

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

**APPEAL NO. 60 OF 2018
(M.A. No. 635 of 2018)**

IN THE MATTER OF:

1. G. Sundarrajan

Aged about 45,
S/o Gomathi Nayagam
G1, No. 73, Sailakshmi Apartments,
Second Main Road, Kumaran Nagar,
Chinmaya Nagar, Koyambedu,
Chennai- 600 092

.....Appellant

Versus

1. Union of India

Through the Secretary
Ministry of Environment, Forest and Climate Change
Paryavaran Bhawan
CGO Complex, Lodhi Road
New Delhi – 110 003

2. State of Tamil Nadu

Through the Chief Secretary,
Secretariat
Chennai- 600 009

3. Tamil Nadu State Pollution Control Board

Through the Member Secretary
76 Anna Salai
Guindy, Chennai – 600 032

4. State Level Environment Impact Assessment Authority

Through the Member Secretary
3rd Floor, Panagal Maaligai
No. 1, Jeenis Road, Saidapet, Chennai – 600 015

5. The Tata Institute of Fundamental Research

Through the Project Director INO
1 Homi Bhaba Road, Mumbai – 400 005

.....Respondents

COUNSEL FOR APPELLANT:

Mr. Ritwick Dutta, Sr. Adv. with Mr. Rahul Choudhary, Ms Meera Gopal, Mr. Utkarsh Jain & Ms. Geetanjali Sreedhar, Advs.

COUNSEL FOR RESPONDENTS:

Mr. Divya Prakash Pande, Mr. Satyalipsu Ray, Mr. Niraj Kumar, Mr. V.K. Singh, Mr. Pankaj Vermaa and Ms. Ayushi Singh, Advs. for Respondent No. 1

Mr. R. Rakesh Sharma, Mr. V. Mowli and Mr. R. Naveen Raj, Advs. for State of TN & TNPCB

Ms. Sakshi popli, Adv. for SEIAA - TN

Mr. R.B. Mahapal, Adv. for Respondent No. 5

JUDGEMENT

PRESENT:

Hon'ble Mr. Justice Raghuvendra S. Rathore (Judicial Member)

Hon'ble Dr. Satyawan Singh Garbyal (Expert Member)

Reserved on: 09th October, 2018
Pronounced on: 02nd November, 2018

1. Whether the judgment is allowed to be published on the net?
2. Whether the judgment is allowed to be published in the NGT Reporter?

Dr. S.S. GARBYAL, (EXPERT MEMBER)

1. This appeal has been filed under Section 16 of the NGT Act against the grant of environmental clearance dated 26.03.2018 by the EAC (Expert Appraisal Committee) under the aegis of MoEF&CC as per the EIA Notification, 2006 to Respondent No. 5 (Tata Institute of Fundamental Research) for the construction of India based Neutrino Observatory

(INO) Project at Bodi West Hills, Pottipuram Village, Theni District, Tamil Nadu.

2. That as per the impugned Environmental Clearance, it has been stated that the India-based Neutrino Observatory (hereinafter referred to as “INO”) project is a proposal to construct an underground laboratory for experiments in the field of neutrino physics. It is also stated therein that the immediate goal of the project is the creation of the underground laboratory as well as building of a large magnetized iron calorimeter detector housed in it to study naturally-produced neutrinos in the Earth’s atmosphere.
3. Pottipuram Village, in Theni District, Tamil Nadu was identified for the construction of the INO Project. An application for the EC was made before the MoEF in the year 2010. EIA study was conducted for the said project by Salim Ali Centre for Ornithology and Natural History in November, 2011 and the MoEF granted EC on 01.06.2011.
4. The appellant had preferred an appeal before the Southern Zonal Bench of NGT in 2015 against the EC dated 01.06.2011. The said appeal was preferred mainly on the grounds that the very categorisation of the project was illegal and wrong and that detailed ecological impact assessment study was not made to study the effect of blasting to excavate the tunnels and cavern and that the said EIA was not complete.

5. The NGT Southern Zonal Bench vide its order dated 20.03.2017 kept the EC dated 01.06.2011 in abeyance on the ground that project site was 4.9 km of the Mathikettan Shola National Park in Idukki District, Kerala and that the project should be treated as category –A project and also that clearance should be obtained from the National Board for Wild Life. The NGT expressed the view with the contention of both the counsels appearing for the appellant as well as Assistant Solicitor General appearing for the Respondent matter needed to be resolved so as to enable the project proponent to make fresh proposal under EIA Notification 2006, in accordance with Law. While keeping EC in abeyance the Tribunal made it clear that the Transfer of land already made in the name of the project proponent should not be affected and the same will be subject to the final order which may be passed by the Regulatory Authority.
6. Therefore, the project proponent applied for fresh EC on 25.07.2017 before SEIAA Tamil Nadu under Activity 8(a) and category B2- Building and Construction Projects. The SEIAA while appraising and considering the project in question refused to appraise the same under 8(a) of the Schedule of EIA Notification siting the various construction activities undertaken under the projects could not be termed as a “Building and Construction Project”. The SEIAA/SEAC asked the project proponent on 31.07.2017 to approach the MoEF

