathya Jith for R5.

No representation for R4

J U D G E M E N T

PRESENT:

Honourable Justice M.S.Nambiar, Judicial Member

Honourable Sri P.S.Rao, Expert Member

Delivered by Hon'ble Sri P.S.Rao, Expert Member

Dated: 13th February, 2017

Whether the Judgement is allowed to be published on the Internet – Yes/No

Whether the Judgement is to be published in the All India NGT Reporter – Yes/No

This appeal is filed under Section 16 (h) of the National Green Tribunal Act, 2010 questioning the legality of the Environmental Clearance (EC) granted under the Environment Impact Assessment (EIA) Notification 2006, by the Ministry of Environment, Forests and Climate Change (MoEF & CC) by order No.F.No.J-11011/565/2010-1A-II (I) dated 31.12.2012 and the revalidation of EC dated 30.3.2016 to the 3rd respondent, M/s. Coromandel Sugars Limited to expand the industry with Molasses/Grain based Distillery (45 KLD), Co-generation Plant (30 MW) and Captive Power Plant (1.5 MW) at SF No.51, Makavalli Village, Krishnarajpet Tehsil, Mandya District, Karnataka.

2. The aforesaid EC dated 31.12.2012, was already challenged by the appellants herein, on various grounds before this Tribunal in Appeal No.21 of 2013 which was disposed on 12.05.2015 by keeping the EC under suspension for a period of six months with a direction to the MoEF & CC to carry out a re-exercise of the appraisal within the said period by calling for additional information and clarifications in respect of all the concerns and objections even if they are minor in nature,

consider the same at the time of meeting to be convened and conducted for the said purpose after giving an opportunity to the Project Proponent, who is to be present at the time of meeting. Thereafter, on 30.3.2016, the respondent No.1, MoEF & CC has issued re-validation of EC to the respondent No.3 Project Proponent. Aggrieved by the revalidation of the EC, the appellants have again approached this Tribunal challenging both the original EC dated 31.12.2012 and the revalidation of EC dated 30.03.2016.

3. It is the contention of the appellants that they are agriculturists growing coconut, sugarcane, areca nut and vegetable crops besides animal husbandry and their agricultural lands are falling within the vicinity of the proposed project and all the villages and towns within the vicinity of the project depend on Hemavathi river for their agriculture and drinking water purpose and the proposed project being a highly polluting industry, will have a great impact on the lives and livelihood of the appellants and people living in the locality. The project involves setting up of Molasses/grain based distillery (45 KLD), Co-generation Plant (30 MW), and Captive Power

Plant (1.5 MW). The sugar factory is under operation since 1999 onwards by the respondent No.3. Further, it is the contention of the appellants that there are numerous Grama Panchayats consisting of scores of villages and towns within 10 km radius of the proposed project and respondent No.2, Karnataka State Pollution Control Board (KSPCB) and respondent No.4, the Deputy Commissioner, Mandya District have repeatedly taken cognizance of the pollution caused by the industry on various documents and directions pursuant to the show cause notice and inspection reports pointing out the pollution caused by the industry over a period of time ever since the industry started functioning in 1999. It is also stated that various complaints have been filed by the villagers for violating the environmental norms by the industry. The appellants have reiterated the alleged shortcomings in the preparation of EIA report and various other lapses alleged to have been committed by the industry. As per the contention of the appellants, these lapses and shortcomings have not been taken into account by respondent No.1, MoEF & CC and EC was granted in the year 2012.

4. After the appeal No.21 of 2013 was disposed of by this Tribunal on 12.05.2015, the appellants have submitted a letter dated 22.07.2015 to the respondent No. 1, MoEF & CC again bringing to its attention the various objections raised by the villagers during the public hearing and further seeking for grant of opportunity of being heard by EAC before any decision was taken and the said objections were also submitted to the respondent No.2, KSPCB, respondent No.4, Deputy Commissioner and the Panchayat Development Officer. The relevant portion of the aforesaid judgment of the Tribunal in Appeal No.21 of 2013 reads as follows:

"92. Under the circumstances, keeping in mind the Precautionary principle and Principle of Sustainable Development as envisaged under Section 20 of the NGT Act,2010 the Tribunal is of the considered view that instead of scrapping the EC granted by the 1st respondent, MoEF to the 3rd respondent industry dated 31.12.2012 for the establishment of molasses/grain based distillery (45 KLD), expansion of Co-generation Plant (from 12 MW to 30 MW) and Captive Power Plant (1.5 MW) at Makavalli village, Mandya District, State of Karnataka it would suffice to keep the EC under suspension for a period of six months herefrom with a direction to the MoEF to carry out a re-exercise of the appraisal within the said period by calling for additional information and clarifications in

respect of all concerned and objections even if they are minor in nature, consider the same at the time of meeting to be convened and conducted for the said purpose after giving an opportunity to the project proponent to be present at the time of that meeting. The EAC is directed to consider each and every issue separately and independently and record the reasons either for rejecting or accepting the concerned and objections and also the response by the Project Proponent thereon enabling thereby to understand both the Project Proponent and Objections, ensuring transparency in the process of recommending either for acceptance or for rejection of the EC by the regulatory authority, namely the MoEF”.

5. The appellants state that in tune with the orders of the Tribunal, the matter was again placed before EAC in its meeting held on 20th and 21st of August 2015 and as per the minutes of the meeting of the EAC, it is clear that respondent No.3, Project Proponent has admitted the fact that the information furnished in the EIA report was false and incorrect. Thereafter, EAC held another meeting on 17th and 18th December, 2015, during which, the EAC recommended the project. It is clear from the minutes of the meetings that none of the objections raised by the villagers have been considered or even mentioned therein, in complete violation of the orders

of the Tribunal. There is absolutely no application of mind and EAC has recommended EC and the EC was revalidated in a mechanical fashion in violation of the EIA Notification 2006 and orders of the Tribunal. Even though the 3rd respondent Project Proponent has admitted the fact that the information furnished in the EIA report was false, the EAC has failed to consider even these aspects. Neither the appellants nor any other representatives of the affected villagers were heard in any of the meetings of the EAC and they are not even intimated about the same and without any independent application of mind, the 1st respondent MoEF & CC revalidated the EC on 30.03.2016.

6. The appellants contend that revalidation of EC has no place in law and the same is in violation of EIA Notification 2006 and the order of the Tribunal in Appeal No.21 of 2013 dated 12.05.2015 and no comprehensive impact assessment has been done. The EAC has failed to consider the grave impact of the project on drawing water from the river Hemavathi. The water requirement for the proposed distillery, Co-generation plant and Power Plant which is sought to be met entirely from Hemavathi river, is impermissible in view of the

fact that respondent No.3 industry has permission to draw water from the river for the purpose of running sugar factory only. According to the Project Proponent, 1350 M³ of water per day during season and 2850 M³ of water per day during off-season is to be drawn every single day from the river for the proposed project. This is in violation of National Water Policy 2002, which mandates that in the planning and operation of systems water allocation priorities should be towards drinking purpose, then irrigation, hydro-power, ecology and only thereafter, to agro-industries and non-agricultural purposes. The EAC failed to take into account all these aspects. It also failed to consider the aspect of the Siting Guidelines for new industries brought out by respondent No.2 KSPCB which stipulates that no new industry shall be permitted to be established within 1.5 km from the embankment of the streams, rivers, dams and if any of these water bodies are the source of drinking water, then such distance shall be stipulated which will not affect such waters by discharge of pollutants and the proposed project which involves distillery and which is a highly polluting industry, is specifically prohibited by the Siting Guidelines.

