**REPORTABLE**

**IN THE SUPREME COURT OF INDIA**
**CIVIL APPELLATE JURISDICTION**

**Civil Appeal No 2566 of 2019**

**Bengaluru Development Authority** **...Appellant**

**Versus**

**Mr Sudhakar Hegde & Ors.** **...Respondents**

# J U D G M E N T

**Dr Dhananjaya Y Chandrachud, J**

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## A Introduction

1. The present appeal arises from a judgment of the Principal Bench of the National Green Tribunal[1] dated 8 February 2019 quashing the Environmental Clearance[2] granted to the appellant for the development of an eight lane Peripheral Ring Road[3] connecting Tumkur Road to Hosur Road and totaling a length of 65 kilometers. The NGT was of the view that the primary data upon which the Environment Impact Assessment[4] report was based was collected more than three years prior to its submission to the State Environment Impact Assessment Authority[5]. The NGT was of the view that it was not necessary to adjudicate upon the other contentions that were urged in support of quashing the EC as there was a substantial delay in the preparation of the EIA report. Accordingly, the NGT directed the appellant to conduct a fresh rapid EIA and clarified that the "project proponent will not proceed on the basis of the impugned Environmental Clearance." Assailing the order of the NGT, the appellant, as project proponent, is in appeal before this Court.

2. In a bid to address the growing need for efficient commutation, address traffic congestion and connect the Bangalore-Mysore Infrastructure Corridor (NICE road) with more access points, the appellant formulated the PRR project scheme in 2005. A preliminary notification was issued on 27 May 2005 under Section 17(1) and (3) of the Bangalore Development Authority Act 1976[6] to

[1] NGT
[2] EC
[3] PRR
[4] EIA
[5] SEIAA
[6] BDA Act

acquire certain land for the execution of the project. The stated purpose of the project was:

> "1) To decongest the traffic in Bangalore City;
>
> 2) To cater intercity connectivity and intercity traffic;
>
> 3) To reduce pollution in the city;
>
> 4) To reduce heavy vehicles traffic i.e., Lorry and Trucks; and
>
> 5) To decongest the traffic on outer ring road."

3. Another preliminary notification was issued on 23 September 2005 which concerned the realignment of the proposed road project. A final notification under Section 19(1) of the BDA Act was issued on 29 June 2007 for the acquisition of the proposed land. The notifications were challenged before the High Court of Karnataka in Writ proceedings[7] on the ground that the appellant had no authority to issue the notifications and acquire land for the proposed PRR project. By a judgment dated 22 July 2014, the High Court dismissed the writ petition on the ground that the appellant was authorised under the BDA Act to acquire the land for the project in question. The Writ Appeal against this was dismissed on the ground of default on 9 February 2017.

4. The appellant, as project proponent, submitted an application[8] to the SEIAA on 10 September 2009 under the EIA Notification 2006[9] seeking an EC for the PRR. The Terms of Reference[10] were prepared by the State Expert Appraisal Committee[11] on 21 November 2009. Primary data was collected between

[7] WP No. 4550/2008
[8] No. BDA/EM/TA3/PRR/EIA/T333/09-10
[9] 2006 notification
[10] ToR
[11] SEAC

December 2009 and February 2010. The final EIA report was placed before the SEAC and the SEIAA in October 2014. An EC was granted by the SEIAA on 20 November 2014. The first and second respondents filed an appeal to the NGT challenging the grant of the EC. The NGT, by an interim order dated 15 April 2015 granted an interim stay of the EC. The relevant portion of the order reads:

> "Pointing to the EIA report which was placed before the 1st respondent, the counsel for the appellant would submit that the first part of the report would clearly indicate that if the road was constructed, it would pass through the Reserve Forest and the later part it would submit that the Forest clearance is not necessary which by itself would suffice to reject the recommendation. The EIA report would clearly indicate that if the proposed road has got to be constructed approximately 200 trees were to be cut which is thoroughly inconsistent to the report given by the Horticulture and Forest Department. According to their report, it would require felling of 16,685 trees. Added further by the counsel for the appellant that if the proposed road is allowed to be constructed it would be above the underground pipe line already laid for transporting petroleum from Mangalore to Bangalore and if any leakages happens in future it would bring forth serious consequence…
>
> There exists a prima facie case in favour of the appellant for granting an interim order of stay…"

The NGT noted the discrepancy between the submission of the appellant and the existence of a reserved forest through which the proposed road was to pass. The NGT recorded that while the EIA report stated that only 200 trees would be cut for the proposed project, the report given by the Horticulture and Forest Department indicated that about 16,685 trees would be required to be felled for the proposed project. By its final order dated 8 February 2019, the NGT stayed the operation of the EC granted by the SEIAA. The relevant portion of the order reads:

> "The Environmental Clearance was granted on 20.11.2014. Thus, the primary data was more than three years prior to the EIA report. There are omissions in the EIA report with regard to data of forests land as well as the provisions of revised Master Plan, 2015 prepared by the BDA. Thippagondanahalli Reservoir (TGR) catchment area has been suppressed in the EIA report. Green cover particulars have been overlooked. Further objection is that there is proximity of the area to the petroleum pipelines and land earmarked for petroleum pipelines overlaps the project. According to the appellant, Stage-I Forest Clearance was not obtained as required…
>
> It is not necessary to adjudicate on the contentions raised, having regard to the patent fact that there was substantial delay in EIA and a period of almost five years passed even thereafter. This Tribunal, vide order dated 15.04.2015, considered the issue…It will, thus, be in the interest of justice that a fresh rapid EIA is conducted. If the project is found viable after incorporating due abatement measures, including the suggestions of the appellant, the same can be taken up without further delay…"

The NGT directed the appellant to conduct a rapid EIA. It was further directed that if the project is found to be viable after incorporating abatement measures, "the same can be taken up without delay". Notice was issued by this Court on 15 March 2019.

## B Submissions

5. Assailing the order of the NGT, Mr Shyam Divan, learned Senior Counsel appearing on behalf of the appellant contended that:

(i) The 2006 Notification obliges a project proponent to seek prior EC only for projects that are listed in the Schedule to the Notification. Para 7(f) of the Schedule includes only those projects that are either National or State Highways. The PRR project does not fall within the ambit of either the National Highways Act 1956 or the Karnataka Highways Act 1964.

Consequently, the appellant was under no obligation under the 2006 Notification to seek a prior EC for the PRR project;

(ii) The 2006 Notification came into effect from the date of its publication in the Official Gazette on 14 September 2006. It is prospective in its application. The PRR project commenced on 23 September 2005 upon the issuance of the preliminary notification under the BDA Act and as such, on the date of the coming into force of the 2006 notification, no obligation existed on the appellant to seek a prior EC for the PRR project;

(iii) The appellant executed the EIA process and applied for the grant of an EC out of abundant caution;

(iv) The first respondent has challenged the grant of the EC by the SEIAA only because his appeal before the Karnataka High Court challenging the acquisition of land for the PRR project was unsuccessful. The present proceedings are merely a method of delaying the acquisition proceedings;

(v) The SEAC acceded to the request of the appellant to not forward to the SEIAA a recommendation for the closure of the proposal. The SEAC recommended to the SEIAA the grant of the EC to the project in question after due consideration of the EIA report in its 121st meeting between 11 and 18 November 2014; and

(vi) All objections raised by the first respondent concerning forests, the cutting of trees and the protection of the reservoir were adequately

addressed in the EIA report submitted in 2014, on which basis an EC was granted to the PRR project.

6. On the other hand, Mr Nikhil Nayyar, learned Senior Counsel appearing on behalf of the first respondent contended:

(i) The term 'highway' or 'expressway' used in the 2006 Notification must be given a wide interpretation and not be restricted to the issuance of a notification under central or state enactments;

(ii) Both the National Highway Act 1956 and the Karnataka State Highway Act 1964 concern the acquisition of land, its development and permissions concerning the collection of toll/fee. The statutory framework does not envisage the wide definition to be attributed to the term 'highway' in matters concerning the protection of the environment;

(iii) The appellant itself admitted in its EIA report that the PRR project is a category 'B' project falling under the purview of para 7(f) of the Schedule under the 2006 Notification;

(iv) The primary data for the PRR project was collected between December 2009 and February 2010. The EAC conducted the appraisal process after a substantial delay of over four years in the year 2014. This defeats the purpose for which ToRs are issued as the state of the environment is constantly changing;

(v) An OM dated 22 March 2010 issued by the Ministry of Environment and Forests[12] stipulates that EIA reports for projects where the ToRs have

[12] MoEF, later renamed as MoEFCC in 2014

been granted prior to the date of the coming into force of the OM must be based on primary data that is not older than three years. The OM further stipulates that a ToR is valid only for a period of four years. The EIA report was prepared after the expiry of the ToR and is legally unsustainable;

(vi) The SEIAA decided to close the file for the PRR project on 17 May 2013, which decision was communicated to the appellant on 25 July 2013. A party aggrieved by the action of the SEIAA may only file an appeal under Section 16 of the NGT Act and the SEIAA was not authorised to reopen the file on the request of the appellant;

(vii) There was no collection of additional data in the year 2014. The report which is styled as a rapid EIA report in the year 2014 is nothing but the final EIA report under the 2006 Notification which was prepared after the public consultation process was conducted in February 2014; and

(viii) There are significant omissions in the EIA report concerning forest land, green cover, number of trees required to be cut, the catchment area in the Thippagondanahalli Reservoir and proximity of the PRR project to the petroleum pipelines underneath. Material concealment by the project proponent invalidates the EC which was granted by the SEIAA.

7. The rival submissions fall for our consideration.

## C Issues

8. Essentially this Court is required to decide:

(i) Whether the PRR project commenced prior to the coming into force of the 2006 Notification;

(ii) Whether the PRR project falls within the scope of para 7(f) of the Schedule to the 2006 Notification obliging the project proponent to seek a prior EC; and

(iii) Whether the appellant has complied with the conditions stipulated in the 2006 Notification and the OMs issued by the MoEF-CC from time to time.

## D Date of commencement of the PRR project

9. This Court is required to adjudicate whether it is the issuance of a preliminary notification under Section 17 of the BDA Act or a final notification under Section 19 of the BDA Act that constituted the identification of the proposed site for the project and marked its commencement for the purposes of the 2006 Notification.

