

7. Chief Engineer,

NTR Telugu Ganga Project,
Opp. S.V. Medical College, Old Alipiri,
Tirupati, Chittoor District- 517507.

...Respondent(s)

For Applicant(s): Mr. Sravan Kumar.

For Respondent(s): Mr. Meyappan for Ms. ME. Sarashwathy for R1.
Mr. Sathish Parasan, Senior Advocate for R2.
Mrs. Madhuri Donti Ready for R3, R4 and R7.

Judgment Reserved on: 11th April, 2023.

Judgment Pronounced on: 11th May, 2023.

CORAM:

HON'BLE SMT. JUSTICE PUSHPA SATHYANARAYANA, JUDICIAL MEMBER
HON'BLE DR. SATYAGOPAL KORLAPATI, EXPERT MEMBER

JUDGMENT

Delivered by Smt. Justice Pushpa Sathyanarayana, Judicial Member
And
Dr. Satyagopal Korlapati, Expert Member.

1. The above appeal is directed against the Environmental Clearance (*hereinafter referred to as "EC"*) dated 08.09.2022 issued by the State Environmental Impact Assessment Authority - Andhra Pradesh (*hereinafter referred to as "SEIAA - AP"*) in favour of the State of Andhra Pradesh for construction of the Avulapalli Balancing Reservoir.
2. According to the appellant, the Avulapalli Reservoir is proposed to create new command area of 40,000 acres plus 20,000 acres of existing ayacut by storing 3.5 TMC of water from Galeru Nagar Sujala Sravanthi (GNSS) Scheme. The Government of Andhra Pradesh has given approval for Administrative Approval for the work of "Investigation and Construction of Lift Schemes" to lift water from Galeru Nagar Sujala Sravanthi (GHSS) to Handri Neeva Sujala Sravathi (HNSS). It is stated that the impugned EC was issued without application of mind on

misrepresentation of facts. The main objection of the applicant is that the EC is obtained only for Avulapalli Balancing Reservoir with the capacity of 2.5 TMC whereas G.O. Rt. 444 dated 26.08.2020 and G.O Rt. 461 dated 02.09.2020 proposed three reservoirs linking GNSS and HNSS.

3. Secondly, the project proponent has taken the land belonging to the Forest Department without the impact assessment being done on the forest and eco-sensitive zone. Thirdly, the capacity of the reservoir is shown as 2.5 TMC in the project but it was stated before the Hon'ble High Court of Andhra Pradesh that it will increase the capacity from 2.5 TMC to 3.5 TMC. The application is considered for construction of project only and subsidiary canals are not included. Whereas, those particulars of land acquisition etc. were not placed before the SEIAA - AP. The next allegation is that the project proponent had not obtained clearances from National Commission of Seismic Design Parameters (NCSDP) and Centre Water Commission, New Delhi.
4. **The 2nd respondent, who is the State Environment Impact Assessment Authority (SEIAA), Andhra Pradesh** has filed a counter affidavit. It is stated by SEIAA - AP that the Government of Andhra Pradesh to combat the consequences of climate change had proposed various projects for climate change adaptation in water resources that can store excess water when it is available and utilize the same later when it becomes necessary. One such project was construction of Avulappali Reservoir through the expansion of an existing minor irrigation tank. This project is an independent one with the primary motive of focusing on tapping and storing the excess rainfall / runoff in the said region and supply it predominantly for drinking. The excess water, after meeting the domestic demand, is proposed to supply for irrigation. Accordingly, the Avulapalli reservoir was constructed as a self-catchment source and to receive the runoff caused due to excess flood flows from Gandikotta Reservoir. The water so collected into the Avulapalli Reservoir is proposed to be utilized

for catering to the needs of the draught prone region of Chittoor district in the semi-arid Rayalaseema region of Andhra Pradesh.