7. The appellants further submitted that the EAC failed to note that the respondent No.3 has admitted that false information was provided in the EIA report, particularly, with respect to the distance from the river Hemavathi and the existence of the forest near the project site as well as the occurrence of hills and mountains and archaeological monuments. The EAC as well as MoEF & CC recommended/approved the project without considering the ecological, soci-cultural impacts of the project. It is the case of the appellants that besides overlooking the aforesaid main issues pointed out by the appellants, the EAC has also failed to look into any of the objections raised by the villagers. In view of the aforesaid facts and circumstances stated, the appellants have also prayed that this Tribunal may be pleased to grant stay the operation of EC dated 31.12.2012 as well as revalidated EC dated 30.3.2016 granted to respondent No.3 industry for Molasses/grain based distillery (45 MW), Co-generation plant (13 MW) and Captive Power Plant (1.5 MW) till the disposal of the appeal. While admitting the appeal on 27.04.2016, it was ordered by this Tribunal that the 3rd

respondent shall maintain the *status quo* till the next date of hearing.

8. Contradicting the submissions made by the appellants, respondent No.3 industry has filed a detailed reply contending that the present appeal is a clear abuse of process of law by the appellants, who have already appealed against the same EC and contested the matters before the Tribunal in Appeal No. 21 of 2013 as well as in Application No.152 of 2014 and the contentions raised therein are repeated in the present appeal. This is nothing but a vexatious litigation, based on matters that were already heard at length by this Tribunal and decided in the judgment which has already attained finality.

9. The respondent No.3 industry contends that in complete derogation of the doctrine of *res judicata*, the appellants are seeking to re-agitate the entire matter with respect to EC, which was already heard at length and decided in appeal No.21 of 2013 by a detailed judgment on 12.05.2015 directing the MoEF & CC to reconsider the appraisal only on certain limited aspects. The attempt of the appellants to challenge the entire EC itself, cannot be allowed. Further, the

appellants had challenged the decision of this Tribunal before the Hon'ble Supreme Court of India and the appeal therein was dismissed by the Hon'ble Supreme Court as withdrawn on 27.01.2016. It is further contended by respondent No.3 that the principle of *res judicata* is based on the consideration of public policy wherein decisions pronounced by courts should be final, unless they are modified or reversed by the appellate authorities. Therefore, the present appeal filed by the appellants is nothing but an abuse of process of law. The appellants have failed to establish any environmental damage caused by the industry and the entire blank allegations of the appellants are on surmises and are false. It is the case of the respondent No. 3 that the industry has been operating with 12 MW Co-generation Plant in the project site for several years and in the year 2010, an application was made for the expansion of Co-generation plant to 30 MW and for establishment of Molasses/grain based distillery (45 KLD) and Captive Power Plant (1.5 MW) and ToR was issued by respondent No.1, MoEF & CC in March 2011. After due consideration, MoEF & CC granted EC on 31.12.2012, against which, appellants have filed Appeal No.21 of 2013. While the

appeal was pending before the Tribunal, the appellants filed application No. 152 of 2014 to quash the Consent to Establish granted by KSPCB on 24.04.2013, which was dismissed by the Tribunal by the common judgment dated 12.05.2015. Pursuant to the judgment of the Tribunal, the respondent No.3, industry approached MoEF & CC and made an application for reconsideration of the EC submitting all the necessary and relevant information with respect to the issues, left for consideration by the judgment of the Tribunal in Appeal No.21 of 2013. The EAC in its meeting held on 20th and 21st August 2015, examined the information provided by the project proponent and after detailed deliberations, in accordance with the terms of this Tribunal, had called for certain additional information from the Project Proponent, which has been provided to the EAC and the same was deliberated by the EAC on 16th and 17th Dec. 2015, and the EAC considered all the aspects and recommended the project for Clearance with certain additional conditions. In the meanwhile in November 2015, the appellants filed Civil Appeal before the Hon'ble Supreme Court challenging the Judgment of this Tribunal. It was dismissed as withdrawn as follows:

"Heard. Learned counsel for the appellants seeks leave to withdraw this appeal reserving liberty for the appellants to file a fresh petition after the Ministry of Environment and Forest (MoEF) takes a final decision in the matter pursuant to the impugned order. The appeal is accordingly dismissed as withdrawn with the liberty prayed for."

10. The appellants have made representation to MoEF & CC in July 2015 and the same was considered by EAC and based on the analysis of the issues, the EAC discussed and deliberated by the EAC both on 20th and 21st August, 2015 and subsequently, on 16th and 17th December, 2015. On 30.3.2016, respondent No.1, MoEF & CC considered the aspect and revalidated the EC, by imposing certain other stringent conditions, and the revalidation of EC was uploaded on the Website of MoEF & CC in March 2016 itself. The respondent No.3 Project Proponent, therefore, prayed for dismissal of the appeal.

11. Respondent No.1, MoEF & CC, Respondent No.2, KSPCB as well as Respondent No.4, Deputy Commissioner, Mandya District have not chosen to file any reply though opportunity was given to them.

12. Miscellaneous Application (MA) No.144 of 2016 was filed by one, Krishnarajpet Taluk Cane Growers Association to get themselves impleaded as party in the appeal, stating that the applicant association consists of 515 members, who are farmers growing sugarcane crop. As per the Government Notification dated 02.02.1999, the members of the applicant association have to necessarily sell the sugarcane crop grown by them only to the respondent No. 3, industry M/s. Coromandel Sugars Ltd. Since the sugarcane crop is seasonal and requires to be harvested at the appropriate time for supplying to the respondent industry for crushing, if the crop is not harvested at the appropriate time it will become a waste resulting in enormous loss\hardship to the sugarcane growing farmers, which is their livelihood and they are totally dependent on the functioning of the respondent No.3, industry. By virtue of an interim order passed by this Tribunal, dated 27.04.2016 in Appeal No. 121 of 2016 the respondent No.3 industry is not purchasing the sugarcane, though the crushing season has already started. Therefore, the members of the Association demonstrated outside the sugar mill and have filed this MA for impleadment. The Miscellaneous Application was

allowed and the applicant Association was impleaded as respondent No.5.

13. Earlier, the respondent No.3 had filed MA No. 56 of 2016 praying for suspension of the interim order dated 27.04.2016 stating that this is being the second round of litigation and the construction of the project as per the EAC is completed to a major portion and therefore, a workable arrangement may be made by modifying the order, specifically permitting the Project Proponent to do the preparatory work like erection of turbine, laying of pipe line and steam blowing without claiming any equity on the same. The applicant in the Miscellaneous Application also submitted that no commercial operations will be carried out till the disposal of the appeal. After considering all aspects, by order dated 10.05.2016, the Project Proponent was permitted to carry on the preparatory work like erection of turbine, laying of pipelines and steam blowing without claiming equity on the same, subject to the result of the appeal, making it clear that the project proponent shall not be permitted to go ahead for further construction and commercial production.

14. Miscellaneous Application No.142 of 2016 was later filed by respondent No. 3 industry to permit them to start the unit and commence the commercial operations with the expanded Co-generation plant, as cleared by the EC dated 31.12.2012 and revalidated on 30.03.2016 and also to direct the KSPCB to issue Consent and other concerned authorities, to issue permission in accordance with law. The applicant submitted that the crushing season has started and new boilers with latest technology have been erected by removing the old boilers for the Co-generation plant. Considering the fact that crushing season has already commenced and the industry had replaced the old boilers of the co-generation plant with new boilers with latest technology to take care of the pollution aspect, and if the industry is not permitted to resume its operations the farmers will be suffering, vide order dated 07.09.2016, the Project Proponent was permitted to run only the co-generation plant for 15 MW purely as a trial run for a period of 12 weeks, subject to the condition that KSPCB shall make periodical inspection at least once in a week and prepare an analysis report about the functioning of the co-generation plant and report this Tribunal for which the KSPCB shall grant

consent on temporary basis for 12 weeks to run the cogeneration plant by the Project Proponent.