10. On 27 January 1994, the MoEF, in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of Section 3 of the Environment (Protection) Act 1986 Act read with clause (d) of sub-rule 3 of rule 5 of the Environment (Protection) Rules, 1986, issued a notification imposing restrictions and prohibitions on the expansion and modernisation of any activity or a new project unless a prior EC was granted in accordance with the procedure stipulated in the notification. On 14 September 2006, the MoEF released the 2006 Notification in supersession of the previous notification. The 2006 Notification directed that:

> "…**on and from the date of its publication** the required construction of new projects or activities or the expansion or modernization of existing projects or activities **listed in the Schedule to this notification** entailing capacity addition with change in process and or technology **shall be undertaken in any part of India only after the prior environmental clearance** from the Central Government or as the case may be, by the State Level Environment Impact Assessment Authority, duly constituted by the Central Government under sub-section (3) of section 3 of the said Act, in accordance with the procedure specified hereinafter in this notification."
>
> (Emphasis supplied)

11. The 2006 Notification came into force on the date of its publication and obliges every project proponent to seek **prior** EC for the projects and activities which are listed in the Schedule to the Notification. According to para 2 of the 2006 Notification, all new projects or activities listed in the Schedule to the 2006 Notification shall require a prior EC from the concerned regulatory authority:

> "2. Application for Prior Environmental Clearance (EC):- An application seeking prior environmental clearance in all cases shall be made in the prescribed Form 1 annexed herewith and Supplementary Form 1A, if applicable, as given in Appendix II, **after the identification of prospective site(s) for the project and/or activities to which the application relates, before commencing any construction activity, or preparation of land, at the site by the applicant**. The applicant shall furnish, along with the application, a copy of the pre-feasibility project report except that, in case of construction projects or activities (item 8 of the Schedule) in addition to Form 1 and the Supplementary Form 1A, a copy of the conceptual plan shall be provided, instead of the pre-feasibility report."
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> (Emphasis supplied)

Once a prospective site has been identified by the applicant for the proposed project, all applications seeking an EC shall be made in the prescribed Form 1 and Supplementary Form 1A, if applicable which contains a detailed list of the extent and potential impact of the proposed project. The application must be submitted after the identification of the prospective site and prior to the commencement of any construction activity, or preparation of the land. Thus, the action by the project proponent that is relevant to the obligation to seek a prior EC under the 2006 notification is the identification of the prospective site for the execution of the proposed project.

12. Section 2(a) of the BDA Act defines "authority" as the Bangalore Development Authority constituted under Section 3 of the Act. Chapter III of the Act deals with development schemes and the procedures that must be complied with in the carrying out of a development scheme. Under Section 15, the appellant may draw up a detailed development scheme for the development of the Bangalore metropolitan area. Section 16(1) mandates that the appellant must also provide, in the formulation of the scheme, the details of the land proposed to be acquired for the development scheme. Section 17 contemplates the issuance of a preliminary notification. It reads:

> "17. **Procedure on completion of scheme**.- (1) When a development scheme has been prepared, the Authority shall draw up a notification stating the fact of a scheme having been made and the limits of the area comprised therein, and naming a place where particulars of the scheme, a map of the area comprised therein, a statement specifying the land which is proposed to be acquired and of the land in regard to which a betterment tax may be levied may be seen at all reasonable hours.
>
> (2) A copy of the said notification shall be sent to the Corporation which shall, within thirty days from the date of receipt thereof, forward to the Authority for transmission to the Government as hereinafter provided, any representation which the Corporation may think fit to make with regard to the scheme.
>
> (3) The Authority shall also cause a copy of the said notification to be published in [ x x x ] the official Gazette and affixed in some conspicuous part of its own office, the Deputy Commissioner's Office, the office of the Corporation and in such other places as the Authority may consider necessary.
>
> (4) If no representation is received from the Corporation within the time specified in sub-section (2), the concurrence of the Corporation to the scheme shall be deemed to have been given.
>
> (5) During the thirty days next following the day on which such notification is published in the official Gazette the Authority shall serve a notice on every person whose name appears in the assessment list of the local authority or in the land revenue register as being primarily liable to pay the

> property tax or land revenue assessment on any building or land which is proposed to be acquired in executing the scheme or in regard to which the Authority proposes to recover betterment tax requiring such person to show cause within thirty days from the date of the receipt of the notice why such acquisition of the building or land and the recovery of betterment tax should not be made.
>
> (6) The notice shall be signed by or by the order of the [Commissioner] and shall be served,-
>
> (a) by personal delivery or if such person is absent or cannot be found, on his agent, or if no agent can be found, then by leaving the same on the land or the building ; or (b) by leaving the same at the usual or last known place of abode or business of such person ; or (c) by registered post addressed to the usual or last known place of abode or business of such person.

Section 17 stipulates that the appellant shall, upon the preparation of a scheme under Section 15, notify that a scheme has been prepared along with the specifications of the scheme, a map of the area comprised therein and the details of the land proposed to be acquired. The notification is forwarded to the Corporation of the City of Bangalore, which is granted thirty days to provide its comments to the appellant authority for transmission to the government along with the scheme for sanction. Section 17(3) stipulates that a copy of the notification shall be published in the Official Gazette and affixed in conspicuous parts of the offices of the appellant and the Corporation. Section 17(5) mandates that the appellant shall serve on every person whose land is proposed to be acquired a notice to show-cause within thirty days on why the acquisition of the building or land must not take place.

13. Section 18 stipulates that where the procedure stipulated under Section 17 is complete, the appellant shall submit the scheme with any modifications, to the

Government of Karnataka for sanction subject to the conditions stipulated therein. Section 18 reads:

> "18. Sanction of scheme.- (1) After publication of the scheme and service of notices as provided in section 17 and after consideration of representations, if any, received in respect thereof, the Authority shall submit the scheme, making such modifications therein as it may think fit, to the Government for sanction, furnishing,-
>
> (a) a description with full particulars of the scheme including the reasons for any modifications inserted therein;
>
> (b) complete plans and estimates of the cost of executing the scheme;
>
> (c) a statement specifying the land proposed to be acquired;
>
> (d) any representation received under sub-section (2) of section 17;
>
> (e) a schedule showing the rateable value, as entered in the municipal assessment book on the date of the publication of a notification relating to the land under the section 17 or the land assessment of all land specified in the statement under clause(c); and
>
> (f) such other particulars, if any, as may be prescribed.
>
> (2) Where any development scheme provides for the construction of houses, the Authority shall also submit to the Government plans and estimates for the construction of the houses.
>
> (3) After considering the proposal submitted to it the Government may, by order, give sanction to the scheme."

Under this provision, the appellant is required to furnish details of the land proposed to be acquired along with a schedule showing the rateable value, as entered in the municipal assessment book on the date of the publication of the notification. The appellant furnishes to the government a description with full particulars of the scheme including the reasons for any modifications inserted, plans and estimates of costs and a statement specifying the land proposed to be

acquired. Significantly, if the government is satisfied with the proposed scheme, it may accord sanction to the scheme under Section 18(3) of the Act. A scheme formulated under Section 15 may only be carried out where sanction has been accorded to the scheme by the Government under Section 18(3) of the Act.

14. Section 19 of the Act reads thus:

> "19. Upon sanction, declaration to be published giving particulars of land to be acquired.- (1) Upon sanction of the scheme, the Government shall publish in the official Gazette a declaration stating the fact of such sanction and that the land proposed to be acquired by the Authority for the purposes of the scheme is required for a public purpose.
>
> (2) The declaration shall state the limits within which the land proposed to be acquired is situated, the purpose for which it is needed, its approximate area and the place where a plan of the land may be inspected.
>
> (3) The said declaration shall be conclusive evidence that the land is needed for a public purpose and the Authority shall, upon the publication of the said declaration, proceed to execute the scheme.
>
> (4) If at any time it appears to the Authority that an improvement can be made in any part of the scheme, the Authority may alter the scheme for the said purpose and shall subject to the provisions of sub-sections (5) and (6), forthwith proceed to execute the scheme as altered.
>
> (5) If the estimated cost of executing the scheme as altered exceeds, by a greater sum than five per cent the estimated cost of executing the scheme as sanctioned, the Authority shall not, without the previous sanction of the Government, proceed to execute the scheme as altered.
>
> (6) If the scheme as altered involves the acquisition otherwise than by agreement, of any land other than that specified in the schedule referred to in clause (e) of sub-section (1) of section 18, the provisions of sections 17 and 18 and of sub-section (1) of this section shall apply to the part of the scheme so altered in the same manner as if such altered part were the scheme."

Under Section 19, once the Government sanctions the appellant's scheme, a final notification is published by the government in the Official Gazette declaring that sanction has been received and that the land proposed to be acquired is required for a public purpose. The final notification specifies the limits within which the land proposed to be acquired is situated and specifies the place at which people may inspect the plan. The appellant is authorised under Section 19(4) to alter the scheme subject to the sub-sections (5) and (6). Section 19(6) stipulates that if acquisition of additional land is required over and above the details that were furnished by the appellant under Section 18, and otherwise than by agreement with the person whose land is proposed to be acquired, the procedure stipulated in Section 17 and 18 shall be followed.

15. The BDA Act was enacted with the purpose of establishing a development authority for the development of the city of Bangalore and adjacent areas. Sections 17, 18 and 19 stipulate the mechanism that must be followed by the appellant leading up to the grant of government sanction for a scheme formulated under Section 15. The purpose underlying Section 17 is to grant to both the Corporation and the persons whose lands are proposed to be acquired an opportunity to file their objections to the proposed scheme and the acquisition of land required for the execution of the project. Though the land proposed to be acquired for the scheme is stipulated in the preliminary notification under Section 17, the provision to forward to the Corporation a copy as well as serve notices to persons whose lands are proposed to be acquired sub-serves the principles of

natural justice where an affected party is extended the right to object to a proposed scheme.

16. Upon the receipt of suggestions and objections, if any, the appellant may modify the scheme in accordance with the suggestions received and thereafter forward to the Government the scheme for the grant of sanction. However, it is only upon the grant of sanction by the Government under Section 18(3), that a final notification under Section 19 is issued. It is only upon the grant of sanction by the Government that a proposed scheme is deemed to be finalized and carried into effect.

17. The 2006 Notification stipulates an obligation to commence the EIA process once a prospective site is identified and before the commencement of any construction or preparation of land. It may be possible that following the formulation of a scheme under Section 15 and the issuance of a preliminary notification under Section 17, government sanction is denied or the appellant drops the proposed scheme prior to the grant of sanction or the issuance of the final notification. In such situations, if it were held that it is the issuance of the preliminary notification identifying the proposed site for the project that marked the commencement of the project for the purposes of the 2006 Notification, the appellant would be under an obligation to carry out the EIA process for a proposed scheme which may not eventually materialize.

18. The EIA process under the 2006 Notification serves as a balance between development and protection of the environment: there is no trade-off between the two. In laying down a detailed procedure for the grant of an EC, the 2006 notification attempts to bridge the perceived gap between the protection of the environment and development. The basic postulate of the 2006 Notification is that the path which is prescribed for disclosures, studies, gathering data, consultation and appraisal is designed in a manner that would secure decision making which is transparent, responsive and inclusive. While the BDA Act was enacted with the purpose of establishing a development authority for the development of the city of Bangalore and adjacent areas, the 2006 Notification embodies the notion that the development agenda of the nation must be carried out in compliance with norms stipulated for the protection of the environment and its complexities. The BDA Act and the 2006 Notification operate in different fields. It cannot be said that a site is deemed identified for the purpose of triggering the obligations under the 2006 Notification upon the issuance of a preliminary notification under Section 17 of the BDA Act. Adopting a contrary interpretation would lead to the absurd result where a project proponent is obligated to carry out the EIA process for a scheme even prior to the grant of government sanction and a final notification carrying into effect the proposed scheme. In this view of the matter, the prospective site is deemed to be identified only upon the issuance of the final notification under Section 19 after the proposed scheme has received Government sanction under Section 18(3).

19. The final notification under Section 19(1) of the BDA Act was issued on 29 June 2007 following the grant of government sanction for the acquisition of the land. This being after the coming into force of the 2006 Notification, the contention urged by the appellant that the project commenced prior to the coming into force of the 2006 Notification cannot be accepted.