- 5.** Though, initially the Avulapalli Reservoir was part of the HNSS Scheme, later the proposal had undergone a change whereby the source of the water has been changed to get it only from the self-catchment system. Therefore, the Avulapalli Reservoir has got nothing to do with HNSS scheme. The project proponent had disclosed that while it had obtained administrative sanction for 3.5 TMC, the scope of the project presently implemented was shown only as 2.5 TMC. The development or expansion into the second phase, for the remaining 1 TMC, is to be considered in detail and then implemented only in the future. Phase 1 of the project is predominantly for supply of drinking water which contemplated a culturable command area of less than 10,000 hectares, the project was classified under B2 category as per the Statutory Orders of MoEF&CC. Only after following the procedure as per the law, the SEIAA has granted the impugned EC on 03.9.2022.
- 6.** The capacity of the reservoir does not determine the category under which the project must be classified for the purposes of obtaining EC. On the contrary, it is only the extent of ayacut/ culturable command area that determines the category of the project and requirement of obtaining an EC in the first place. Therefore, there is no illegality in splitting the proposed plan into two phases. The EIA Notification, 2006 itself provides for a mechanism for granting fresh EC for expansion projects and the project proponent would have to apply under the same, comply with the procedural requirements therein and obtain the requisite permission under Clause 7(ii) of the EIA Notification, 2006 when it is desirous of implementing Phase 2 or any other expansion.
- 7.** The 2nd respondent, SEIAA - AP categorically states that the project proponent had expressly disclosed to this respondent and State Expert Appraisal Committee - Andhra Pradesh

(hereinafter referred to as "**SEAC – AP**") that administrative approvals in respect of the Avulapalli reservoir was obtained for a total capacity of 3.5 TMC. It is for the sake of administrative convenience and the development is only being undertaken for what is envisaged as Phase 1 at present. Hence, the present application was also submitted only for Phase 1 of the total project which is 2.5 TMC. As and when the Project Proponent proposes to implement any expansion in future for providing irrigation water to more than the present 9700 Hectare under Phase 2 of the project, then that proposal should be submitted to the SEIAA - AP for EC as an expansion project and the authorities can suitably review the same. As the project proponent had obtained the sanctions for three reservoirs under the same G.O for the sake of administrative convenience, the appellant had misconceived the same and challenging it in this Appeal.

8. Regarding the allegation that the construction of the proposed project falls within the forest land, this respondent submitted that the present project will not affect the forest land as it is far away from the forest boundary. The main allegation raised in the grounds is that the project proponent had submitted to the SEIAA - AP that the total intended capacity of the proposed reservoir is 3.5 TMC as per the administrative sanction. However, application for EC in Form-I was made only for Phase 1 project to supply drinking water to the people also to supply water to 9700 Hectare, for irrigation with the reservoir having capacity of 2.5 TMC. After considering these facts, the SEIAA - AP processed the application and granted EC with specific conditions that the project proponent ought to have adhered to the specification mentioned in the application. Merely because EC has been granted for construction of reservoir with the capacity of 2.5 TMC it does not mean that the project proponent cannot expand the same. The project proponent can therefore expand the same after obtaining the requisite permission from the answering respondent. Unless the project is done without getting necessary approvals from SEIAA - AP, the appellant cannot have any grievance.

9. Regarding the allegation that no clearance was obtained from NCSDP and Central Water Commission, the SEIAA - AP had stated that the project site location falls within Seismic Zone II of the Seismic Zones of India Map. It is seen from the record that designs/ stability analysis of the Earth Bund was finalized and was found to be in accordance with the provisions of Appendix A of IS 7894-1975 after adopting minimum desired factor of safety value. SEIAA - AP has further stated that it is in the practice of issuing a standard condition pertaining to obtaining approvals from NCSDP and Central Water Commission for projects of this nature.