Discussion & Conclusion:

15. The point for consideration is :

Whether the directions of the Tribunal in Appeal No.21 of 2013 and 56 of 2013 were complied with by the EAC and whether the Environmental Clearance granted is vitiated?

16. Admittedly, the Project Proponent is an existing sugarcane crushing industry started in the year 1999 over an extent of 99 acres of land in S.F. No. 141, Makavalli village, Krishnarajapet Tehsil, Mandya District, which was originally known as ICL Sugars Limited. It is also a fact that a series of show cause notices have been issued by KSPCB and various shortcomings were pointed out with regard to the emission standards and the industry was operating with Co-generation plant of 12 MW capacity with old boilers. In the year 2010 the Project Proponent has applied for expansion of the industrial activities by setting up a molasses/grain based distillery (45 KLD), increase in the capacity of co-generation plant from 12

MW to 30 MW and a new Captive Power Plant (1.5 MW) at Makavalli village and obtained EC from respondent No.1 MoEF & CC on 31.12.2012 containing various general and specific conditions. The EC was challenged by the appellants by filing appeal No.21 of 2013 before this Tribunal. That apart, the appellants have filed application No.152 of 2014 challenging the Consent given to the Project Proponent. The Project Proponent also filed an appeal No. 56 of 2013 against the stop work order of construction works relating to the expansion of Co-generation plant issued by KSPCB and all the above three matters (Appeal No.21 of 2013, Appeal No. 56 of 2013 and Application No. 152 of 2014) were listed for hearing together by this Tribunal and arguments were advanced against the impugned EC granted by MoEF & CC dated 31.12.2012. The Tribunal in its common judgment dated 12.05.2015, has framed the following points:

"1. Whether the Public Hearing process undertaken by the KSPCB is in violation of EIA Notification, 2006.

2. Whether the EC is vitiated on the ground that the EIA was conducted by an agency not having accreditation and competence.

3. Whether there was any deviation from the siting guidelines prescribed by the KSPCB.

4. Whether the EC is liable to be set aside on the grounds of suppression of material fact by the Project Proponent and non application of mind on the part of the EAC for recommending the grant of EC to the 3rd respondent as alleged by the appellants.

17. On Point No. 1, the Tribunal held that there is no violation of the provisions of EIA Notification 2006 in respect of conducting the public hearing.

18. On Point No.2, the Tribunal held that the process of granting EC was not vitiated since the EIA conducted by an agency, namely, ECIPL was subsequently revised by TLL, which is a competent and approved agency.

19. On Point No.3, it was held that the industry is already an existing one and what was applied was only for an expansion of existing industry and Hemavathi river is situated at a distance of 2 KM from the project site as stated in the reply filed by KSPCB and rejected the contention raised by the applicants that the siting guidelines are violated.

20. Only on Point No.4, it was held that EAC ought to have made a comprehensive study about the impact of the consent to the expansion of the project and instead of setting aside the EC dated 31.12.2012 for the establishment of molasses/grain based distillery (45 KLD), expansion of Co-generation plant (from 12 MW to 30 MW) and Captive Power Plant (1.5 MW), the EC was kept under suspension for a period of six months with a direction to MoEF & CC to carry out a re-exercise of the appraisal within a period of six months by calling for additional information and clarifications in respect of all the concerns and objections.

21. By the judgment dated 12th May, 2015, the Tribunal had already answered the challenge against the Public Hearing process undertaken by the KSPCB as well as the question of suppression of material facts canvassed by the appellants against them and in favour of the industry. Though the learned counsel appearing for the appellants vehemently argued that in view of the order of the Hon'ble Supreme Court in Civil Appeal No.40770 of 2015 dated 27.01.2016 filed against the judgment in Appeal 21 of 2013 and connected matters filed by the

appellants, and in view of the liberty granted by the Hon'ble Supreme Court, the appellants are entitled to challenge the entire findings including those settled in the earlier litigation in Appeal No.21 of 2013, in law we cannot agree. It is true that the Hon'ble Supreme Court while permitting the appellants to withdraw the appeal challenging the judgment of this Tribunal, granted liberty to them to file an application. But, that does not mean that the findings against the appellants in Appeal 21 of 2013 are set aside or non-est or could be ignored by the appellants. The liberty sought before the Hon'ble Supreme Court was not to withdraw the appeal 21 of 2013, but only the appeal before the Hon'ble Supreme Court. Liberty so granted would enable the appellants to file an application before the Tribunal under Section 14 of the National Green Tribunal Act. But when the appeal filed against the judgment in Appeal No.21 of 2013 has been dismissed as withdrawn, the findings against the appellants in appeal No.21 of 2013 would attain finality, except those aspects which are directed to be decided by the EAC and MoEF. There is a vast difference between withdrawal of a suit while an appeal is pending before the Appellate Authority, with liberty to file a suit under Sub-rule 3

of Rule 1 of Code of Civil Procedure and withdrawal of only the appeal from the appellate Court. In the latter case what is withdrawn is only an appeal and consequently, the judgment in the suit will survive. On the other hand, if the Appellate Authority grants permission to withdraw the appeal, as well as the suit, as a natural consequence, the findings in the suit will be erased and therefore, those findings will not operate as *res judicata*. But in the latter case, the findings in the suit would definitely operate as *res judicata* as the findings against the appellant, would attain finality on dismissal of the appeal. That exactly is the case, when the appellants withdrew the appeal preferred before the Hon'ble Supreme Court challenging the judgment of the Tribunal. Whatever be the finding against the appellant in the appeal 21/2013, thus, it attained finality. As the appeal is withdrawn, those findings would be binding and would operate against the appellants. The appellants therefore, cannot ignore those findings. Hence, they cannot re-agitate the same question once again in the appeal, challenging the environmental clearance granted pursuant to the directions of the tribunal in appeal No.21 of 2013. Therefore, as rightly argued by the learned counsel appearing for the respondents,

the findings on the issues already decided in appeal No.21 of 2013 on the validity of the Public Hearing process, whether EC is vitiated on the ground that EAC was conducted by an agency not having accreditation and whether there was any deviation from the siting parameters prescribed by KSPCB, have already attained finality. The appellants, therefore, cannot re-agitate the same in this appeal. What remains is only the question on the compliance of the directions of the Tribunal by the EAC as well as MoEF while granting the impugned EC.

22. Though the learned counsel appearing for the appellants relying on the decision of the Hon'ble Supreme Court in **Ram Preeti Yadav VS U.P. Board of High School and Intermediate Education and Ors., (2003 8 SCC 311), State of AP and another Vs T.Suryachandra Rao (2005 6 SCC 149) and A.V.Papayya Sastry & Ors Vs Government of A.P. (AIR 2007 SC 1546)** argued that by not furnishing the full details of the population in the impact villages fraud has been played by the industry and it vitiates the entire proceedings including the EC. On facts, we cannot agree with the said submission. In fact subsequently, the industry

corrected the population of the villages that was shown in the original report before the EAC, at the time of reconsideration of the question before the EAC. That decision was taken as directed by the Tribunal. Therefore, on the ground of the difference in the population shown originally, it cannot be said that a fraud has been played and that fraud vitiated the proceedings before the EAC or MoEF or that on this ground the entire process before the EAC is vitiated. Moreover, the suppression of material facts propounded by the appellants have already been decided by the Tribunal in the judgment in Appeal No.21 of 2013. It has already been found in paragraph 84 of the judgment that there is no suppression of material facts. The finding reads:

"After giving anxious considerations on the submission made and thorough scrutiny of all the materials made available, the Tribunal has irresistibly come to the conclusion that there was suppression of materials facts and relevant particulars which the project proponent was duty bound to place before the EAC to enable the same to take a decision whether to grant not the EC for the project in question".

Based on the plea of fraud, we cannot agree with the submissions of the appellants that the EC is vitiated or is non-est.