## E Applicability of the EIA Notification 2006

20. Essentially, this Court is required to address the contention urged by Mr Shyam Divan, learned Senior Counsel appearing on behalf of the appellant that the PRR project, being neither a project falling within Section 2 of the National Highways Act 1956 or Section 3 of the Karnataka Highways Act 1964, does not fall within the ambit of the Schedule to the 2006 Notification.

21. Para 2 of the 2006 Notification reads thus:

> "2. Requirements of prior Environmental Clearance (EC):- The following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter be referred to as the Central Government in the Ministry of Environment and Forests for matters falling under Category 'A' in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category 'B' in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity:
>
> (i) All new projects or activities **listed in the Schedule to this notification**;
>
> (ii) Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization;

(iii) Any change in product - mix in an existing manufacturing unit included in Schedule beyond the specified range."

(Emphasis supplied)

Para 2(1) of the 2006 Notification stipulates that only projects listed in the Schedule must be granted prior EC. Para 7(f) of the Schedule to the 2006 Notification, as originally enacted reads:

| **Project or Activity** | | **Category with threshold limit** | | **Conditions, if any** |
|---|---|---|---|---|
| | | **A** | **B** | |
| **(1)** | **(2)** | **(3)** | **(4)** | **(5)** |
| 7(f) | Highways | i) New National Highways; and<br><br>ii) Expansion of National High ways greater than 30 KM, involving additional right of way greater than 20m involving land acquisition and passing through more than one State. | i) New State Highways; and<br><br>ii) Expansion of National / State Highways greater than 30 km involving additional right of way greater than 20m involving land acquisition. | General Condition shall apply |

22. The schedule to the 2006 Notification stipulates that projects listed in column 3 must be granted prior EC from the MoEF-CC while projects listed in column 4 must be granted prior EC from the SEIAA. The general conditions applicable are listed at the end of the Schedule.[13] Column 3 of para 7(f) includes new national highways and the expansion of existing national highways while column 4 includes new state highways and the expansion of existing state highways. Admittedly, in the present case, no notification was issued under either the National Highways Act 1956 or the Karnataka Highways Act 1964 notifying

[13] "Any project or activity specified in Category 'B' will be treated as Category A, if located in whole or in part within 10 km from the boundary of: (i) Protected Areas notified under the Wild Life (Protection) Act, 1972, (ii) Critically Polluted areas as notified by the Central Pollution Control Board from time to time, (iii) Notified Eco-sensitive areas, (iv) inter-State boundaries and international boundaries."

the PRR project as a highway under those enactments. Initial discussions took place at the Government of Karnataka level regarding the transfer of the PRR project to the National Highways Authority of India[14]. On 10 January 2018, the Central Road Transport Ministry was informed that the Government of Karnataka had granted its consent to transfer the said project to the NHAI on an "as it is" basis. However, the Government of Karnataka, by its order dated 24 June 2008, withdrew the proposal to transfer the PRR project to the NHAI.

23. There is however another aspect of the matter that warrants the attention of this Court. Para 7(f) of the Schedule to the 2006 Notification has been amended[15] since the coming into force of the 2006 Notification.

24. Prior to the issuance of the 2006 Notification, a draft notification was published in the official Gazette on 15 September 2005 stipulating that comments may be sent to the MoEF-CC within sixty days from the date on which the notification was published. Para 7(f) of the Schedule to the draft notification reads:

| S. No. | Project or Activity | NIC code (2004) | ISIC code | Category | | | Conditions if any |
|---|---|---|---|---|---|---|---|
| | | | | A | A/B | B | |
| (f) | Roads Highways | 45203* | | All new National Highways, Express ways and bypasses >= 30 Km length | - | All State Highway projects >= 30 km length Or | GC-1 |

[14] NHAI
[15] Notifications dated 11 November 2007, 1 December 2009, 4 April 2011 and 22 August 2013.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | | | | Or<br><br>All National Highways, Express way expansion projects<br><br>>= 30 km length and additional right of way of more than 20m | | All State Highway expansion projects<br><br>>= 30 km length and additional rights of way of more than 20 m | |

In the draft notification, para 7(f) to the Schedule included the term 'expressway' under category 'A' projects. However, in the final 2006 Notification, the word 'expressway' was deleted. Absent any conclusive reason for the deletion from the draft notification prior to it coming into force, such deletion cannot be used to construe the terms of the 2006 Notification or subsequent amendments thereto.

25. In exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of Section 3 of the Environment (Protection) Act 1986 read with clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Act 1986, the Central Government issued a notification dated 1 December 2009 amending, *inter alia*, para 7(f) of the Schedule to the 2006 Notification. Para (xv) of the amending notification reads:

> "**(xv) against item 7(f),**
>
> **(a) In column (4), for the entry, the following entry shall be substituted namely:-**
>
> "i) All State Highway Projects; and

ii) State Highway expansion projects in hilly terrain (above 1,000 m AMSL) and or ecologically sensitive areas"

**(b) in column (5) for existing entry, the following entry shall be substituted, namely:-**

"General Conditions shall apply.
Note: Highways include expressways."

Following the 2009 amendment, column 5 of para 7(f) to the Schedule which read "General Condition shall apply" was substituted to stipulate that in addition to the application of the general conditions, highways include expressways.

26. Prior to the amendment, a draft notification was published on 19 January 2009 seeking comments and objections thereto. The MoEF-CC, by its order dated 3 July 2009 constituted a Committee under the Chairmanship of Shri J M Mauskar, Additional Secretary to consider the comments received on the draft notification, conduct meetings with the various stake holders and make recommendations for the finalization of the notification. The Committee held various meetings with concerned stakeholders. The MoEF-CC published the report of the Committee titled "**Report of the Committee constituted under the Chairmanship of Shri J M Mauskar, Additional Secretary to examine the comments / suggestions on the Draft Amendments to EIA Notification, 2006**" in October, 2009. Numerous comments were received by the Committee on various aspects of the draft notification including the proposed amendment to para 7(f) of the Schedule. The initial draft notification only sought to modify column 4 of para 7(f). However, comments were received by the Committee

stating that a specific reference to expressways must be made. The Committee formulated its analysis in the following terms:

> "**Analysis**: The main suggestion relates to expansion of the scope of the notification by including expressways, bypasses, Major district roads, tunnelling for roads within city limits, peripheral roads around municipal corporation limits. There is also a request for expanding the right of way limit from 20 metres to 60 metres. BRO has sought exemption of their projects up to 50 kilometres. **From the comments received, it is perceived that Expressways are different from Highways. However, keeping in view the objective of the Notification, it needs to be explicitly clarified in the Notification that Highways include Expressways**. In regard to other items these may be considered separately. In regard to the proposal for enhancing the right of way limit from 20 metres to 60 metres, this may not be accepted as it would involve significant changes in land use and issues of rehabilitation."
>
> (Emphasis supplied)

27. The analysis of the Committee recorded that the main suggestions related to the expansion of the scope of the Notification by including within its ambit expressways, bypasses, major district roads, tunnelling for roads within city limits and peripheral roads around municipal corporation limits. Significantly, the Committee took note of the perception that highways and expressways differed from each other. Though it appeared from the comments that an expansion was sought in the scope of the 2006 Notification, the Committee explicitly clarified that the term 'highways' includes 'expressways'. For other items, the Committee stated that they may be considered separately. The clarification issued for highways and expressways did not amount to an expansion in the scope of the 2006 Notification but only made clear that the term highways always included expressways.

28. Where an amendment is clarificatory in nature, such amendment is deemed to be retrospective in its application. In **State Bank of India** v **V Ramakrishnan**[16], the question before a two judge Bench of this Court concerned whether Section 14 of the Insolvency and Bankruptcy Code, 2016 which provides for a moratorium for the limited period mentioned, on admission of an insolvency petition, would apply to a personal guarantor of a corporate debtor. In the judgment of National Company Law Appellate Tribunal which was under appeal, it was held that as a Resolution Plan binds personal guarantors as well under Section 31, the moratorium under Section 14 would apply to personal guarantors. Assailing this, the appellant relied upon the Insolvency Committee Law proceedings to contend that an amendment to Section 14 which stipulated that the moratorium shall not apply to a surety in a contract of guarantee to a corporate debtor was clarificatory in nature and that personal guarantors were always intended to fall outside the operation of the moratorium. Accepting this contention, Justice RF Nariman, speaking for the Court held:

> "31. The Insolvency Law Committee, appointed by the Ministry of Corporate Affairs, by its Report dated 26-3-2018, made certain key recommendations, one of which was:
>
> > "(iv) to clear the confusion regarding treatment of assets of guarantors of the corporate debtor vis-à-vis the moratorium on the assets of the corporate debtor*, it has been recommended to clarify by way of an explanation that all assets of such guarantors to the corporate debtor shall be outside scope of moratorium imposed under the Code*;" (Emphasis supplied)
> >
> > …
> >
> > The Committee concluded that Section 14 does not intend to bar actions against assets of guarantors to the debts of the corporate debtor and recommended

[16] (2018) 17 SCC 394

> that an explanation to clarify this may be inserted in Section 14 of the Code. The scope of the moratorium may be restricted to the assets of the corporate debtor only."
>
> 33. The Report of the said Committee makes it clear that the object of the amendment was to clarify and set at rest what the Committee thought was an overbroad interpretation of Section 14."

The Court noted that the Committee clarified that it was never intended that the moratorium under Section 14 applied to personal guarantors of corporate debtors. Accordingly, an amendment was enacted to Section 14. The Court then proceeded to hold, relying on consistent precedent of this Court, that a clarificatory amendment has retrospective application. A similar position is expounded by G P Singh in his seminal work **Principles of Statutory Interpretation.** He states:

> "…An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, in the principal Act was existing law when the amendment came into force, the amending Act also will be part of the existing law."

29. An amending provision which clarifies the position of law which was considered to be implicit, is construed to have retrospective effect. The position of the retrospective application of clarificatory amendments to notifications is analogous to the position under statutory enactments. In the present case, the Committee appointed by the MoEF-CC clarified that the term highways included expressways and suggested that a suitable amendment be issued to that effect. Based on the report of the Committee, a clarificatory amendment was issued in column 5 of para 7(f) to stipulate that highways include expressways. This being

the position, this Court is required to analyze whether the PRR project qualifies as an expressway falling within the ambit of para 7(f) of the Schedule.

30. Neither the National Highways Act 1956 nor the Karnataka Highways Act 1964 define the term 'highway'. The 2009 amendment to the 2006 Notification is silent on the definition of the term 'expressway'. It was submitted by the learned Senior Counsel appearing on behalf of the respondents that the definition by the Indian Road Congress[17] in the Manual of Specifications and Standards for Expressways in instructive is instructive.

31. The IRC was set up in 1934 on the recommendation of the Indian Road Development Committee constituted by the Government of India for the development of roads in the country. An expert group was constituted in 2013 to formulate a Manual of Specifications and Standards for Expressways. The report, which was released in the same year, defined an expressway in the following terms:

> "…For this purpose, the Expressway is defined as an arterial highway for motorized traffic, with divided carriageways for high speed travel, with full control of access and provided with grade separators at location of intersections. Generally, only fast-moving vehicles are allowed access on Expressways…"

An expressway is defined as an arterial highway designed for high-speed travel with the objective of reducing traffic and generally involving control of access. Other indicators are the provision of toll booths, divided carriageways and grade

[17] IRC

separators located at intersections. The assessment of whether a road project is an expressway is to be determined on a case by case basis.