10. On the above facts, the issues arising out of Appeal for determination are:-

- (i) Whether the project seeking EC submitted to SEIAA - AP is for Phase-1 of the project for 2.5 TMC and whether it was submitted to SEIAA - AP that the total capacity is 3.5 TMC?
- (ii) Whether the EC obtained for only 2.5 TMC is correct, when the project capacity is said to be 3.5 TMC?
- (iii) Whether for administrative convenience the project can be implemented in Phases by securing EC for Phase-1 without furnishing the full details of the other Phase of the Project?
- (iv) Whether the EC issued to the project under 'B2' Category is correct and whether the same is based on due diligence?
- (v) Whether Muvedu and Nethiguntapalli Balancing Reservoirs require prior EC?
- (vi) What is the environmental compensation payable by the Project Proponent?
- (vii) Any other relief?

Issue No. 1 & 2:

11. Learned Counsel appearing for the appellant would argue that the impugned EC is granted on the basis of the reduced

component and the capacity of the project wherein the linking of GNSS and HNSS and building of three reservoirs have been delinked from Avulapalli Reservoir. According to him, the total capacity of the project is reduced from 3.5 TMC to 2.5 TMC so as to bring it under purview of the SEIAA - AP only with ulterior motive to bypass the mandatory provision of the EIA Notification, 2006. Hence, according to the appellant, the EC has been obtained by misrepresentation and alteration of the facts with malafide intention. Hence, he sought for setting aside the EC.

12. The Learned Counsel for the appellant would state that a writ petition was filed by one Lakshmipati Naidu before the Hon'ble High Court of Andhra Pradesh as W.P. No.25682 of 2022 for a mandamus directing the District Collector who was arrayed as 4th respondent to consider the representation given by the writ petitioner dated 20.05.2022. After the 4th respondent had passed the order on 13.08.2022, the petitioner objected to the said order on the ground that the permission obtained by the State from the SEIAA - AP on 08.09.2022 shows that the approval which the State had sought for was for construction of a balancing reservoir with a capacity of 2.5 TMC and the approval was given only for 2.5 TMC in the order. In the counter affidavit, filed in the said writ petition by the State of Andhra Pradesh, it was stated that the capacity of the reservoir is not changed. It was clearly stated in the Detailed Project Report and the submission made to the SEIAA - AP for issue of EC that the final capacity of the reservoir is 3.5 TMC. Initially, the project will be taken up for drinking purpose only during Phase 1, accordingly the EC was made for the construction of reservoirs with the capacity of 2.5 TMC during the Phase 1.

13. The counter further stated that the issue of EC for the Phase-II of the reservoir to its full capacity of 3.5 TMC will be submitted as and when necessary. The Hon'ble High Court also had recorded the same that the State has decided to take up the construction of the reservoirs in two phases, with the 1st phase being the construction of the reservoir with 2.5 TMC and to

enhance the capacity to 3.5 TMC by way of 2nd phase. In this regard, the Learned Counsel appearing for the appellant would invite our attention to the special condition no.3 in Part A of the EC which reads as "the *project proponent shall not enhance the storage capacity - 2.5 TMC and ayacut beyond 9700 ha.*" and contended that the project proponent is not entitled to enhance the storage capacity as per the above condition. The application for grant of EC was applied only for 2.5 TMC and the same issued by SEIAA - AP. The condition referred above indicates that with this EC dated 08.09.2022 the project proponent cannot increase/enhance the capacity.

14. The Learned counsel for SEIAA - AP would further state that the project proponent clearly had stated that the balance 01 TMC of project will be taken in Phase-II, for which, separate EC would be obtained by them. In fact, the general condition No.X in the EC specifically mentions that "*in case of change in the scope of the project, project would be required a fresh appraisal*". It is the case of the project proponent that for the Phase-II of the balance 01 TMC for which they have already got the Government's approval, as and when they intend to construct, they will get appropriate EC from SEIAA - AP and they also undertake that the present project is only with respect to 2.5 TMC which is granted in EC dated 08.09.2022. So, the Project proponent, therefore, had obtained the prior EC as required by law before commencing his project. The above referred special and general conditions referred in the Environmental Clearance were not brought to the knowledge of the Hon'ble High Court, Andhra Pradesh.