23. The EAC re-examined the appraisal aspect and during 46th re-constituted EAC (Industry-2) meeting held on 20th and 21st August, 2015, the EAC has dealt with the following issues.

1. Suppression of material facts and improper assessment – number of villages falling within the radius of 10 KM of the project site.
2. EIA report was completely silent on the pollution already being caused by the existing sugar factory.
3. The ash generated from the industry is dumped haphazardly causing inconvenience to public.
4. The data allegedly collected in the EIA report was contrary to the data of KSPCB. The Ambient Air Quality (AAQ) standards as per the EIA report for the period from April 2011 to June, 2011 were well within the AAQ standards. However, the inspection reports of KSPCB for the same period indicated violation of particulate matter.
5. No study done in regard to the impact of drawing of water from the river on the drinking water needs of the villages and on the riparian rights of the downstream communities or on the flow of the river.
6. Project Proponent suppressed the presence of forest.

7. Project Proponent has suppressed the archaeological and historical places within 25 KM radius of the project.

8. Suppression on the presence of hill/mountains

24. As revealed from the minutes of the meeting, the EAC has examined the above points, based on the further information submitted by the Project Proponent in response to the representation of the appellants dated 22.07.2015 and as observed in the judgment dated 12.05.2015.

25. With regard to Point No.1, suppression of material facts and improper assessment of number of villages falling within the radius of 10 KM of the project site, the Project Proponent has submitted updated Socio economic data of the villages falling within 10 KM radius of the project site at the time of reappraisal of the Project by EAC. The Project Proponent agreed that initially EIA report didn't contain latest data. It was mentioned that only 8 villages are falling in the impact area with a total population of 6467. But the revised and updated data placed before the EAC lists a population of 1,13,549. The EAC considered the updated information and

made no further comments indicating that it had accepted the data. But the contention of the Appellants is that the EAC failed to take into account the large variation of data and failed to direct to revise the ToR and direct fresh conducting of Public Hearing so that all the affected persons would have got a chance to participate and ventilate their concerns. The population of the villagers is not at all a matter to be considered here. There is no provision in the EIA Notification 2006 that based on the density of population in the impact area, the EAC should take a decision whether to recommend a project or not. Before the Public Hearing was conducted, its date and venue was informed to the general public by publishing in daily newspapers both in English and Kannada languages. That notice is not limited to only 6467 villagers listed in the initial report. There is no bar for any person from attending the Public hearing. Simply because accurate population figures were not reported, the public hearing process can not be found vitiated. This has been brought to the notice of the EAC during the meeting held on 20th and 21st August, 2015.

26. With regard to point no.2, the EAC recorded that as per the data collected by third party laboratory, the Ambient Air Quality (AAQ) monitoring was carried out at 3 locations during September, November, December 2014 and February 2015, which indicates the range of concentration of PM_{2.5} (10.4 µg/m³ to 27.4 µg/m³), PM₁₀ (49.8 µg/m³ to 89.2 µg/m³), SO₂ (9.11 µg/m³ to 15.9 µg/m³) and NO_x (30.1 µg/m³ to 42.8 µg/m³) respectively, which are within the prescribed limits. The EAC was satisfied and accepted the data and no further comments were recorded in the minutes of the meeting. With regard to point No.3, the EAC recorded that the ash estimated to be generated from the 30 MW Co-generation power plant is 529 TPM from bagasse and 65 TPM from coal and the ash will be collected in Ash silos and ash from 140 TPH bagasse and coal fired boiler will be sent to Brick manufacturing unit. Ash from existing bagasse fired boilers 2 X 45 TPH mixed with press mud and sold as soil conditioner to farmers. It is clear that the EAC was satisfied with the proposals of the Project Proponent.

27. With regard to point no.4 it was recorded in the minutes of the meeting that the project proponent informed that though in some cases particulate emissions from the stacks exceeded the standards, the existing 2 X 45 TPH bagasse fired boilers will be removed after commissioning of 140 TPH boiler, a new design will be made and emissions will be as per AAQ standards. This infact became a reality as per the data furnished by the KSPCB as observed by it during the trial run of the newly installed boilers with latest technology.

28. On the point relating to drawing of water from the river, Hemavathi, it is recorded that Government of Karnataka permitted drawal of 1.293 cusecs. (3176 KLD) water by the industry from Hemavathi river, by the agreement dated 22.3.2000, and this drawal amounts to less than 0.01% of total flow during lean season and only 0.0004% of total flow during peak monsoon season. Thus the EAC reviewed the agreement made by the industry with the State Government and satisfied itself with the proposal of the Project Proponent that the expansion doesn't change the drawal of water for the entire industry and in fact with the use of new techniques the project

would draw less water. The EAC also recommended certain additional measures to further reduce the water usage and Project Proponent undertakes to implement the same. Therefore, no revision of agreement is necessary and the Project Proponent can draw the water within the allowable quantity which is always liable for scrutiny and there is no possibility of exceeding the limits as flow metres will be recording the actual intake of the water.

29. In respect of presence of forest, though initially the topo sheet (57 D/6) issued by Survey of India in 1972-73, does not reflect occurrence of any forest within the impact area, the latest Survey of India topo sheet (copyright 2011) for this area reflects a Reserved Forest (RF) at a distance of 8.87 KM in southwest direction. Besides this, another forest, which consists of Eucalyptus plantation, is located at a distance of 2.7 KM in eastern direction and no impact is reported on these forests because of the activities of the project.

30. With regard to Point No.7, the existence of archaeological and historical places within 25 Km radius of the project, the following monuments are located within 10 KM .

Sl.No.	Name of the Monument/Temple	Notified By	Distance from the Project site (KM)	Direction
1.	Lakshminarayana	ASI	9.29	SE
2.	Panchalingeshwara	ASI	8.83	NW
3.	Brahmeshwara	State ASI	7.22	N

No data is produced by the appellants to show how the above monuments/temples are going to be affected by the industry which is already in existence for almost 2 decades.

31. Next and last point is with regard to suppression of presence of hill/mountains. Few hillocks are observed in both South East (SE) and North East (NE) directions. The MSL of hillock in SE direction located at a distance of 8 km is 922 m and the hillock in NE direction is at a distance of 9.7 km with 915 m MSL whereas the project site is located at 829 m MSL. Therefore, no impact will be observed on these hillocks because of the activities of the proposed project. The appellants have

not brought out any point as to how these hillocks are going to be affected because of the activities of the project.

32. After examination of the above information, the EAC sought for following additional information:

“(i). Last 1 year data regarding fly ash management.

(ii). Actual distance to the scale to be reflected with reference to the environmental sensitivities including archaeological.0000 monuments within 10 km distance on the toposheet.

(iii). Effluent treatment scheme of sugar unit along with method of disposal of treated effluent and copies of CTOs.

(iv). Details of Enterprises Social Commitment based on need of surrounding villagers and time bound action plan including annual budgetary allocation to be submitted.

(v). Commitment to install bag filter in the existing boilers.

(vi). Water balance chart of the distillery and cogeneration power plant.

(vii). Latest water quality data of the river at upstream and downstream of plant site.

(viii). Action Plan to be prepared for reduction of the water consumption.

(ix). Effort to be made to recycle/reuse MEE Condensate, spentlees and effluent from utilities.”

33. After obtaining the additional information from the project proponent, the EAC in its meeting held on 16th and 17th December 2015 has recommended the project with certain additional specific conditions. The EAC observed that it verified the documents submitted by the Project Proponent and found satisfactory response with respect to pollution control measures adopted and management of waste water conservation measures within the plant and prescribed the following additional specific conditions:

“(i). Bag filters shall be provided to the existing 2x45 TPH boilers in place of ventury scrubbers to control particulate emissions.