32. In the present case, the stated purpose of the PRR project is thus:

> "1) To decongest the traffic in Bangalore City;
>
> 2) To cater intercity connectivity and intercity traffic;
>
> 3) To reduce pollution in the city
>
> 4) To reduce heavy vehicles traffic i.e., Lorry and Trucks
>
> 5) To decongest the traffic on outer ring road."

The brief note submitted by the appellant to this Court states that:

> "…the PRR proposed to be implemented by the BDA is an 8 lane divided road around Bangalore city is primarily **ease the vehicular traffic congestion on its city roads**. The proposed cross-section consists of 4 lane main road in each traffic direction and 3 lane service road on either side of the main road for local traffic. The main road and the service road will be **separated by access-controlled facility**. **The engineering designs will be carried out in accordance with Indian roads congress standards**."
>
> (Emphasis supplied)

The primary purpose of the PRR project is to ease vehicular traffic congestion in the city. The main road and the service road are to be separated by access-controlled facilities. The engineering designs are to be carried out in accordance with the standards laid down by the IRC. The EIA report prepared by the appellant describes the PRR project in the following terms:

> "The proposed Peripheral Ring Road (PRR) project alignment starts from – Tumkur Road as CH.17a (distance of 16-20 Km from Bangalore city railway station) on NH4 & terminate at Hosur Road near Begur CH.64.65 Km (65Km) for a smooth flow of traffic, to reduce the **traffic congestion, pollution intensity and travel time**."

…

Highway Design

The proposed Peripheral Ring Road (PRR) alignment has been designed for a **speed of 100 Kmph where ever possible**. However, at a few locations that designs have been carried out for 80 Kmph owing to restrictions at site. The vertical curves are designed as per the guidelines of IRC SP:23.

…

Interchanges

An interchange is a **grade separated intersection with connecting roadways for turning traffic** between highway and approaches. The intersections are designed during the construction of Peripheral Ring Road (PRR) after contemplating the guidelines and schemes given in AASHTO and IRC: 92 guidelines.

…

Toll Plaza

…All the traffic passing through the toll plaza section of road will have to pay toll. The public bus transport will be exempted from paying the toll.

Accessibility

The Peripheral Ring Road (PRR) is speculated as a toll road. Provisions are provided for toll booths for tolling the road system. **Accessibility to Peripheral Ring Road (PRR) is restricted** to the following categories of roads

National Highways;

State Highways;

Major District roads.

"The proposed project being a new state highway having 65 Km length with Right of Way of 75m the project falls under category "b" in the Schedule of the EIA notification 2006 and requires environmental clearance from SEIAA"

(Emphasis supplied)

33. The PRR project is expected to be an 8 lane main carriageway highway (4 + 4 bi-directional), along with a 6 lane road service road (3 + 3 bi-directional) having a right of way of 75 meters and total length of 63.5 kms. The EIA report stipulates that the PRR project was conceptualised with the salient purpose of decongesting the traffic in the city and catering to intercity connectivity and intercity traffic. This, it was stated, would significantly reduce pollution intensity and travel time. The EIA report clarifies that the project is designed to cater to high speed vehicular traffic with vehicles plying at speeds of 100 Kms/hr, where possible, and 80Kms/hr in other places.

34. Moreover, the report stipulates that the project also comprises of ten interchanges and sixteen toll booths. It is stated that access to the road is restricted only to national highways, state highways and major district roads. In this view of the matter, there is no doubt that the PRR project is an expressway falling within the ambit of para 7(f) of the Schedule to the 2006 Notification. The PRR project commenced on the issuance of the final notification under Section 19(1) of the BDA Act on 29 June 2007. Having concluded that the PRR project is an expressway, the appellant as project proponent was under an obligation under para 7(f) of the Schedule to the 2006 Notification to seek a prior EC to implement the project.

## F Compliance with the procedure under the EIA Notification 2006

35. The next question to be analysed is whether the EIA process followed by the appellant was in compliance with the procedure stipulated under the 2006 Notification. In the written submissions and the rejoinder filed by the appellant before this Court, it was contended that the EIA process leading upto the preparation and submission of the EIA report to the SEAC was in compliance with the procedure stipulated under the 2006 Notification. It was contended that the NGT erred in concluding that there was a substantial delay in the preparation of the EIA report and in suspending the operation of the EC granted to the PRR project. On the other hand, in the written submissions filed by the respondents, it was contended that the delay in the preparation of the EIA report was in contravention of the OM dated 22 March 2010 issued by the MoEF-CC prescribing a validity period of four years for ToRs from the date on which they are issued. In assessing the rival contentions, it becomes necessary to analyse the EIA process followed by the appellant, leading up to the grant of the EC.

36. On 10 September 2009, the appellant filed an application with the SEAC seeking a prior EC for the PRR project as a category 'B' project under the 2006 Notification. In accordance with the 2006 Notification, the SEAC at its 46th meeting held on 21 November 2009 formulated and issued the ToR for the PRR project on which basis the appellant was required to carry out the EIA process. The final EIA report was placed before the SEAC and the SEIAA in November 2014. The SEAC held meetings on 5 April 2013, 9 June 2014, 11-12 August 2014 and 11-18 November 2014. At its final meeting between 11-18 November, the

SEAC recommended the grant of an EC for the PRR project to the SEIAA. The EC was granted on 20 November 2014.

37. The SEAC, at its 101st meeting dated 5 April 2013 decided to recommend to the SEIAA the closure of the project file since the ToRs were issued over two years prior to the meeting and there was no correspondence by the appellant indicating any progress on the EIA process. Acting upon the letter of the SEAC, the SEIAA, at its 66th meeting dated 17 May 2013 closed the file relating to the grant of EC for the PRR project and communicated its decision to the appellant on 25 July 2013. By a letter dated 24 August 2013, the appellant requested the SEIAA to re-open the file. The SEIAA, at its 71st meeting dated 3 September 2013 decided to re-open the file, subject to the payment of the requisite processing fee. A public hearing was conducted on 6 February 2014. The SEAC, at its 111th meeting dated 9 June 2014, decided to defer the consideration of the appellant's proposal as the EIA report was not made available to the Committee members. By a letter dated 2 August 2014, the appellant placed before the SEAC the EIA report which was prepared after the public hearing was conducted in February 2014. The SEAC, at its 115th meeting dated 11-12 August, 2014 noted numerous deficiencies in the information submitted by the appellant and decided to obtain additional information which was communicated to the appellant on 28 August 2014.

38. The appellant provided to the SEAC a point-wise reply to the information sought along with additional samples on ground water, surface water and soil. A

final EIA report was prepared by the appellant in October 2014 and submitted to the SEAC. At its 121st meeting between 11th and 18th November 2014, the SEAC recommended to the SEIAA the grant of EC to the PRR project. The SEIAA issued the EC on 20 November 2014.

39. Under the 2006 Notification, the process to obtain an EC for new projects comprises a maximum of four stages, all of which may not apply depending on the specific case stipulated under the Notification: screening, scoping, public consultation and appraisal. At the scoping stage, the project proponent submits information in Form 1 to the EAC or the SEAC, as the case may be, for the preparation of a comprehensive ToR. Following this, the project proponent prepares a summary EIA for the purpose of the public consultation process. The summary EIA is presented at the public hearing to invite comments and objections, if any. Based on the comments received and after addressing the objections raised, a final EIA report is prepared and sent to the concerned regulatory authority. At this stage, the regulatory authority must examine the documents “strictly with reference to the ToR” and communicate any inadequacy to the EAC or the SEAC, as the case may be, within 30 days of the receipt of the documents. Within sixty days of the receipt of all the documents, the EAC or the SEAC, as the case may be, shall complete the appraisal process as prescribed in Appendix V. The appraisal stage involves detailed scrutiny by the EAC or the SEAC of all the documents submitted by the applicant for the grant of EC. The EAC and the SEAC are charged with evaluating the information submitted by the

applicant in Form 1/Form 1A with reference to the ToR which was issued for the preparation of the EIA report.

40. Significantly, the process of obtaining an EC commences from the production of the information stipulated in Form 1/Form 1A. Information submitted in Form 1 relies on data and information on an "as is" basis at the relevant time of submitting information. Material information regarding the particulars of the proposed project as well as the potential impact on the environment is sought to enable the EAC or the SEAC to prepare a comprehensive ToR on which basis the applicant proceeds to prepare the EIA report. As the information in Form 1 is submitted on the basis of prevailing environmental conditions as on the date of its preparation, it is necessary to ensure that the EIA process is contemporary to the submission of information in Form 1 and the issuance of the ToR. The MoEF-CC, noting situations where some EIA reports were prepared belatedly on the basis of outdated ToRs, issued a notification on 22 March 2010 prescribing a time limit for the validity of ToRs which stated thus:

"Office Memorandum

**Sub: Time limit for validity of Terms of Reference (TORs) prescribed under EIA Notification, 2006 for undertaking detailed EIA studies for developmental projects requiring environmental clearance – Regarding.**

The EIA Notification, 2006 has prescribed a time limit for validity environmental clearance granted to a project. However, no time limit has been specifically provided under the EIA Notification for the TORs prescribed for undertaking detailed EIA studies. **As a result, the TORs once prescribed would continue to be valid indefinitely, which is definitely not desirable because the TORs are very much site specific and are dynamic to some extent depending upon the site features, its land use and the**

> **nature of development around it.** The matter has been considered in the Ministry of Environment & Forests.
>
> It has been decided that from 1.4.2010, the prescribed TORs would be valid for a period of two years for submission of the EIA/EMP Reports, after public consultation where so required. This period will be extendable to the 3rd year, based on proper justification and approval of the EAC/SEAC, as the case may be. Thus, an outer limit of three years has been prescribed for the validity of the TORs with effect from 1.4.2010.
>
> **In case of the proposals which has been granted TORs prior to the issue of this O.M., the EIA/EMP reports should be submitted, after public consultation where so required, no later that four years from the date of the grant of the TORs, with primary data not older that three years**."
>
> (Emphasis supplied)

41. The MoEF-CC stated that it was clearly undesirable to indefinitely continue a ToR. The environment is, by its very nature, dynamic. Soil quality, air characteristics and surrounding flora and fauna are among the characteristics of the environment which are constantly in a state of flux. A robust framework of environmental governance accounts for the dynamic nature of the environment. It is for this reason that project proponents are also required to ensure the submission of an Environmental Management Plan and compliance with the monitoring procedures envisaged under the 2006 Notification. An indefinite ToR defeats the very purpose which underlies the 2006 Notification for it may lead to situations where the state of the environment has changed drastically, yet the EIA process is carried out on the basis of outdated information. For this reason, the MoEF-CC prescribed a validity period of two years for TORs, which could be extended by the EAC or the SEAC only by another year. Furthermore, extension is to be granted only where the project proponent provides adequate justification

in writing. Relevant to the present case, the notification dated 22 March 2010 stipulates that where ToRs were granted prior to the issue of the OM, the EIA report must be submitted within four years from the date on which the ToR was issued, with primary data not being older than three years.