15. In this regard, the Learned Counsel appearing for the appellant would place his reliance to the **(2020) 2 SCC 66-Keystone realtors Private Limited Vs. Anil V. Tharthare & Ors.** However, the Learned Counsel for the second respondent would state that the said case would not have any application for this case in terms of the facts because in the said case after obtaining EC for 32,395.17 square meters, the project proponent, therein, added another 8,085.71 square meters

totalling 40,480.88 square meters of construction. The project proponent had applied for an expansion for the increased 8,05.71 square meters in which circumstances, the Hon'ble Supreme Court held that though by adding the expanded extent the project is within the threshold. Two crucial points to be considered is with respect to 7(ii) are that the use of the phrase "expansion with increase in production capacity beyond the capacity for which prior environment clearance has been granted". Secondly, the qualifying language referring to breaching the threshold limits "after expansion" is absent. An expansion can occur even after the grant of an EC when the project first crossed the lower limit stipulated in the threshold and it is not necessary for the project to breach the upper limit after the expansion. Therefore, a close reading of paragraph 7(ii) would support the interpretation that even after obtaining an EC if the project is expanded beyond the limits for which the prior EC is obtained, a fresh application would need to be made even if the expansion is within the upper limit prescribed in the Schedule.

- 16.** The Learned Counsel for second Respondent submitted that S.O 3977(E) dated 14.08.2018 has categorised the project activity under clause 1(c)(ii)(b) as Medium irrigation system which is more than 2,000 ha., and less than 10,000 ha., the project requires only to prepare EMP and to be dealt at State Level as 'B2' category.
- 17.** The appellant also pleaded that the Mudivedu Balancing Reservoir and Nethiguntapalli Balancing Reservoir are being constructed without prior EC in violation of the Judgment passed by the Tribunal in O.A. No.137 of 2021 (SZ). It is also submitted that the balancing reservoirs which were linked to the GNSS – HNSS projects were delinked, besides claiming that the total project capacity of Avulapalli is 2.5 TMC to bring it under "B1 – Category" and these acts for obtaining EC by misrepresentation and alteration of the fact is malafide and is the fraudulent attempt to render the Judgment of the Tribunal in O.A. No.137 of 2021 (SZ) dated 14.02.2022 infructuous.

18. The 2nd respondent has contended that the culturable command area for Mudivedu Balancing Reservoir is 832 Hectares and the Nethiguntapalli Balancing Reservoir is 742 Hectares. Also, Phase – I of these were developed with the prime objective of supplying drinking water to lakhs of people in that area and contended that the projects did not require EC and when the project proponent approached the answering respondent, it was clarified that the project did not require the EC.

19. The perusal of the copy of the EC issued in favour of Government of Andhra Pradesh for construction of Avulapalli Balancing Reservoir shows that the capacity of 2.5 TMC intending to supply drinking water (1.31 TMC) to around 2.76 lakh people and an ayacut/culturable command area of 9700 ha., in Chittoor District. The said EC was issued on 08.09.2022 after considering the recommendations of SEAC - AP which was accepted and the EC was granted.

20. After the matter was reserved for orders, since all the documents of SEIAA - AP are not furnished, this Tribunal had directed the 2nd respondent to produce the following documents for perusal:-

"a. SEIAA – File that dealt with the prior Environmental Clearance for Avulapalli Reservoir, Mudivedu Reservoir and Nethiguntapalli Reservoir, including the minutes of the SEAC and SEIAA meetings on the subject and copies of DPR and EMPs.

b. Project report relating to the drinking water based on Avulapalli, Mudivedu and Nethiguntapalli Reservoirs submitted to SEIAA along with the application or later based on directions of SEAC / SEIAA if any.

c. Minutes of meeting chaired by Chief Engineer held on 08.05.2022 in the chamber of the Chief Engineer NTR Telugu Ganga Project, Tirupati along with the supporting documents that have been submitted to NGT on the issue of executing Avulapalli Reservoir in phases."