(ii). Effluent from the existing Sugar Unit shall be treated in the efficient ETP and treated effluent shall be recycled/reused in the process in order to reduce the overall fresh water requirement for the entire project.

(iii). No effluent shall be discharged outside the premises and ‘Zero’ discharge shall be maintained.

(iv). Automatic / online monitoring system (24x7 monitoring devices) for air pollution as

well as water pollution in respect of flow measurement and relevant pollutants in the treatment system to be installed. The data to be made available to the respective SPCB and in the Company's website.

(v). Bagasse/biomass/Coal storage in the existing sugar unit shall be done in such a way that it does not get air borne or fly around due to wind.

(vi). Boiler ash in the sugar unit shall be stored separately as per CPCB guidelines so that it shall not adversely affect the air quality, becoming air borne by wind or water regime during rainy season by flowing along with the storm water. Direct exposure of workers to fly ash & dust shall be avoided. Bagasse ash and coal ash shall be stored separately."

34. Learned Senior counsel appearing for appellants vehemently argued that EAC failed to take into account the observations in the judgment dated 12.05.2015 of this Tribunal and without application of mind recommended the project as the EAC did not even discussed all the observations made in the judgment. Learned counsel has concentrated mainly on the following issues:

1. Increase in the human population residing within 10 km radius of the project, which was initially reported as 6,467 by the Project Proponent but it is actually about 1,00,000.

2. The existence of forest was suppressed.
3. Water requirement from the river Hemavathi was not specific as there is no proposal showing that because of the expansion of the industry with increasing Co-generation plant, what is the actual quantum of water required.
4. Existence of Archaeological monuments.
5. Existence of Hillocks and mountains.

35. It is a fact that this Tribunal in its judgment dated 12.05.2015 found certain shortcomings in the process of appraisal of the project and keeping in mind the Precautionary Principle and Principle of Sustainable Development directed the MoEF & CC to carry out a re-exercise of the appraisal within a period of six months calling for additional information and clarifications in respect of all concerns and objections even if they are minor in nature, consider the same at the time of meeting to be convened and conducted for the said purpose after giving opportunity to the Project Proponent and consider each and every issue separately and independently and record the reasons either for accepting or rejecting the contentions and also the response by the Project Proponent, ensuring transparency in the process of recommending either for

acceptance or for rejection of the EC by the regulatory authority, namely, MoEF & CC.

36. A perusal of minutes of the meeting held in 15th and 16th August, 2015 by EAC as well as the objections raised by the appellants in the representation submitted to the MoEF&CC dated 21.07.2015, the information furnished by the Project Proponent before EAC and the recording of the minutes of meeting will go to show that EAC has deliberated the issues and verified the documents submitted by the Project Proponent and found satisfactory response with respect to pollution control measures and then only recommended for grant of EC. Accordingly the MOEF&CC having satisfied revalidated the EC.

37. The Principal Bench of this Tribunal in *S. Venkatesh Vs. The Corporation of Chennai and others*, in Application No.139 of 2015, Appeal No. 98 of 2015 and Appeal No. 28 of 2015 (SZ) dated 10.12.2015, had occasion to consider the objection with regard to the non application of mind. It was held:

"The argument of the applicant that there is non-application of mind and the permission has been granted arbitrarily is without any merit. The authorities have raised specific queries on their own as well as with reference to the representations that they had received, requisite information was furnished by the respondent Corporation which resulted even in deletion of some works as proposed by the Project Proponent. Application of mind is to be gathered from the minutes of the meetings of respondent no. 2 and the fact that the authorities considered relevant factors while putting restrictions for allowing or disallowing the project. In the present case the authorities had even taken into consideration the information received from the Principal Chief Conservator of Forests and Chief Wildlife Warden Chennai and had put restrictions on the height and design of the lights to be fixed as well as the period during which they must be put off. Once the record before the Tribunal shows objective consideration, it would essentially exclude the arbitrariness".

38. We do not agree with the contention of the appellants that EAC failed to apply its mind while appraising the project as directed by this Tribunal. We also do not subscribe to the plea made by the appellants that since they were not given an opportunity of participating in the public hearing, it vitiated the process of public hearing. It is not denied that the Tribunal in its judgment dated 12.05.2015 has categorically observed

that public hearing was conducted as prescribed in EIA Notification 2006. Though the Project Proponent initially reported less number of persons living in the impact site, general notice was issued by the authorities informing the venue, date and time of public hearing by giving wide publicity through advertisement in the newspapers. Anybody interested may participate in the public hearing. Para 7 (III), stage (3), (i) of EIA Notification, 2006 reads as follows:

"Public Consultation" refers to the process by which the concerns of local affected persons and others who have plausible stake in the environmental impacts of the project or activity are ascertained with view to taking into account all the material concerns in the project or activity design as appropriate."

39. So it is clear that irrespective of the number of villages and population as reported in the EIA report before conducting the public hearing on 09.12.2011, the process of public consultation cannot be found fault because the notice published in the newspapers does not restrict the persons interested in participating the public consultation process. The Project Proponent, after the judgment of the Tribunal, furnished latest statistics of the number of villages and

population living within 10 KM radius of the project site and the EAC is satisfied that it did not vitiate the process of public hearing.

40. One more issue which the Project Proponent finds fault is non application of mind by EAC on the water requirement of the industry if the expansion takes place. The Project Proponent has brought to the notice of EAC during the meetings that as per agreement entered into with the State Government, the project was permitted to draw water from Hemavathi river @ 1.293 cusec. per day. Therefore we cannot agree with the submission of the applicant that EAC did not examine this issue. Instead, it is clear that EAC got satisfied with the information furnished by the Project Proponent as the Project Proponent had undertaken that the entire water requirement, even after the expansion of the project, will be met within the quantity allowed as per the agreement and in fact, they will be drawing less quantity of water than what was permitted, because of adopting the latest technology. As per the Water (Prevention and Control of Pollution) Cess Act, 1977 the industry consuming water is liable to pay water cess based

on the quantity consumed for which records, are to be maintained and are liable for verification. Therefore it is always possible for the authorities to ensure that the industry does not exceed the allowable quantity.

41. With regard to the existence of forests it is a fact that one Reserved Forest is located at a distance of about 8.0 km in SW direction and another forest consisting of Eucalyptus plantation, is located in the Eastern direction at a distance of 2.7 km from the project site. These facts were brought to the notice of EAC. There is no bar in establishing/expanding the industry even if there are forests, when no evidence or material is produced by the appellants to show that the industry when expanded would cause any harm to these forests. It is not the case of the appellants that these forests are located in a Protected Area or in an Ecologically Sensitive Zone. Neither it is the case of the appellants that there are any endangered species of flora and fauna which are going to be affected because of the industry. No record is placed before us by the Appellants to show that Bird Sanctuary located near Hemagiri falls is falling within 10 km from the project site. Further,

considering the nature and magnitude of the industry, one cannot jump to the conclusion that the industry is going to cause any harm to the forests.

42. With regard to the existence of archaeological monuments and historical places also, there is no such bar when EAC has examined all the aspects before recommending the case. In fact the EAC recorded that the legal requirement under the Ancient monuments and Archaeological sites and Remains Act, 1958 and its amendments in 2010 is that no industry should be permitted within 100 m of a site and the EAC was satisfied that the industry of the Project Proponent is not going to affect as the nearest monuments and sites, are located at a distance of 7.22 km.