42. By another notification dated 22 August 2014, the MoEF-CC clarified the validity of the ToRs prescribed under the 2006 Notification in the following terms:

> "…2(iv) Extension of validity of TORs beyond the outer limit of three years for all projects or activities and four years for River Valley and HEP projects **shall not be considered by the Regulatory Authority. In such cases, the project proponent will have to start the process *de novo* and obtain fresh TORs in case the proponent is still interested in pursuing the clearance for the project. Re-use of old baseline data (provided it is not more than 3 years old) for the purpose of preparation of fresh EIA and EMP report will be considered subject to due diligence by the EAC/SEAC which may make appropriate recommendations including the need for revalidation.** Baseline data older than 3 years will not be used for preparation of EIA/EMP report. In any case, the PH shall have to be considered afresh in such cases."
>
> (Emphasis supplied)

The MoEF-CC clarified that where the time period prescribed for the ToR has expired, the regulatory authority "shall not" consider any further extension and a project proponent seeking to continue the project must initiate the EIA process *de novo*. This includes the submission of fresh information in Form 1 and the prescription of a new ToR to guide the preparation of the EIA report. The extraordinary prescription of conducting the EIA process afresh was in keeping with the commitment to a framework of environmental governance which accounts for the dynamic nature of the environment.

43. By another notification dated 7 November 2014, the MoEF-CC issued a notification clarifying the time limit prescribed for ToRs as well as the consideration of EIA reports by the SEAC which relied on primary data older than three years. The notification, in so far as it is relevant reads:

> "2. The matter has been further examined in the Ministry in the light of the decision taken as part of clearance reform and it is felt that it would not be logical to start the process of environment clearance *de novo* including taking fresh Terms of Reference (TORs), **if the base line data collected for preparation of EIA/EMP report and/or public consultation are more than three years old**.
>
> 3. Thus, it has been decided to substitute para 2(v) of the above referred Office Memorandum No. J-110113/41/2006-IA.II(I) (part) dated 22.08.2014 with the following:
>
> "(v) (a) All the projects which have been recommended by the Expert Appraisal Committee (EAC) shall be considered by the Competent Authority even if data collected has become more than three years old **as the ToRs itself used to have three years validity and extendable by one more year.**
>
> (b) All the projects where the project proponent have already submitted their EIA/EMP Report for consideration by the EAC though the cases have still not been placed before the EAC and meanwhile the data has become more than three years old, shall be considered for the same reasons as given in para (a) above…."
>
> (Emphasis supplied)

This notification stipulated that the 'concerned authority' shall consider EIA reports for the grant of EC even where the primary data relied upon was collected beyond three years from the preparation of the EIA report. This was because the ToR itself was extendable beyond three years by an additional year. Thus, where the EIA report is prepared within the prescribed time period for the validity of the ToR, the concerned authority may consider an EIA report which relies on primary data which was collected more than three years ago i.e. in the

fourth year preceeding the preparation of the EIA report. The effect of the notification was to prescribe a uniform validity period of four years for both ToRs and the primary data collected. However, the stipulation that a fresh EIA process must be undertaken where the ToR has expired was retained.

44. In the present case, the ToR was issued on 21 November 2009, prior to the issue of the OM dated 22 March 2010. Hence, by virtue of the notification, the appellant was required to submit the EIA report within four years from the date of the issuance of the ToR i.e before 21 November 2013. The SEAC was under a corresponding obligation to refuse the consideration of any EIA report prepared after the expiry of the ToR. Public hearing was conducted belatedly only on 6 February 2014 and the EIA report prepared thereafter was placed before the SEAC only on 2 August 2014, nearly a year after the ToR had expired. We cannot gloss over the failure of the project proponent to comply with the OMs issued by the MoEF-CC prescribing a time limit for the validity of the ToR. The decision of the SEAC to proceed with the EIA report as well as seek additional information from the project proponent despite the expiry of the ToR suffers from a non-application of mind and is unsustainable.

45. Moreover, primary data was collected in December 2009 and February 2010. The EIA report was prepared after the public hearing was conducted in February 2014, nearly a year after the primary data had expired in terms of the OMs issued by the MoEF-CC. In the final EIA report prepared in October 2014, it is stated:

> "1.8 Study Period
>
> To prepare the Rapid Environmental Impact Assessment (REIA) report for the proposed project, **the data was collected from December to February (2009-2010)** in the study area. Micro Meteorological parameters were recorded such as wind speed, wind direction and relative humidity on hourly basis during the study period."
>
> "3.5 Monitoring period
>
> Meteorological data was collected for the study area during **the months of winter (December, January and February (2009-2010)**, Wind Speed, Wind Direction, Temperature and Relative Humidity were recorded on hourly basis for the total study period"
>
> (Emphasis supplied)

46. Admittedly, the EIA reports prepared in August and October 2014 relied on primary data which was collected between the months of December 2009 and February 2010. The EIA report was prepared prior to the coming into force of the OM dated 7 November 2014 by which the MoEF-CC extended the validity of primary data collected from a period of three years to four years. Even if the benefit under the notification were extended to the appellant, it was duty bound to collect fresh primary data upon the expiry of four years from the date of issuance of the ToR i.e. 21 November 2013. This was evidently not done. This being the case, there is no manner of doubt that the final EIA report prepared on the basis of an expired ToR and primary data was in contravention of the OMs dated 22 March 2010, 22 August 2014 and 7 November 2014 issued by the MoEF-CC and could not form the basis of a validly issued EC.

47. It is also pertinent to note that a Rapid EIA along with a socio-economic study was prepared by M/s Ramky Enviro Engineers Ltd., the EIA consultant for

the PRR project on behalf of the appellant in November 2010. This EIA report relied on primary data collected between the months of December 2009 and February 2010 and analysed the impact of the proposed PRR project on the environment. A perusal of both the 2010 rapid EIA report and the EIA report prepared in October 2014 reveals that the data as well as the analysis of the impact of the proposed PRR project on the environment in the 2014 report is similar to that in the 2010 Rapid EIA report. It appears that the EIA consultant has reproduced verbatim, portions of the Rapid EIA report which was prepared in the year 2010. No effort was taken by the appellant to ensure the fresh collection of data in compliance with its obligations under the OMs issued by the MoEF-CC. In this view of the matter, the contention urged on behalf of the respondents that there was a substantial delay in the carrying out of the EIA process, vitiating the process commends itself for our acceptance.

48. In the rejoinder and brief note of submissions filed before this Court by the appellant, it was contended that any delay in the collection of primary data was remedied by the collection of fresh samples in reply to the questions raised by the SEAC in its 115th meeting dated 11-12 August, 2014. The primary data furnished in reply, it was urged, dated to the year 2014 and not 2010. In assessing this contention, it is necessary to advert to the questions raised by the SEAC to the appellant. The SEAC, at its 115th meeting noted shortfalls in the information submitted by the appellant and decided to obtain additional information. This was communicated to the appellant on 28 August 2014. The SEAC sought additional information on the following:

“

1. EIA accredited consultant for Highway projects was not present
2. Declaration of experts involved in preparation of EIA report is not furnished in the report
3. Accessibility to all villages on either sides of the proposed road has to be preferably through underpasses.
4. Baseline data of hardness of borewell water furnished in the report is found to be wrongly analysed.
5. Surface water analysis report is found to be with wrong results.
6. All the parameters required to be tested as per NABET guidelines are to be analysed and furnished with lab reports.
7. Sampling locations are to be marked on maps windrose diagram to be superimposed.
8. In AAQ analysis, CO concentration is reported to be at dangerous level and this has to be checked again.
9. EMP to be revised and has to be site specific.
10. Sensitive location monitoring to be explicitly mentioned in EIA report with details of location.
11. Regarding information on forest land in the EIA report there are contradicting information in the report.
12. Trees to be planted are to be known in advance to grow samplings.
13. Soil analysis to be revalidated.
14. Borrow area of earth to be part of EIA report.
15. Emergency relief operation to be included.
16. As per the proposals submitted in page no 10. “No forest land is involved in the proposed project. Hence forest clearance is not required” whereas in the same proposal page no 21 “the total forest land to be diverted is estimated to be 1.5ha in the jarakbande kaval at Ch. 12.000” to 12.500. The contradictory information to be explained with documents.
17. In the same proposal under the head 10.3 afforestation plan : “Species proposed for afforestation plan are Avicennia officinalis, Avicennia alba, Rhizophora mucronara & Rhizophora aciculate etc., they are mangrove-tropical tree growing in shoes ie., they are endemic in sea shores (coastal area in the Kundapur coast) etc.
18. PP is advised to consult the forest wing under BDA to design (1 to 2) rows depending on the availability of the area) the strip plantations on either side of the proposed road with suitable native fruit yielding shade bearing & fast growing species (instead of this consultant), to improve the micro climate. Committee decide to obtain additional information sought above and to recall the proposal alter receipt of the information.”

By its letter dated 12 November 2014, the appellant provided to the SEAC a point-wise reply to the information sought along with additional samples on ground water, surface water and soil.

49. The questions framed by the SEAC and responses filed by the appellant demonstrate that there existed serious deficiencies in the EIA report which was submitted to the SEAC. This included outdated data on the AAQ air analysis, soil quality, forest land and the number of trees to be planted. The SEAC noted certain shortfalls which concerned limited aspects of the EIA report including the baseline data of hardness of borewell water, soil analysis and forest land. In addition to this, the SEAC directed that certain samples collected were to be marked on the map submitted to the SEAC in the EIA Report. Significantly, the SEAC noted the discrepancy concerning the disclosure of the existence of forest land. This aspect shall be explored in the course of the judgment.

50. The SEAC framed questions and sought information which was clarificatory in nature and covered specific substantive aspects of the data submitted in the EIA report. The EIA report on the other hand covers a wide range of matters which include terrain, topography, land requirements, terrain classification, wind and noise pattern analysis, air quality analysis, surface and ground water analysis, soil environment analysis, impact of flora and fauna and environmental monitoring plans.

51. The submission of additional fresh data on a few points raised in the form of a query on behalf of the SEAC does not remedy the general obligation to ensure that the EIA report was prepared within a time period of four years from the date of the issuance of the ToR, relying on primary data that was no older than four years. Merely because some additional information was sought which required the furnishing of additional details and the collection of fresh samples, it cannot be said that such an exercise cures the defect arising from the preparation of an EIA report outside the time period prescribed by the MoEF-CC. Significantly, even at the relevant time when information was sought from the project proponent, both the ToR as well as the primary data upon which the EIA report was prepared was beyond the period of their validity. In such a case, the SEAC, by seeking additional information, has traversed beyond the power conferred upon it under the 2006 Notification.

52. The SEAC proceeded to recommend to the SEIAA the grant of the EC to the PRR project in contravention of the obligations stipulated under the OMs issued by the MoEF-CC. Significantly, the SEAC considered the final EIA report only at its 121st meeting between 11 – 18 November 2014 when the OM dated 22 August 2014 issued by the MoEF-CC was in force. The SEAC was under an obligation to direct the appellant to conduct the EIA process *de novo.* The SEAC and the project proponent cannot circumvent the obligation to ensure reliance on contemporary data by seeking additional information beyond the prescribed validity of the ToR and primary data. The SEAC has clearly erred in

recommending to the SEIAA the grant of EC despite the non-compliance by the appellant with the prescribed time limit for the preparation of the EIA report.

## G Deficiencies in the EIA report

### G.1 Accreditation of the EIA consultant

53. In the written submissions submitted by the appellant, it was contended that the EIA process was undertaken on behalf of the appellant by M/s Ramky Enviro Engineers Pvt. Ltd., a non-accredited EIA consultant. This, it was submitted, was in contravention of the OM dated 2 December 2009 issued by the MoEF-CC mandating that only sector-specific accredited EIA consultants should be engaged to carry out the EIA process.