for EC. Subsequently MoEF informed SEAC on 13.11.2017 that the said INO project is to be considered as 8(a) projects. Thereafter INO project was placed in the 98th SEAC meeting held on 27.11.2017 wherein it was observed that the projects cannot be appraised under 8(a) as tunneling work involved carrying out blasting hard and composite rock mass which required huge quantity of high strength explosives to break it. It was also stated that since impact on Kerala was also needed to be looked into and therefore project required inter-state scrutiny. Moreover Mathikettan Shola National Park of State of Kerala was at a distance of 4.9 km from INO site, Minutes of the 98th SEAC Meeting held on 27.11.2017 is placed as Annexure A-6.

7. The Committee also observed that the Western Ghat is a global biodiversity hotspot and a “Treasure Trove of Biological Diversity” as it harboured many endemic species of flora and fauna and that the site also forms part of the catchment of various Streams and Vaigai Watershed which forms the life support and livelihood of the dependent communities by providing water for drinking and agriculture needs in five districts of Tamil Nadu, SEAC, therefore, decided that the proposal could not be appraised under 8(a) –“Building and Construction Project”, as it involved many technical features other than a mere construction.

8. Therefore the Project Proponent placed the proposal before the MoEF and the EAC considered it on 25.01.2018. Considering the National Importance of the proposal the MoEF decided to appraise the proposal at the Central Level as a special case by sectoral EAC (Intra-II) Committee. The Committee after detailed deliberations sought following additional information:-

(i) Submit the detailed Geo Technical Investigation Report on study carried out for locating underground laboratory of INO on Pottipuram Site.

(ii) Detailed status of Court cases pending/disposed against the project.

(iii) Details of public meeting held on 08.10.2010 by Collector with 1200 local villagers from Pottipuram Panchayat in tabular form alongwith action plan.

(iv) The proposal was, therefore, deferred till the desired information is submitted.

9. Subsequently the INO proposal was taken up for consideration by EAC (Intra-II) on 05.03.2018. It was observed as follows:-

The project proponent submitted desired information on 20.02.2018. The Committee deliberated upon the information provided by the Project Proponent. Expert from Defence Research and Development Organization (DRDO), Government of India was also present during the deliberation.

The Committee was given to understand that though the proposals are not within the scope for the EAC the Ministry would want the EAC (Infra-2)

to consider this as a special case and that based on built up area and total area considerations this is a category 8(a) project. The project proponents also informed that the earlier EC granted in 2011 was for an 8(a) project and that there are no changes in the proposals as conceived earlier (for which the EC was granted in 2011) and the present proposals. It was also stated that since the earlier EC has been quashed by the Hon'ble Court, a certified compliance report may not be required and that no work has been initiated on site.

The Committee was also informed that the earlier concerns of radioactivity and leaching of water, as raised in the representation to the courts have been explained to the court also and that there is no scope of any radio activity or leaching of water. They have also categorically clarified that based on studies there will be no impact of blasting on any inhabitation in the vicinity.

The EAC, after detailed deliberations on the proposal and submissions made by the project proponent, recommended the project for grant of environmental clearance and stipulated the following specific conditions along with other environmental conditions while considering for accord of environmental clearance. Therefore the EC was granted by the MoEF to the TIFR on 26.03.2018.

10. The Appellant has submitted that the EAC and the MoEF has not sought any ecological/environmental impact assessment study for the project as the project was to come up in the ecological sensitive area of Western Ghats. The Appellant has submitted that EC in 2011 was granted on the basis of a Rapid EIA Report prepared by non-accredited "Agency" the Salim Ali Centre for Ornithology & Natural History". The

Appellant has also contended that project was scrutinised under 8(a) "Building and Construction Projects" for the purpose of granting EC. The appellant has stated that the project involved large scale tunneling and blasting and was likely to affect a part of Western Ghats.

11. The Appellants have contended that the EAC does not have the statutory power to appraise category -B, projects under item 8(a) of the Schedule to the EIA Notification 2006. It has been stated that under the EIA Notification 2006 the appraisal of 8(a) projects can be done by the EAC or MoEF only in following two situations:-

(i) When the respective SEIAA/SEAC are not existing or functioning,

Or;

(ii) When the General Condition Applies to Category B projects.