43. Based on the direction of this Tribunal in M.A.No.142 of 2016 dated 7th September, 2016, the Project Proponent has taken up a trial run with Co-generation Plant of 15 MW after removing old boilers and erecting new boilers as per the 'Consent to Operate' given by KSPCB on 05.10.2016 and the unit started functioning from 10.10.2016. The KSPCB in its report on analysis of the data of the industry during trial run of

the Co-generation plant for which, Consent was granted on temporary basis for a period of 12 weeks from the date of commencement of operation, the Officer of the KSPCB, Regional Office at Mandya District conducted periodical monitoring of the emissions. As per the analysis report the monitoring results are as follows:

SI. No.	Date of Inspection and Monitoring	Analysis results of Treated trade effluent samples	Analysis results of stack emissions samples collected from stack attached to 140 TPH Boiler
1	17-10-2016	Conforming	90 mg/Nm ³ Non-conforming
2	26-10-2016	Conforming	40 mg/Nm ³ conforming
3	02-11-2016	Conforming	45 mg/Nm ³ conforming
4	08-11-2016	Conforming	Boiler was not in operation- Monitoring was not carried out
5	10-11-2016	Conforming	30 mg/Nm ³ conforming
6	18-11-2016	Conforming	35 mg/Nm ³ conforming
7	25-11-2016	Results awaited	
8	01-12-2016	Results awaited	

Observations:

1. The cane crushing operation for the year 2016-17 commissioned on 11/10/2016 and the industry has crushed around 1150 MT of sugarcane till 13/10/2016.
2. The Co-generation plant is commissioned and synchronization to CHECOM grid is done on 10/10/2016 and the industry has generated 128000 units (128MW) of power till 13/10/2016.
3. Treated trade effluent conforming to the standards.
4. Copies of the consent order, inspection reports and analysis reports enclosed for kind perusal.

Extract of Analysis report of the final Treated trade effluent collected from the outlet of polishing pond of M/s. Coromandel Sugars Ltd.

Sl No.	Para Meters Description	Units	Stand ards	RESULT						
				17-10-2016	26-10-2016	02-11-2016	08-11-2016	10-11-2016	18-11-2016	25-11-2016
1.	Colour	....	Colour less	Colour less	Colour less	Colour less	Colour less	Colour less	...	...
2.	Odour	...	Plea-sant	Odour less	Odour less	Odour less	Odour less	Odour Less	...	...
3.	Total Suspended solids	Mg/l	100	25	40	40	60	30	60	30
4.	pH	pH unit	5.5 – 8.5	8.5	8.5	8.4	8.4	8.4	8.4	8.3
5.	Oil & Grease	Mg/l	10	BDL	BDL	BDL	BDL	BDL	BDL	BDL
6.	BOD	Mg/l	100	9.0	12.0	13.5	12.0	10.0	18.0	12.0
7.	TDS	Mg/l	2100	380	1020	1980	340	920	1020	1080

Extract of Analysis report of the stack monitoring results of M/s Coromandel Sugars Ltd.,

Sl No.	Para Meters Description	Units	Stand ards	RESULT						
				17-10-2016	26-10-2016	02-11-2016	08-11-2016	10-11-2016	18-11-2016	25-11-2016
1.	Particul ate matter	Mg/l	<50	90	40	45	....	30	35	40

"INSPECTION REPORT OF K.L. SAVITHA. D.E.O., KSPCB, RO, MANDYA

Staff accompanied: Pallavi, H.V. AEO.

1	Name and Address of the Industry	M/s. Coromandel Sugars Limited, (Formally called ICL Sugars Ltd), Makavalli Village, K.R. Pet Taluk, Mandya District – 571426
2	Date of Inspection	02-11-2016

3	Persons Contacted	Sri. C. Pavankumar, Vice President Sri. Ramakrishna, AGM-Engineering	
4	Operational Status of the Industry	Sugar	Operating
		Co-gen	Not in Operation
5	Maximum Power Generation in MW till date	945000 units (945MW)	
6	Total Working days of Co-gen Plant	10 days	

The industry was inspected for on 02-11-2016 for routine monitoring & the following observations were made:

1. The Sugar plant was in operation. The cane crushing operation for was commissioned from 11-10-2016 and they crushed around **33998 MT of sugarcane** till 01-11-2016.
2. The Co-gen plant was not in operation due to some operational problems in turbine.
3. The Co-gen plant is commissioned and synchronized to CHESCOM grid on 10-10-2016 and generated 945000 units (945MW) of power and about 12244 units have power is exported to grid till 01-11-2016.

WPC Status:

1. The ETP provided for treating the trade effluent is in operation and treated effluent is utilized on land for irrigation.

APC Status:

1. The 2 Nos. of 45 TPH boilers and coal crushing mill were not in operation.
2. The 140 TPH boiler was in operation. The fuel used to boiler is bagasse.
3. The boiler fuel feeding conveyers are covered with G.I Sheet and installed 2 nos. of silos for collection of bottom ash and fly ash
4. About 60 to 70 Tons of coal was stored in coal yard. The coal yard is not made impervious".

44. Thus, the analysis report submitted by KSPCB for the data collected during the trial run of the Co-generation Plant, shows that the stack emissions of the boilers is ranging from 30 mg/Nm³ to 90 mg/Nm³. Though initially it was 90 mg/Nm³ it has come down to 30 mg/Nm³ and therefore, it is well within the standard prescribed (i.e.) less than 50 mg/Nm³. It indicates that the Co-generation Plant with new boilers is meeting the standards and emission norms. The objections raised in the memo dated 04.01.2017 filed by the appellants against the analysis report of respondent No. 2, KSPCB doesn't merit consideration as the emissions are within the standards prescribed.

45. In support of his contention, that the EAC has not applied its mind while recommending EC, the learned counsel appearing for the appellants has quoted the following judgments:

1. *Utkarsh Mandal VS Union of India* (Order of the Hon'ble High Court of Delhi dated 26.11.2009 in WP (C) No.9340/2009)

2. *Jeet Singh Kanwar & Anr. VS Union of India & Anr.* (Order of the NGT, New Delhi dated 16.04.2013 in Appeal No.10/2011)
3. *Gau Raxa Hitraxak Manch and Gauchar Paryavaran Bachav Trust VS Union of India and Others.* (Order of the Hon'ble NGT, New Delhi dt.22.8.2013 in Appeal 47/2012)
4. *Samata and Anr Vs Union of India and Ors* (NGT Order dated 13.12.2013 in Appeal No.9/2011)
5. *T.Muruganandam VS Ministry of Environment and Forests.* (Order of the Hon'ble NGT, Principal Bench dt.10.11.2014 in Appeal No.50/2012.)
6. *Krishna Lal Gera Vs State of Haryana* (Order of the Hon'ble NGT, New Delhi dt.25.8.2015 In Appeal No.22 of 2015)
7. *M/s. Upadhay and Co. VS State of U.P.*(Order of the Hon'ble Supreme Court dated 01.12.1998)
8. *Lafarge Umium Mining Pvt Ltd. VS Union of India and others.* (AIR 2011 SC 2781)
9. *Mahendra Pandey VS Ministry of Environment and Forests* (2013 (139) DRJ 175)
10. *Sreeranganathan K.P. VS Union of India and Ors* (Appeal Nos.172, 173 & 174/2013, Appeal Nos. 1 and 19 of 2014 & Appeal No.172 of 2013).
11. Order of the Hon'ble Supreme Court in Civil Appeal No.6594-6598 of 2014.

46. In respect of his contention on suppression of material facts by the Project Proponent which he claims vitiates the process of granting EC, learned counsel appearing for the appellants, relied on the following Decisions:

1. *Ram Preeti Yadav VS U.P.Board of High School and Intermediate Education and Ors* (2003) 8 SCC 311.
2. *State of AP and another Vs T.Suryachandra Rao* (2005) 6 SCC 149.
3. *A.V. Papayya Sastry & Ors VS Government of A.P.* (AIR 2007SC 1546.)