21. The Tribunal perused the documents submitted by the Appellant and the documents produced by the Respondent along with Memo dated 06.04.2023 in response to the mail sent by this Tribunal. However, in view of certain discrepancies

and also noting that all the documents that were relied by SEAC – AP & SEIAA – AP for appraisal and the proceedings in the case were not filed, this Tribunal by its order dated 03.03.2023 has directed the 2nd respondent to **produce the original documents from the date of application by the project proponent till the issuance of EC.** It was also taken on record that the learned counsel for the SEIAA – AP stated that there is no physical file being maintained by the SEIAA – AP and everything is only online. Therefore, the learned counsel for the SEIAA – AP was directed to get the certified copies from the department relating to the above impugned order. The above orders were also acknowledged in the affidavit filed on 06.04.2023 by the SEIAA – AP while submitting the documents called for.

- 22.** In response, the Learned Standing Counsel for the Government of Andhra Pradesh has submitted an affidavit filed on behalf of the 2nd respondent/SEIAA – AP dated 06.04.2023 (but uploaded as dated 11-4-2023) along with a spiral bound volume that is said to have contained copies of the original documents which were submitted to SEIAA-AP, which were the basis for appraisal and grant of the EC. On 19.04.2023, the Learned Standing Counsel has submitted the copies of the Minutes of the 194th Meeting of the SEAC – AP held on 29.07.2022 and the Minutes of the 191st Meeting of the SEIAA – AP held on 12.08.2022.
- 23.** Besides hearing the Learned Counsels, all the documents furnished have been perused. In the Form-I submitted to SEIAA – AP, the caption 'Basic Information' serial no. 3 seeks information about the proposed capacity of the project, for which, the project proponent has claimed that Avulapalli Balancing Reservoir is proposed to be constructed with a capacity of 2.5 TMC to provide drinking water to 2.76 lakh people and irrigate an ayacut/culturalable command area of 9700 ha., in Chittoor District.

- 24.** Even in Form-II under the caption 'project configuration' the project capacity was reported to only as 2.5 TMC. Neither in Form-I nor in Form-II there was any mention at all that the proposed construction is part of Phase-I with project capacity of 2.5 TMC and that the total project capacity will be enhanced during phase-II from 2.5 TMC to 3.5 TMC. Even in the EMP submitted along with the Form-I the project capacity is reported to be 2.5 TMC and there is no mention of the project being implemented in Phase-I and Phase-II.
- 25.** A perusal of the said documents submitted by SEIAA – AP reveal that the G.O.461 dated 02.09.2020 by which the project was sanctioned is only an abstract of the said G.O. and contains only details of the financial sanction without any reference to the capacity of the project, proposed new ayacut area, apportionment of the water for drinking water needs, etc. From the documents furnished by the 2nd respondent, it is clear that only the abstract of the G.O. Rt. No.461 dated 02.09.2020 was produced before the SEIAA – AP.
- 26.** However, the applicant along with his Appeal submitted
- i. Copy of the abstract of G.O. Rt. No.461 dated 02.09.2020
 - ii. Check Slip accompanying the project/ scheme/ work estimate
 - iii. Report Accompanying the Estimate for the formation of Avulapalli Balancing Reservoir near Avulapalli Village in Somala Mandal of Chittoor District.
- 27.** A perusal of the check slip reveals that under the caption 'Scope work brief', it was indicated that the project will result in irrigation of a new ayacut of 40,000 Acres and also the project capacity is 3.5 TMC and under the caption 'Availability of water at site', it is reported that "Feeding from HNSS".
- 28.** Contrary to the details provided in the Check Slip accompanying the project as well as the Report Accompanying

the Estimate, the details furnished in Form – I, Form – II, and EMP produced before the SEAC - AP and SEIAA – AP indicate that the ayacut to be benefited is 9,700 Hectares and capacity of the project is 2.5 TMC, of which, 1.31 TMC will be utilized for drinking water purposes and that the project is based on utilization of self catchment and surplus flood water reaching the Gandikota Reservoir on Penna River and the balancing reservoir is proposed to store the flood waters, if available during the monsoon period.