54. The MoEF-CC, by its notification dated 2 December 2009, mandated the registration of EIA consultants under the scheme of Accreditation and Registration of the National Accreditation Board of Education and Training/Quality Council of India. The relevant portion of the notification reads:

> "…It has been felt in the Ministry that there is a need to enhance the quality of EIA reports as the Consultants generally, undertake preparation of EIA/EMP Reports in many sectors and in some instances without requisite expertise and supporting facilities like laboratories for testing of samples, qualified staff etc. The good quality EIA Reports are pre-requisites for improved decision making.
>
> …
>
> 3. After detailed consideration of the issued relating to the accreditation of the Consultants, following decisions have been taken:
>
> - **All the Consultants/Public Sector Undertaking (PSUs) working in the area of Environmental Impact Assessment**

> **would be required to get themselves registered under the scheme of Accreditation and Registration of the NABET/QCI.**
> - **Consultant would be confined only to the accredited sectors and parameters for bringing in more specificity in the EIA document**.
>
> …
>
> 4. It is decided, in the above factual matrix that no EIA/EMP Reports prepared by such Consultants who are not registered with NABET/QCI shall be considered by the Ministry after 30th June, 2010."
>
> (Emphasis supplied)

55. The MoEF-CC prescribed that it is mandatory for every consultant or PSU acting as an EIA consultant to get themselves registered under the accreditation scheme of the NABET/QCI. Moreover, a consultant would be confined to the sector for which they receive accreditation to ensure expertise and specificity in the carrying out of the EIA process. This was also to ensure the availability of facilities like laboratories. It was stated that a good quality EIA report is a pre-condition for improved decision-making. In the written submissions before this Court, the appellant urged that M/s Ramky Enviro Engineers Pvt. Ltd. was hired in November 2009 upon the issuance of the ToRs prior to the coming into force of the OM dated 2 December 2009. Consequently, there was no obligation to engage an accredited consultant for the preparation of the EIA report. Be that as it may, Ramky Enviro Engineers Pvt. Ltd, Hyderabad was granted the status of a 'consultant with accreditation' vide OM dated 30 June 2011 issued by the MoEF-CC. At the time of the preparation of the EIA report which was submitted to the SEAC, the EIA consultant had received accreditation. However, the learned counsel appearing on behalf of the respondents has also placed on record a copy of the minutes of the 4th Accreditation Committee Meeting for Re-Accreditation

held on 22 November 2013. The case of Ramky Enviro Engineers Pvt. Ltd, Hyderabad was considered in the following terms:

> "21. Ramky Enviro Engineers Pvt. Ltd., Hyderabad
>
> The case of Ramky Enviro Engineers was discussed earlier in RAAC meeting dated Oct. 28 2013. Inadequacies with respect to a) Variation in names of candidate in list of experts/persons included in EIA b) Implementation of QMS and c) Quality of EIA were observed. Ramky Enviro was asked to explain the reasons for shortfalls to Accreditation Committee (AC)
>
> …
>
> Results of the Re-accreditation (RA) assessment are given below:
>
> Ramky Enviro Engineers have scored more than 60% as an organization and therefore qualifies for Cat. A EIA projects. However, in respect of Completeness and quality of EIA, the marks are less that 60% indicating scope of improvement vide points mentioned below in relevant section.
>
> 2.1.1 Scope of accreditation

| Sl. No. | Sector No. as NABET Scheme | Name of Sector | Cat. |
|---|---|---|---|
| 1 | 1 | Mining | A |
| 2 | 40 | Thermal Power plants | A |
| 3 | 20 | Petrochemical based processing | A |
| 4 | 21 | Synthetic organic processing | A |
| 5 | 1 | Industrial estate/parks/SEZ | A |
| 6 | 32 | TSDF | A |
| 7 | 38 | Building and Large construction | A |
| 8 | 39 | Area and Township projects | A |

56. The Committee noted the deficiencies in the performance of M/s Ramky Enviro Engineers Pvt. Ltd. as an EIA consultant and indicated a scope for improvement. The Committee then proceeded to record the sectors for which M/s Ramky is granted accreditation. Conspicuous in its absence is the grant of accreditation for serving as an EIA consultant for highway projects. When the final EIA report for the PRR project was prepared in August/October 2014, M/s

Ramky lacked accreditation to serve as an EIA consultant for highway projects. This aspect shall be borne in mind in deciding the eventual directions which this Court seeks to issue.

## G.2 Forest land

57. Essentially, the contention urged on behalf of the respondents in its written submissions before this Court is that there was a patent and abject failure on the part of the appellant as project proponent, to disclose the diversion of forest land for the proposed PRR project. The appellant, it was contended, concealed material information concerning the diversion of forest land and absent the requisite forest clearance, the EC granted for the PRR project stands vitiated.

58. In the draft EIA report prepared for the PRR project, it was stated:

> "The Forest (Conservation) Act, 1980
>
> …No forest land is involved in the proposed project. Hence, Forest clearance is not required."

Despite an indication that the proposed PRR project did not involve the diversion of forest land, the draft EIA report stated:

> "…As per the proposed design, the total forest land to be diverted is estimated to be 1.5 Ha and the chainage wise details of the same are presented as:

Table 2.2 B. Details of Forest Area proposed to be diverted for the Project Road

| Sl.No. | Proposed chainage | Length (Km) | Forest | Village | Survey No. | Area of the forest to be diverted in HA |
|---|---|---|---|---|---|---|
| 1 | Ch 12.000 to 12.500 | 763 M | Jarakabande kavalu | Yelahanka | 59 | 1.5 |

The draft EIA report noted that 1.5 hectares of forest land in Jarakabande kavalu is proposed to be diverted between linkages Ch 12.000 and 12.500 for a portion of the proposed road totaling 763 meters. A similar contradiction is noted in the final EIA report prepared in October, 2014:

> "Initial portion of the Highway is along protected forest areas. From the site visits and discussion with officials, it is inferred that there are no noticeable habitats or wild or endangered animal habitats along close vicinity of the project road…"

The EIA report affirms at numerous places that 1.5 hectares of forest land will be affected by a part of the project. Despite this, the EIA report proceeds to state:

| Sl. No | Type of clearance | Statutory Authority | Applicability | Project stage | Responsibility |
|---|---|---|---|---|---|
| 1 | Prior Environmental Clearance under EIA Notification, 2006 | SEIAA | Applicable | Pre construction | BDA |
| **2** | **Forest Clearance under Forest Conservation Act, 1980** | **Karnataka State and Forest Dept & MoEF** | **Not applicable** | **Pre construction** | **BDA** |

59. The EIA report proceeds on the assumption that no forest clearance is required despite the diversion of 1.5 hectares of forest land. No explanation has been provided by the appellant either in the EIA report or in the written submissions before this Court as to why it was exempt from seeking the requisite forest clearance. The only indication of remedying the loss of forest cover provided in the EIA report is thus:

> "10.4 Afforestation Plan
>
> Affected Area – Around 1.50 Ha.

> Area proposed to be afforested – 4.5 Ha (three times the affected area)
>
> Afforestation Program will be implemented through the Forest Department, BDA and regular monitoring will be ensured.
>
> Land will be identified in consultation with state Forest Department, Bangalore."

The contradictory stand by the appellant on the forest cover proposed to be diverted for the proposed project was noted by the SEAC in its 115th meeting dated 11-12 August, 2014. The SEAC sought additional information from the appellant on numerous grounds, of which one concerned the potential loss of forest cover. The SEAC, in its letter to the appellant, noted the contradictory stand of the appellant and stated:

> "…16. As per the proposals submitted in page no 10. "No forest land is involved in the proposed project. Hence forest clearance is not required" whereas in the same proposal page no 21 "the total forest land to be diverted is estimated to be 1.5ha in the jarakbande kaval at Ch. 12.000" to 12.500. The contradictory information to be explained with documents."

The appellant furnished a pointwise reply to the question raised by the EAC. It replied to the question concerning forest land by stating:

> "As per the proposed design the total forest land to be diverted is estimated to be 1.5 ha in the Jarakbande Kaval at Sh.12.000 to 12.500.
>
> 25 acres of land available in possession with BDA is proposed to be given to Forest Department in lieu of 25 acre of Forest Land (PRR Chainage between $12^{th}$ and $13^{th}$ Km in Survey No. 59 of Jarakbande Kaval approved vide by authority Subject No. 80/89 dated 17.03.2009.) needed to PRR."

The appellant confirmed that 1.5 hectares of forest land is proposed to be diverted. It was stated that in lieu of the 25 acres of forest land required, the

appellant shall make available to the Forest Department 25 acres of land available with it.

60. We cannot gloss over the patent contradiction of the appellant as the project proponent in disclosing the existence of forest land to be diverted for the purposes of the PRR project. Despite a clear indication that a total 1.5 hectares of forest land is to be diverted for the purpose of the PRR project, the appellant sought to remedy its failure in seeking the requisite clearances in a post facto manner by stipulating that 25 acres of land available with it is to be given to the forest department in lieu of the forest cover proposed to be diverted for the project. Post facto explanations are inadequate to deal with a failure of due process in the field of environmental governance. While the appellant submitted to the EAC that it had already obtained the consent of the forest department to divert the proposed forest land, a contradictory stance was taken in the written submissions filed by the appellant:

> "It is stated herein that the PRR passes through 25 acres of forest land situated in Jarakbande Kaval Forest Area, Yelahanka Hobli, Bangalore North Taluk and since the alignment inevitably passed through this, the forest department was requested on 28.08.2018 to handover the forest land to the Appellant for the purpose of the PRR project. Thereafter, the forest department replied on 12.01.2019 requesting for alternate land of 25 acres."

It was stated by the appellant that it was only on 28 August 2018 that it sought to remedy its failure in obtaining the requisite forest clearance by requesting the forest department to handover the forest area involved in the project. The appellant, in its rejoinder filed before this Court states:

> "…**It is admitted that the PRR does indeed pass through the forest land in Jarakabande Kavalu forest area**. It is also pertinent to point out here that the Appellant has also taken necessary steps to ensure that land measuring 25 acres have also been provided as alternate land for the afforestation plan due to the forests to be cleared in the Jarakabande Kavalu forest area as shown in pg. 238 of IA. No. 53243**. The contradictions mentioned in the EIA report have subsequently stood corrected and clarified before the EAC and the SEIAA**."
>
> (Emphasis supplied)

In addition to the admission by the appellant of the contradictions in the EIA report, it sought to substitute the requisite forest clearance with an agreement with the forest department to provide an alternative site for afforestation. This is not sustainable in law. Compliance with the 2006 Notification and other statutory enactments envisaged in the EIA process cannot be reduced to an ad-hoc mechanism where the project proponent seeks to remedy its abject failure to disclose material information and seek the requisites clearances at a belated stage.

61. The Karnataka SEIAA, in its affidavit before the NGT sought to contend that the EC was granted subject to the appellant obtaining the required forest clearance. It was stated:

> "Forest Area
>
> (b) Environmental Clearance has been provided by SEIAA is for the present alignment of the road as submitted to SEIAA and any change in the scope of the project requires fresh appraisal. In this regard, it may be noted that details of the forest land involved are covered in the Environment Impact Assessment Report. The proponent has decided to provide 25 acres of land available with them to the Forest Department.