47. Learned counsel appearing for the appellants relied on the following judgments with regard to the application of Precautionary Principle and the Sustainable Development:

1. *Vellore Citizens Welfare Forum VS Union of India and Others* (1996(5) SCC 647)
2. *Research Foundation for Science Technology and Natural Resources Policy Vs Union of India and Anr.* (2005 (10) SCC 10)

48. It has been vehemently argued by the learned counsel that the EAC ought to have given reasons for acceptance of the proposals and clarifications and should

have recorded the reasons in the minutes of the meeting. We find that after the EC was suspended by this Tribunal for a period of 6 months with a direction to the MoEF & CC to carry out a re-exercise of the appraisal within the said period by calling for additional information and clarifications in respect of all the concerns and objections even if they are minor in nature, consider the same at the time of meeting to be convened and conducted for the said purpose after giving an opportunity to the Project Proponent, who is to be present at the time of meeting, the material record produced before us clearly indicates that the EAC raised various queries and further information was sought from the Project Proponent. This is evident from the Minutes of the Meetings of the EAC. After each such meeting the project proponent has submitted its response with supporting material and documents and then came to be placed before the EAC and on having considered the same the EAC is satisfied and recommends for granting the EC.

49. Learned Counsel argued at length that this was not in accordance with the law as laid down in various

judgements regarding appreciation of the material particularly quoting the aforesaid *Utkarsh Mandal Vs. Union of India* judgment dated 26.11.2009. We have carefully examined the above submission as well as the decisions relied upon. The procedure for appraisal has been prescribed under the EIA Notification, 2006 in detail along with the format prescribed under Appendix V in which the order is required to be passed. The procedure as provided and prescribed under the EIA Notification, 2006 is as follows:

"7. Stages in the Prior Environmental Clearance (EC) Process for New Projects

- I. Stage (1)
- II. Stage (2)
- III. Stage (3)
- IV. Stage (4) - Appraisal:

(i) *Appraisal means the detailed scrutiny by the Expert Appraisal Committee or State Level Expert Appraisal Committee of the application and other documents like the Final EIA report, outcome of the public consultations including public hearing proceedings, submitted by the applicant to the regulatory authority concerned for grant of environmental clearance. This appraisal shall be made by Expert Appraisal Committee or State Level Expert Appraisal Committee concerned in a transparent manner in a proceeding to which the applicant shall be invited for furnishing necessary clarifications in person or through an authorized representative.*

On conclusion of this proceeding, the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned shall make categorical recommendations to the regulatory authority concerned either for grant of prior environmental clearance on stipulated terms and conditions, or rejection of the application for prior environmental clearance, together with reasons for the same.

(ii) The appraisal of all projects or activities which are not required to undergo public consultation, or submit an Environment Impact Assessment report, shall be carried out on the basis of the prescribed application Form 1 and Form 1A as applicable, any other relevant validated information available and the site visit wherever the same is considered as necessary by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned.

(iii) The appraisal of an application shall be completed by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned within sixty days of the receipt of the final Environment Impact Assessment report and other documents or the receipt of Form 1 and Form 1 A, where public consultation is not necessary and the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee shall be placed before the competent authority for a final decision within the next fifteen days .The prescribed procedure for appraisal is given in Appendix V ;

APPENDIX –V
(See paragraph 7)

PROCEDURE PRESCRIBED FOR APPRAISAL

1. The applicant shall apply to the concerned regulatory authority through a simple

communication enclosing the following documents where public consultations are mandatory: -

- a. Final Environment Impact Assessment Report [20(twenty) hard copies and 1 (one) soft copy)]
- b. c.A copy of the video tape or CD of the public hearing proceedings.
- c. A copy of final layout plan (20 copies)
- d. A copy of the project feasibility report (1 copy)

2. The Final EIA Report and the other relevant documents submitted by the applicant shall be scrutinized in office within 30 days from the date of its receipt by the concerned Regulatory Authority strictly with reference to the TOR and the inadequacies noted shall be communicated electronically or otherwise in a single set to the Members of the EAC /SEAC enclosing a copy each of the Final EIA Report including the public hearing proceedings and other public responses received along with a copy of Form -1or Form 1A and scheduled date of the EAC /SEAC meeting for considering the proposal .

3. Where a public consultation is not mandatory and therefore a formal EIA study is not required, the appraisal shall be made on the basis of the prescribed application Form 1 and a pre-feasibility report in the case of all projects and activities other than Item 8 of the Schedule .In the case of Item 8 of the Schedule, considering its unique project cycle , the EAC or SEAC concerned shall appraise all Category B projects or activities on the basis of Form 1, Form 1A and the conceptual plan and stipulate the conditions for environmental clearance . As and when the applicant submits the approved scheme /building plans complying with the stipulated environmental clearance conditions

with all other necessary statutory approvals, the EAC /SEAC shall recommend the grant of environmental clearance to the competent authority.

4. Every application shall be placed before the EAC /SEAC and its appraisal completed within 60 days of its receipt with requisite documents / details in the prescribed manner.

5. The applicant shall be informed at least 15 (fifteen) days prior to the scheduled date of the EAC /SEAC meeting for considering the project proposal.

6. The minutes of the EAC /SEAC meeting shall be finalised within 5 working days of the meeting and displayed on the website of the concerned regulatory authority. In case the project or activity is recommended for grant of EC, then the minutes shall clearly list out the specific environmental safeguards and conditions. In case the recommendations are for rejection, the reasons for the same shall also be explicitly stated.”

50. The process of appraisal quoted above, clearly goes to show that under Stage (4) – Appraisal - (i) there is a provision to invite the applicant if any clarification is required. On conclusion of the appraisal the EAC or SEAC concerned, makes it's recommendations to the regulatory authority either for grant of prior EC on terms and conditions or for rejection of the application for prior EC.

51. The EAC consists highly qualified experts who are specialists in the field and will recommend the case only on the merits. Of course, whenever it is found that the EAC failed to take into account of the issues in proper perspective and missed some important points, it is always open to question the decision of EAC and point out the shortcomings and thus there is a provision in the EC itself to make an appeal to quash/set aside the EC because of faulty appraisal. The learned counsel for the appellants vehemently argued that the EAC rushed through the agenda for appraisal of a number of projects on a single day including the present case and recommended the project without application of mind. Though we agree that the EAC should carefully and scrupulously examine the proposal, it is not expected on the part of EAC to fix a time frame for the appraisal of each of the projects. It is always open to the EAC that wherever and whenever required, it can deliberate the proposal at length and can call for further information and fully satisfy itself before recommending the case. In the case on hand, the project was already appraised and EAC recommended for EC and

EC was also issued by MoEF & CC as long back as in 2012. Presently, it is only reappraisal of the project on a limited issue as directed by the Tribunal. After obtaining fresh and updated information and after examining all the aspects and even verifying the contents of the representation made by the appellants and after calling for further information from the project proponent, the EAC deliberated the proposals in its meetings held in August and December 2015 and recommended the case by imposing stringent additional conditions.

52. No doubt the industry with the addition of distillery and captive power plant, may cause pollution if it violates the general and specific conditions prescribed in the EC. Even if there is any justification for such apprehension, that cannot be a ground for stalling the project. There is a mechanism to regularly monitor the functioning of the industry by the authorities concerned and it is always open to the appellants to approach the appropriate forum or the authorities concerned if the industry is violating the norms on the pollution aspects. It is not that once EC is granted it is a green signal to the Project Proponent to operate the unit

as he wishes by throwing the prescribed norms and conditions to the wind. However, the learned counsel appearing for the 3rd respondent submitted that the industry undertakes that they will not take up the distillery unit as the public of the locality is against the same. That submission is recorded.