29. The minutes of the SEAC – AP reveals that they have perused the G.O. Rt. No.461 dated 02.09.2020, but it is only the abstract of the said G.O. which is available in the records furnished to the SEIAA – AP which implies that the SEAC – AP has not done due diligence and has not applied its mind and has not even bothered to secure the details from the project proponent to ascertain whether the ayacut area is less than 10,000 Hectare before they have concluded that it falls under “B2 – Category” as per S.O.3977 (E) dated 14.08.2018. From the above, it is evident that the project proponent has misled, falsified and modified the project by claiming that new ayacut will be only 9,700 Hectares contrary to the orders of the Government to secure the EC under the “B2 – Category”.

30. It is also to be noted that the project proponent has indicated that the drinking water requirement will be 1.31 TMC to meet the drinking water needs of 2.75 Lakh people, though there is no such mention in the abstract of the said G.O. However, a perusal of the Report Accompanying the Estimate for the formation of Avulapalli Balancing Reservoir reveals that the three balancing reservoirs viz., Avulapalli, Mudivedu, and Nethiguntapalli sanctioned under the G.O. Rt. No.461 dated 02.09.2020, will have total live storage capacity of 6.5 TMC, i.e. capacity of Mudivedu Reservoir is 2 TMC, Nethiguntapalli Reservoir is 1 TMC and Avulapalli Reservoir is 3.5 TMC. It is proposed to irrigate 70,000 Acres of direct ayacut with 3.5 TMC and to stabilize an existing ayacut of 40,000 Acres under MI Tanks with 2 TMC together with providing drinking water

facilities and 1 TMC from all the three balancing reservoirs, which is contrary to the claim made by the project proponent before the SEAC - AP and SEIAA - AP.

- 31.** Moreover, there was no attempt by the SEAC - AP to ascertain whether for a population of 2.75 lakhs, the requirement of drinking water as per the National Standards will be 1.31 TMC or not. As per the National Rural Drinking Water Program, the minimum level of supply should be 70 Liters per capita per day (Lpcd) in rural areas, and in urban areas, the norm is 135 Lpcd. Even, if it is presumed that currently not even a single drop of drinking water is supplied to the said 2.75 Lakh population, if the requirement is 70 Lpcd, the water requirement will be 0.2479 TMC/Annum and if it is presumed that 135 Lpcd was proposed, the requirement will be 0.4785 TMC/Annum and in metropolitan areas, the norm is 155 Lpcd and if this is presumed to be the proposal, the requirement will be 0.55 TMC/Annum, whereas it is claimed that 1.31 TMC is meant for drinking water.
- 32.** This clearly shows that there is no critical analysis of the proposal that has been submitted by the project proponent and the proposal was accepted on its face value without any scrutiny. The above data also shows the dubious methods adopted by the project proponent in furnishing blatantly misleading information both in its Form - I, Form - IA and EMP. The SEAC - AP and SEIAA - AP have failed in their duty by merely relying on the information provided by the project proponent without calling for the DPR and the supporting documents along with the G.O. Rt. No.461.
- 33.** From the documents furnished by SEIAA - AP, to this Tribunal, it is seen that certain documents were submitted by the applicant in PARVISH portal online on 22.07.2022. These documents are (i) covering letter along with bank draft, (ii) Form-I and Form-II, (iii) Environmental Management Plan report (171 pages), (iv) G.O. Rt. 461 dated 02.09.2020, (v) G.O. Rt. 323 dated 24.06.2020 of Water Resources

Department, (vi) Risk and Disaster Management Plan, (vii) topomap and (viii) consultation and accreditation letter. In addition, it was claimed by SEIAA - AP, that the project proponent has submitted certain documents physically to SEAC - AP for appraisal. **Out of those documents, the documents listed below were submitted only after the grant of EC:-**

(a) detailed inflow and outflow of Srisailam project from 2017-18 to 2022-23 (upto 29.10.2022),

(b) year-wise inflows and outflows of Gandikota Reservoir (upto 31.10.2022) and

(c) Safety Letter of Chief Engineer, Central Design Organisations, Vijayawada dated 03.11.2022.