> It may also be noted that as per law, clearances from other statutory authorities is not mandatory for consideration of the application for Environment Clearance (hereafter, also referred to as "EC") as it is prior Environmental clearance. Nonetheless, specific conditions have been imposed in the EC that such permission shall be obtained by the project proponent.
>
> …
>
> It is also important to note that the EC is subject to compliance with the conditions requiring obtaining of required clearances from the competent authority in accordance with the applicable law such as prior clearances relating to forests and lakes. Any non-compliance will be construed as a violation of the EC conditions and will be dealt with in accordance with law."

In the view of the Karnataka SEIAA, there was no deficiency in the grant of the EC so long as specific conditions were imposed on the project proponent to seek the requisite clearance.

62. Prior to the notification, prior clearance from regulatory bodies or authorities was not required. The MoEF-CC, by a notification dated 31 March 2011, prescribed the procedure to be followed for projects which involve forest land in the grant of an EC. The relevant portion reads:

> "…In this regard, reference is also invited to para 8(v) of the EIA notification, 2006 which reads as follows:
>
> "Clearances from other regulatory bodies or authorities shall not be required prior to receipt of applications or prior environmental clearance of projects or activities, or screening, or scoping, or appraisal, or decision by the regulatory authority concerned, unless any of these is sequentially dependent on such clearance either due to a requirement of law, or for necessary technical reasons.
>
> …
>
> However, in view of the complexity of the issues involved, the matter has been considered further in the Ministry and in suppression of the earlier instructions, it has now been

> decided to adopt the following procedure for consideration of such projects.
>
> …
>
> I. (B) **Projects for which TORs have already been prescribed by the proposal for environmental clearance is yet to be submitted:**
>
> In case of the proposals, which involve forestland, in part or it full, and for which TORs have already been prescribed, the project proponents are advised to ensure that the requisite stage-I forestry clearance has been granted and its copy is submitted along with their application/proposal for environmental clearance. Alternatively, the proponent should delete from their land requirement, the forest land involved in the project and the proposal so amended without any forest land may be submitted for appraisal by the EAC.
>
> In case of projects where forest diversion (Stage I clearance) has been approved for part of the total forest land involved in the project, the proposal will be considered only for the land for which forest diversion has been approved and the non forest land, if any…"

63. The MoEF-CC stipulated that where ToRs have been issued and the EIA report for the grant of EC is yet to be submitted, project proponents must ensure that the requisite forest clearance has been granted. A copy of the grant should be submitted along with their application for the grant of EC. Alternatively, the project proponent may delete from the proposed project any forest land that may be affected by the project. The MoEF-CC clarified that where forest clearance has been obtained for only a part of the total forest land involved in the project, the proposal will be considered only to the extent of the land for which forest diversion has been approved.

64. By two subsequent notifications dated 9 September 2011 and 18 May 2012, the procedure concerning the grant of EC for projects involving forest land stood amended in the following terms:

"…

(ii) At the stage of consideration of proposals for EC in respect of projects involving forestland, the project proponent would inform the respective EACs about the status of their application for forestry clearance along with necessary supporting documents from the concerned Forest Authorities. It will clearly be informed to the EAC whether the application is at the State level or at the Central level. The EAC will take cognizance of the involvement of forestland and its status in terms of forestry clearance and make their recommendations on the project on its merits. After the EAC has recommended the project for environmental clearance, it would be processed on file for obtaining decision of the Competent Authority for grant of environmental clearance. In the cases where the Competent Authority has approved the grant of environmental clearance, the proponent will be informed of the same and a time limit of 12 months, which may be extended in exceptional circumstances to 18 months, a decision on which will be taken by the Competent Authority, will be given to the proponent to submit the requisite stage-I forestry clearance. **The formal environmental clearance will be issued only after the stage-I forestry clearance has been submitted by the proponent.**

(iii) In the eventuality that the stage-I forestry clearance is not submitted by the project proponent within the prescribed time limit mentioned at para (ii) above, as and when the stage-I forestry clearance is submitted thereafter, such projects would be referred to EAC for having **a relook on the proposal on case by case basis depending on the environmental merits of the project and the site.** In such a situation the EAC may either reiterate its earlier recommendations or decide on the need for its reappraisal, as the case may be. In the eventuality, a reappraisal is asked for, the Committee will simultaneously decide on the requirement of documents / information for reappraisal as also the need for a fresh public hearing."

(Emphasis supplied)

65. Project proponents are duty bound to disclose the existence of forest land and inform the SEAC of the status of their application for forest clearance at the time of submitting the EIA report for the grant of the EC. Where the competent authority has granted the EC for a project, the project proponent is then duty bound to obtain and submit to the competent authority the requisite stage I forest

clearance for the proposed project within 12 months or 18 months, as the case may be. Where the project proponent fails to submit the requisite forest clearance within the prescribed time, the EAC or the SEAC are authorised to reexamine the project and decide whether there is a need for the reappraisal of the project. The process envisaged for the disclosure of the forest clearance procedure as well as the submission of the grant of forest clearance sub-serves the purpose of ensuring timely and adequate protection of forest land. Where the EAC or the SEAC is of the opinion that additional documents are required upon the failure of the project proponent to submit the requisite forest clearance within the prescribed time, it may direct that a fresh public hearing be conducted.

66. The appellant attempted to remedy its contradictory stand on the forest land proposed to be diverted and its failure to obtain the requisite forest clearance by submitting to the SEAC an undertaking to ensure afforestation in an alternate plot of land owned by it in collaboration with the forest department. Such a procedure is neither envisaged under the 2006 Notification nor is in compliance with the notifications issued by the MoEF-CC from time to time. Similarly, the SEAC was under an obligation to ensure that the project proponent had complied with the stipulated procedure for the grant of forest clearance. Instead, the SEAC proceeded on the clarification issued by the appellant in contravention of the OMs dated 31 March 2011, 9 September 2011 and 18 May 2012. Despite the numerous deficiencies that were noted in the minutes of the SEAC meeting, it proceeded to recommend to the SEIAA the grant of EC for the PRR project. The decision of the SEAC to recommend to the SEIAA the grant of the EC, despite

the contradictory stand of the appellant as well as its failure to furnish adequate reasons as to why it was exempt from seeking forest clearance, suffers from a non-application of mind.

## G.3 Trees

67. In the written submissions filed before this Court, it was contended by the respondents that there was a material concealment by the project proponent of the number of trees proposed to be felled for the PRR project. While the appellant stated that only 200 – 500 trees were required to be felled, the number was in fact as high as 16,000 trees. The appellant, as project proponent, stated in the 2014 EIA report:

> "Around 519 plants are felled for the project; the minimum of three times the number of felled plant will be replanted in the nearby areas"

The Deputy Conservator of Forests, BDA, in a reply dated 24 April 2009 to a right to information query stated:

> "With respect to the information sought under the Right to Information Act, 2005, the number of trees that will be cut for the formation of the Peripheral Ring Road – Part I have been provided below:

| Sl. No. | Information sought for | Information provided |
|---|---|---|
| | Here is the information sought regarding cutting of trees for the formation of the Peripheral Ring Road Part - I | The below mentioned trees belong to the Horticulture & Forest Department will be cut for the formation of the peripheral ring road Part – I<br>1. Coconut trees: 3837<br>2. Mango trees: 3142<br>3. Guava trees: 1361<br>4. Sapota trees: 0818 |

| | | |
|---|---|---|
| | | 5. Arecanut trees: 0287<br>6. Jamun trees: 0084<br>7. Jackfruit trees: 0059<br>8. Tamarind trees: 0040<br>9. Teak trees: 0201<br>10. Silver oak trees: 0028<br>11. Neem trees: 0028<br>12. Eucalyptus trees: 7000 |
| | **Total** | **16,785** |

68. The Deputy Conservator of Forests revealed that around 16,785 trees were proposed to be cut for the purpose of executing the PRR project. The abject failure of the project proponent in disclosing the number of trees required to be felled is also evident from the rejoinder filed by appellant before this Court. It was submitted:

> "13. In reply to Para No. 6: As had been stated earlier, the clarifications regarding cutting of trees and the corrections have been made subsequently and additionally a further 25 acres of land has been provided for the purpose of afforestation in an alternate piece of land. The same has been shown in pg. 184 of I.A. No. 53243/2019."

The EIA report prevaricated by recording that the area required for the proposed PRR project has only a few trees. Though the development of infrastructure may necessitate the felling of trees, the process stipulated under the 2006 Notification must be transparent, candid and robust. Hiding significant components of the environment from scrutiny cannot be an acceptable method of securing project approvals. There was a serious lacuna in regard to disclosures and appraisal on this aspect of the controversy.

## G.4 Pipelines

69. The EIA process was challenged on the ground that by virtue of a notification dated 12 June 1999, the Central Government acquired certain lands for laying a petroleum pipeline between Mangalore and Bangalore. Petronet MHB Ltd., by its letters dated 7 November 2005 and 21 November 2007 sought to inform the appellant of the potential crossover of the PRR project over the pipelines. The same was reiterated in its meeting with the appellant dated 4 February 2008. Petronet MHB Ltd. was of the opinion that as the pipelines contain hazardous material which is highly inflammable, care should be taken to either relocate parts of the project or ensure that adequate safeguards were put in place.

70. The respondents have placed on record the minutes of the meeting dated 2 February 2008 between the appellant authority and the representatives of M/S. Petronet MHB Limited. It was noted that the proposed PRR project crosses the PETRONET pipeline at three locations – PRR CH 7600, PRR CH 29100 to 29500 and CH 31100 to 31800 and PRR CH 39500. It was agreed that a joint-inspection would take place for one crossing, while for the other two crossings it was agreed that the PRR project would be raised for clearance height. It was stated:

> "The MD, M/S. Petronet MHB Limited agreed that the PRR may be taken over at higher level with a clearance of minimum 5.20 m from the ground level and the crossing shall be preferably at right angles. He also insisted that no supports shall be constructed within their Right of user (ROU) of 18.00."

In this view of the matter, the appellant sought to take adequate precautions to ensure that the proposed PRR project did not cross a pipeline and where it did, it was at a sufficient height without the use of support pillars. The respondent contended that that the appellant was constrained to revert to the proposed alignment prior to the meeting by virtue of various orders passed by the High Court of Karnataka. This shall be dealt with in the directions which this Court seeks to issue.

## H Appraisal by the SEAC

71. In addition to the finding that the SEAC erred in recommending to the SEIAA the grant of EC on the basis of an expired ToR and primary data, there is another aspect of the matter that warrants the attention of this Court. The SEAC, in its 121st meeting between 11 – 18 November 2014 proceeded to recommend to the SEIAA the grant of EC for the PRR project. Appraisal by the SEAC is structured and defined by the 2006 Notification. At this stage, the SEAC is required to conduct “a detailed scrutiny” of the application and other documents including the EIA report submitted by the applicant for the grant of an EC. Upon the completion of the appraisal process, the SEAC makes “categorical recommendations” to the SEIAA either for: (i) the grant of a prior EC on stipulated terms and conditions; or (ii) the rejection of the application. Significantly, the recommendations made by the SEAC for the grant of EC, are normally accepted by the SEIAA and must be based on “reasons”. At its 121st meeting, the SEAC recorded the following reasons for its recommendations:

> "PP and environmental consultant were present in the meeting.
>
> PP stated that the project was conceived and the consultant was engaged in 2003 prior to 2006 EIA Notification. Now JICA is insisting for EC.
>
> PP have submitted the compliance for the above queries raised by the committee vide their letter dated 12.11.2014.
>
> After due deliberations the committee decided to recommend the proposal to SEIAA for consideration to issue EC.
>
> PP has submitted an undertaking on the day of the meeting on the following points:
>
> 1. To provide pedestrian crossings in the utility crossings facility taking all the precautions.
> 2. Adequate CD works
> 3. To maintain Raja Kalave
> 4. To take up afforestation work separately
> 5. Major crossings of NH/SH/MDR/VR
> 6. Accessibility to proposed road from all villages without charging toll.
>
> Action to be taken: Secretary, SEAC to submit the proposal to SEIAA accordingly."