53. The Principal Bench of Hon'ble NGT in the case of *M/s. Sterlite Industries Ltd. Vs. Tamil Nadu Pollution Control Board* (2013 Vol.I ALL (I) NGT Reporter Page 368)

upon detailed consideration, held:

" 113. Risk of harm to the environment or to human health is to be decided in public interest, according to a "reasonable person's" test. XXX. If without degrading the environment or by minimising the adverse effects thereupon by applying stringent safeguards, it is possible to carry on developmental activities applying the principle of sustainable development, in that eventuality, development has to go on because one cannot lose sight of the need for development of industry, irrigation resources, power projects, etc. including the need to improve employment opportunities and the generation of revenue. A balance has to be struck. [Refer: *Research Foundation for Science and Technology and Natural Resource Policy v. Union of India* (2007) 9 SCR 906; *Narmada Bachao Andolan v. Union of India* (2000) 10 SCC 664; *Chairman*

Barton: The Status of the Precautionary Principle in Australia (Vol.22) (1998) (Harv. Envtt. Law Review, p. 509 at p.549-A) as in A.P. Pollution Control Board v. Prof. M.V. Nayudu(1999) 2 SCC 718]”

54. It becomes necessary to look into the Doctrine of Sustainable Development, in view of the factual circumstances of the present case. The Hon'ble Tribunal in the case of **M/s. Sterlite Industries Ltd. Vs. Tamil Nadu Pollution Control Board (Supra)**, upon detailed consideration, further held as under:

"136. XXX heavy onus lies upon the industrial unit or the developer to show by cogent and reliable evidence that it is non-polluting and non-hazardous or is not likely to have caused the accident complained of.

137. The view we are taking finds strength from the observations stated by the Supreme Court in its judgment in the case of Narmada Bachao Andolan v. Union of India (supra) where the Court, while referring to the case of Vellore Citizens' Welfare Forum v. Union of India (AIR 1996 SC 2715) and the report of the International Law Commission, held as under:

120. It appears to us that the 'precautionary principle' and the corresponding burden of proof on the person who wants to change the status quo will ordinarily apply in a case of

polluting or other project or industry where the extent of damage likely to be inflicted is not known. When there is a state of uncertainty due to lack of data or material about the extent of damage or pollution likely to be caused then, in order to maintain the ecology balance, the burden of proof that the said balance will be maintained must necessarily be on the industry or the unit which is likely to cause pollution. On the other hand where the effect on ecology or environment of setting up of an industry is known, what has to be seen is that if the environment is likely to suffer, then what imitative steps can be taken to offset the same. Merely because there will be a change is no reason to presume that there will be ecological disaster. It is when the effect of the project is known then the principle of sustainable development would come into play which will ensure that imitative steps are and can be taken to preserve the ecological balance. Sustainable development means what type or extent of development can take place which can be sustained by nature/ ecology with or without mitigation."

55. In *T.N.Godavarman Thirumulpad Vs. Union of India and Others* case reported in (2002) 10 SCC 606, the Hon'ble Supreme Court observed:

*"25. Progress and pollution go together. As this Court observed in *M.C. Mehta v. Union of India* (1986) 2 SCC 176, when science and technology are increasingly employed in producing goods and services calculated to improve the quality of life, there is a certain element of hazard or risk inherent in the very use of science and*

technology and it is not possible to totally eliminate such hazard or risk altogether. We can only hope to reduce the element of hazard or risk to the community by taking all necessary steps for locating such industries in a manner which would pose least risk of danger to the community and maximizing safety requirements. As observed in the United Conference held at Stockholm in June 1972, economic and social development was essential for ensuring a favourable living and working environment for man and for creating conditions on earth that were necessary for the improvement of the quality of life”.

56. This Tribunal, in the judgment dated 15-2-2016 in the case of ***Kayalpatnam Environmental Protection Association (KEPA) Vs. Union of India and Others in Appeal No. 37 of 2014*** (SZ), while dismissing the appeal which was filed challenging the grant of EC dated 24.02.2014 by the MoEF & CC for construction of a new plant and expansion of the production capacity of existing units, observed as follows.

“Considering the fact that the industrial unit of the 2nd Respondent, Project Proponent was established almost 6 decades ago in an era when virtually no environmental / pollution laws and regulations were under existence in this country, and bringing in new enactments and enforcement of Environmental / Pollution laws only in the past 4 decades beginning with Water Act,1974 and also considering the nature of the industry, that

the Mercury cell technology was the only choice left which subsequently became obsolete because of the advancement in technology, the whole issue requires a holistic approach and to be looked in a broader perspective. Further, after an elaborate exercise undertaken by the Project Proponent and after a thorough scrutiny and site inspections, the proposal was recommended by the EAC for granting the EC. Moreover, as there is a substantial compliance of the conditions imposed in the EC granted earlier for the existing units of the Project Proponent and suitable steps were taken to mitigate the pollution, we arrive at a conclusion and do not agree with the contentions of the Appellant that there are strong grounds of non-compliance of the safeguards provided under the Environment (Protection) Act, 1986 and procedure prescribed under the EIA Notification, 2006 and therefore, the entire process of granting the impugned EC is vitiated, warranting it to be set aside”.

57. In the case of ***Indian Council for Enviro Legal Action Vs. Union of India (1996) 5 SCC 281***, the Hon'ble Supreme Court observed:

"While economic development should not be allowed to take place at the cost of ecology or by causing widespread environmental destruction and violation; at the same time the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment should go hand in hand, in other words, there should not be development at the cost of environment and vice versa, but there should be

development while taking due care and ensuring the protection of the environment”.

58. In the case of ***Essar Oil Vs.. Halar Utkarsh Samiti*** **AIR 2004 SC 1834**, a similar view was taken by the Hon’ble Supreme Court as follows:

“This, therefore, is the sole aim, namely, to balance economic and social needs on the one hand with environmental considerations on the other. But in a sense all development is an environmental threat. Indeed, the very existence of humanity and the rapid increase in population together with the consequential demands to sustain the population has resulted in the concreting of open lands, cutting down of forests, filling up of lakes and the pollution of water resources and the very air that we breath.

However there need not necessarily be a deadlock between developments on the one hand and the environment on the other. The objective of all laws on environment should be to create harmony between the two since neither one can be sacrificed at the altar of the other”.

59. The Hon’ble Supreme Court while considering the case of ***N.D. Jayal and another. Vs. Union of India and others***, **AIR 2004 SC 867** observed the following:

"XXXX. 22) "the strict observance of sustainable development will put us on a path that ensures development while protecting the environment, a path that works for all peoples and for all generations. It is a guarantee to the present and a bequeath to the future. All environmental related developmental activities should benefit more people while maintaining the environmental balance. This could be ensured only by the strict adherence of sustainable development without which life of coming generations will be in jeopardy. XXXXX".

60. It is not disputed that 3rd respondent industry is catering to the needs of the sugarcane growers of the area who are bound to supply the sugarcane to the industry. Even the appellants have no case that the industry is not necessary. Their grievance is only with regard to the pollution being caused, on the apprehension that when the capacity of the cogeneration plant is permitted to be expanded, as per the impugned EC, it would aggravate the pollution. We have already found that the industry has actually replaced the old boilers and in its place, installed new boilers with modern technology. After the industry was permitted to have a trial run with new boilers, the Pollution Control Board was directed to inspect the unit and take out the samples, analyse them and

to report on the working of the co-generation plant. The report establishes that all the parameters are within the prescribed standards. In such circumstances, considering the sustainable development and the interest of the sugarcane growers of that area, we find no reason to interfere with the EC granted, as sought for by the appellants.

61. We, therefore, hold that the re-exercise of the appraisal by EAC as ordered by this Tribunal and revalidation of EC by the MoEF & CC dated 30.03.2016 is not vitiated. We find no merit in the appeal. Accordingly, the appeal is dismissed with no costs.

62. In view of the fact that the Appeal is dismissed, the M.A. No. 1 of 2017 filed by the Project Proponent to permit to continue the operation of co-generation plant, becomes infructuous.

Justice M.S.Nambiar
Judicial Member

P.S.Rao
Expert Member