It has been submitted that neither of the above two situations are applicable since Tamil Nadu SEAC is functional and the general condition is not applicable as per the provision of the EIA Notification, 2006.

12. It has further been submitted that the projects site is in close proximity to identified ecologically sensitive area of Western Ghats and realising the need to protect and rejuvenate the ecology and land and sustainable development in Western Ghats the MoEF has constituted Western Ghats Ecology Expert Panel (WGEEP) under the Chairmanship of Dr.

Madhav Gadgil and a High Level Working Group (HLWG) under Dr. Kasturirangan to suggest an all-round and holistic approach for sustainable and equitable development of Western Ghats. It has been submitted that the project in question should have been rejected at the scoping stage itself by the EAC and the MoEF.

13. The Appellant has further submitted that no impact assessment was conducted for the project in question. It has been stated that EC was granted based upon rapid EIA report prepared by Salim Ali Centre for Ornithology & Natural History which is not an accredited agency and EAC and MoEF should have insisted on the EIA report by an accredited agency.
14. It has been submitted by Respondent 1 MoEF&CC that after the location of the project was shifted to the present location, the EC dated 01.06.2011 was granted by MoEF&CC which was challenged before NGT (SZ). Hon'ble Tribunal (SZ) vide order dated 20.03.2017 has disposed of the Appeal No. 6/2015 (SZ) and held that the project should be treated as Category A project. Based on the meetings, the EAC recommended the proposal for granting EC with adequate environmental safeguards. Based on the recommendations of the EAC, EC was granted on 26.03.2018 with various conditions. Due procedure of law for appraisal of the project

as prescribed under the EIA Notification 2006, as amended from time to time has been followed.

15. Respondent No. 2, the State of Tamil Nadu submitted that the revenue Department of the State has transferred 25.825 hectares of land at Pootipuram Village to conduct research on Neutrinos vide order dated 03.10.2011. Environment and Forest Department of the State has diverted 4.62 hectares of land vide order dated 14.11.2011 for the purpose of the project.
16. It has been submitted by Tata Institute of Fundamental Research. Respondent no. 5 that since the area is more than 20,000 m² under Category 8(a) project, it does not need EIA study. Being of B2 Category, these projects can be appraised at the state level itself. In view of the specialty and uncommon nature of the project, and inability expressed by SEIAA-Tamil Nadu, litigation in the past and order of the NGT, it was imperative to take this project for appraisal at higher level i.e. EAC- MoEF&CC. Appraising by the higher level committee at Central level was done to take extra care in this particular peculiar situation. No technical aspect has been missed out by the expert members and the procedure is completed strictly in accordance with the EIA Notification. EIA Study has been done through Salim Ali Centre, even when there was no requirement. The said project is of national importance. Techniques will be adopted for a

minimal impact on the environment. The project is already delayed which is affecting the competitiveness of the Project. The State Government has also stated that the said project is a Category A project. The State Government's refusal to assess the Project led to the Central Government taking up the assessment of the Project.

16. After going through the submissions as above we are of the considered opinion that:-

- (i) As the project involved appraisal at the inter-state Level i.e. Tamil Nadu as well as Kerala,
- (ii) As the project needed to be appraised considering the fact that the INO site was in ecologically sensitive Western Ghats, and
- (iii) As the INO site was at a distance of 4.9 km from Mathikettan Shola National Park in Kerala.

Therefore, it was correct on the part of the EAC and the MoEF to appraise the project at their level. Moreover, it is not the case that EAC or the MoEF could not have appraised the projects at their level under any circumstances or that EAC has no competency to appraise the projects of this nature. In any case the event when state SEIAA/SEAC are not constituted it is the MoEF or EAC which appraises the projects. Since study of impact on two states is involved and also that MoEF has constituted various Committees/Expert Groups regarding Western Ghats the Tamil Nadu SEIAA/SEAC could not have appraised this project.

17. We have been informed by the Learned Counsel of MoEF that the report regarding Western Ghats submitted by the Committees constituted are under consideration of the MoEF and decision is likely to be taken shortly. Therefore, the specific or general condition or recommendation made by the Committees/ Expert Groups will be mandatorily made applicable in the current project of INO also. We further direct that project will not be implemented until and unless the approval of National Board for the Wildlife is received since the project site is within the Eco sensitive Zone of the National Park in Kerala.

With the aforesaid directions, we dispose of the present Appeal. There shall be no order as to cost.

As the main Application has been disposed of, the Miscellaneous Application No. 635 of 2018 does not survive for consideration and it is accordingly dismissed, with no order as to cost.

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Justice Raghuvendra S. Rathore
(Judicial Member)

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Satyawan Singh Garbyal
(Expert Member)

Dated: 2nd November, 2018
New Delhi