72. The reasons furnished by the SEAC must be assessed with reference to the norm that it is required to submit **reasons** for its recommendation. The analysis by the SEAC is, to say the least, both perfunctory and fails to disclose the reasons upon which it recommended to the SEIAA the grant of EC for the PRR project. The SEAC proceeds merely on the reply furnished by the appellant to the queries raised by the SEAC at its 115th meeting dated 11-12 August, 2014. In this view, the procedure followed by the SEAC suffers from a non-application of mind.

73. The SEAC is under an obligation to record the specific reasons upon which it recommends the grant of an EC. The requirement that the SEAC must record reasons, besides being mandatory under the 2006 Notification, is of significance for two reasons: (i) The SEAC makes a recommendation to the SEIAA in terms of the 2006 Notification. The regulatory authority has to consider the recommendation and convey its decision to the project proponent. The regulatory authority, as para 8(ii) of the 2006 Notification provides[18], shall *normally* accept the recommendations of the EAC. Thus, the role of the SEAC in the grant of the EC for a proposed project is crucial; and (ii) The grant of an EC is subject to an appeal before the NGT under Section 16 of the NGT Act 2010. The reasons furnished by the SEAC constitute the link upon which the SEIAA either grants or rejects the EC. The reasons form the material which will be considered by the NGT when it considers a challenge to the grant of an EC.

74. In **Shreeranganathan K P** v **Union of India**[19], the grant of an EC to the KGS Aranmula International Airport Project was challenged. The NGT found fault with the process leading upto the grant of the EC since sector specific issues had not been dealt with. The NGT extensively reviewed the information submitted with regard to the construction of the airport and held thus:

> "182. … a duty is cast upon the EAC or SEAC as the case may be to apply the cardinal principle of Sustainable Development and Principle of Precaution while screening, scoping, and appraisal of the projects or activities. While so, it is evident in the instant case that the EAC has miserably failed in the performance of its duty not only as mandated by the EIA Notification, 2006, but has also disappointed the legal

[18] "(ii) The regulatory authority shall normally accept the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned…"
[19] 2014 ALL (I) NGT Reporter (1) (SZ) 1

> expectations from the same. For a huge project as the one in the instant case, **the consideration for approval has been done in such a cursory and arbitrary manner without taking note of the implication and importance of environmental issues. …Thus, the EAC has not conducted itself as mandated by the EIA Notification, 2006 since it has not made proper appraisal by considering the available materials and objections in order to make proper evaluation of the project before making a recommendation for grant of EC**."

The Court held that the EAC had not conducted a proper appraisal given its failure to consider the available material and objections before it. The EAC had thus failed to conduct a proper evaluation of the project prior to forwarding to the regulatory authority its recommendation.

75. In **Lafarge Umiam Mining Private Limited** v **Union of India**,[20] an application was made under the 1994 notification for the grant of an EC to a proposed limestone mining project at Nongtrai Village, East Khasi Hills District, Meghalaya. A three judge Bench of this Court rejected the challenge and upheld the grant of the EC to the proposed project. Chief Justice S H Kapadia noted that the doctrine of proportionality must be applied to matters concerning the environment as part of judicial review. The principles of judicial review in environmental matters have been enunciated thus:

> "In the circumstances, barring exceptions, decisions relating to utilisation of natural resources have to be tested on the anvil of the well-recognised principles of judicial review. Have all the relevant factors been taken into account? Have any extraneous factors influenced the decision? Is the decision strictly in accordance with the legislative policy underlying the law (if any) that governs the field? Is the decision consistent with the principles of sustainable development in the sense that has the decision-maker taken into account the said

[20] (2011) 7 SCC 338

> principle and, on the basis of relevant considerations, arrived at a balanced decision? Thus, the Court should review the decision-making process to ensure that the decision of MoEF is fair and fully informed, based on the correct principles, and free from any bias or restraint."

76. The SEAC, as an expert body, must speak in the manner of an expert. Its remit is to apply itself to every relevant aspect of the project bearing upon the environment and scrutinise the document submitted to it. The SEAC is duty bound to analyse the EIA report. Apart from its failure to repudiate a process conducted beyond the prescribed time period stipulated by the MoEF-CC, the SEAC failed to apply its mind to the abject failure of the appellant in conducting the EIA process leading upto the submission of the EIA report for the grant of EC. The SEAC is not required to accept either the EIA report or any clarification sent to it by the project proponent. In the absence of cogent reasons by the SEAC for the recommendation of the grant of EC, the process by its very nature, together with the outcome, stands vitiated.

## I Courts and the environment

77. Courts today are faced with increasing environmental litigation. A development project that was conceptualized as early as in the year 2005 has surfaced before this Court over 15 years later. The period that has led up to the present litigation has involved a myriad of decisions and processes, each contributing to the delay of a project that was outlined to sub-serve a salient development policy of de-congesting the city. Where project proponents and institutions envisaged under the 2006 Notification abdicate their duty, it is not only the environment that suffers a serious set-back, but also the development of the

nation. In the eventual analysis, compliance with the deliberative and streamlined process envisaged for the protection of the environment ensures a symbiotic relationship between the development of the nation and the protection of the environment.

78. The adversarial system is, by its nature, rights based. In the quest for justice, it is not uncommon to postulate a winning side and a losing side. In matters of the environment and development however, there is no trade-off between the two. The protection of the environment is an inherent component of development and growth. Professor Charles E Corker of the University of Washington School of Law said in a speech titled "**Litigating the Environment – are we overdoing it**?"[21]:

> "My answer is yes. We are overdoing our litigation of the environment. I do not mean that there are necessarily too many lawsuits being filed on environmental issues, and that we should somehow cut back – I would not know how, in any case – the number of those suits by ten percent, twenty percent, or fifty percent. I do mean that a disproportionately large share of attention, effort and environmental concern is being focused on lawsuits. Lawsuits cannot accomplish, by themselves, solutions to the most pressing of our environmental problems. As a result, we are in some danger of leaving the most pressing environmental problems unsolved – or even made worse – because the commotion of litigation has persuaded us that something has been accomplished."

Professor Corker draws attention to the idea that the environmental protection goes beyond lawsuits. Where the state and statutory bodies fail in their duty to comply with the regulatory framework for the protection of the environment, the

[21] Speech to the Thirteenth Annual Meeting of the Interstate Conference on Water Problems, Portland, Oregon delivered on 29 October, 1970.

courts, acting on actions brought by public spirited individuals are called to invalidate such actions. Equally important however, is to be cautious that environmental litigation alone is not the panacea in the quest to ensure sustainable development.

79. The protection of the environment is premised not only on the active role of courts, but also on robust institutional frameworks within which every stakeholder complies with its duty to ensure sustainable development. A framework of environmental governance committed to the rule of law requires a regime which has effective, accountable and transparent institutions. Equally important is responsive, inclusive, participatory and representative decision making. Environmental governance is founded on the rule of law and emerges from the values of our Constitution. Where the health of the environment is key to preserving the right to life as a constitutionally recognized value under Article 21 of the Constitution, proper structures for environmental decision making find expression in the guarantee against arbitrary action and the affirmative duty of fair treatment under Article 14 of the Constitution. Sustainable development is premised not merely on the redressal of the failure of democratic institutions in the protection of the environment, but ensuring that such failures do not take place.

80. In the present case, as our analysis has indicated, there has been a failure of due process commencing from issuance of the ToR and leading to the grant of the EC for the PRR project. The appellant, as project proponent sought to rely on

an expired ToR and proceeded to prepare the final EIA report on the basis of outdated primary data. At the same time, the process leading to the grant of the EC was replete with contradictions on the existence of forest land to be diverted for the project as well as the number of trees required to be felled.

81. The SEAC, as an expert body abdicated its role and function by relying solely on the responses submitted to it by the appellant and failing to comply with its obligations under the OMs issued by the MoEF-CC from time to time. In failing to provide adequate reasons for its recommendation to the SEIAA for the grant of an EC, it failed in its fundamental duty of ensuring both the application of mind to the materials presented to it as well as the furnishing of reasons which it is mandated to do under the 2006 Notification.

82. In this view of the matter, neither the process of decision making nor the decision itself can pass legal muster. Equally, this Court must bear in mind the need to balance the development of infrastructure and the environment. We are of the view that while the need for a road project is factored into the decision-making calculus, equal emphasis should be placed on the prevailing state of the environment. The appeal which was filed before the NGT in 2015, was finally disposed of at a belated stage only in 2019.

## J Directions

83. Bearing in mind the need to bring about a requisite balance, we propose to issue the following directions under Article 142 of the Constitution:

(i) The appellant is directed to conduct a fresh rapid EIA for the proposed PRR project;

(ii) The appellant shall, for the purpose of conducting the rapid EIA, hire a sector-specific accredited EIA consultant;

(iii) The appellant shall have due regard to the various deficiencies noted in the present judgment as well as ensure that additional precautions are taken to account for the prevailing state of the environment;

(iv) The appellant shall ensure that the requisite clearances under various enactments have been obtained and submitted to the SEAC prior to the consideration by it of the information submitted by the appellant in accordance with the OMs issued by the MoEF-CC from time to time;

(v) The SEAC shall thereafter assess the rapid EIA report and other information submitted to it by the appellant in accordance with the role assigned to it under the 2006 Notification. If it is of the opinion that the appellant has complied with the 2006 Notification as well as the directions issued by this Court, only then shall it recommend to the SEIAA the grant of EC for the proposed project. The SEAC and the SEIAA would lay down appropriate conditions concerning air, water, noise, land, biological and socioeconomic environment and other conditions it deems fit; and

(vi) The appellant shall consult the requisite authority to ensure that no potential damage is caused by the project to the petroleum pipelines over which the proposed road may be constructed.

84. In moulding the above directions, this Court has factored into its decision-making calculus the fact that the appeal from the judgment of the NGT was filed by the project proponent and no appeal was filed by the respondents. The order of the NGT directing the appellant to conduct a rapid EIA is upheld, though for the reasons which we have indicated above. We clarify that no other Court or Tribunal shall entertain any challenge to the ultimate decision of the SEAC or the SEIAA. Liberty is granted to the parties to approach this Court upon any grievance from the decision of the SEAC or the SEIAA pursuant to the order of this Court.

85. The appeal is disposed of in the above terms. There shall be no order as to costs.

Pending application(s), if any, shall stand disposed of.

**……..…..…..…..……..…..J.**
**[Dr Dhananjaya Y Chandrachud]**

**..…..…..…..…..……..…..J.**
**[Hemant Gupta]**

**New Delhi;**
**March 17, 2020.**