This is evident from the fact that though the EC was granted on 08.09.2022, the data in the above documents relate to periods upto 29.10.2022 and 31.10.2022 respectively and the safety letter is dated 03.11.2022 subsequent to the issuance of EC.

34. When the EC was granted on 08.09.2022, we do not understand how these documents were called for by SEAC - AP and how it was appraised for the project after the grant of EC. This only shows that an attempt is being made to show that detailed appraisal has been made without actually undertaking such an exercise and it is a blatant attempt to mislead this Tribunal.

35. In the documents filed by SEIAA - AP dated 06.04.2023, in the Index it was also stated that a modified Environmental Management Plan report was physically submitted to SEAC - AP for appraisal. However, the date on which it was submitted, the basis for modification of EMP plan submitted along with application etc., were not furnished in the affidavit filed by SEIAA - AP. A perusal of the original EMP as well as modified EMP reveals that for the first time information that the project will be implemented in two phases finds place only in the modified EMP. In the EMP submitted along with the application

the project proponent has not indicated that it will be implemented in phases, though SEIAA - AP in its counter affidavit has claimed that they were informed of the intention of the project proponent to implement the project in phases.

36. Though in the modified Environment Management Plan said to have been submitted physically to SEIAA - AP (undated document) it is claimed that the project will be implemented in Phases, and total capacity will be 3.5 TMC, but there is no reference to the new ayacut to be benefited totally in the Phase -I and Phase-II. **However, the set of papers along with Form - I, Form - II and the EMP which are said to have been submitted on 22.07.2022 to SEIAA-AP matches with the Environment Management Plan Report submitted by the Appellant. In these documents there is no mention whatsoever about the different phases and about the total capacity of the reservoir to be 3.5 TMC.**

37. The modified EMP was submitted to National Green Tribunal only after certain documents have been called for by National Green Tribunal by its email and by its order dated 03.03.2023. Admittedly, this undated modified EMP is not available in the documents submitted to SEIAA - AP online. Therefore, the above document has no value. It appears that this modified EMP plan has been prepared only to justify the stand taken by SEIAA - AP in its counter affidavit to justify its sanction of the EC claiming that the project proponent has submitted a proposal for phase-I of the project which needs further probe.

38. Therefore, the claim of SEIAA-AP as made out in para 8 of the counter affidavit and detailed below:

"8. The project proponent, in its proposal, had disclosed that while it had obtained administrative sanction for 3.5 TMC, the scope of the project presently implemented is only 2.5 TMC. The development or expansion into the second phase, for the remaining 1 TMC, is to be considered in detail and then implemented only in the future. Phase 1 of the project is predominantly for supply of drinking water. As phase 1 of the project contemplated a culturable command area of less than 10000 hectares, the project was classified under B2 category as per the Statutory Orders (SOs) of MoEF&CC, Govt. of India. Annexed hereto and marked as Annexure "5" are copies of the

relevant S.Os. Therefore, the only requirement was preparation of an Environment Management Plan.”

has to be considered as misleading since there is not even a whisper in the Minutes of the meeting of SEAC – AP that the Project capacity is 3.5 TMC and scope of present project is for Phase -I and the minutes also do not reveal that revised EMP was called for. Based on the deliberations on 29.07.2022 itself, the SEAC - AP has recommended for grant of EC and did not call for any additional particulars as claimed supra.

- 39.** Moreover, a perusal of the documents produced before SEIAA - AP reveal that, there is not even a shred of evidence to show that documents were produced to SEIAA - AP to show that the original proposal of Avulapalli reservoir which was part of the HNSS Scheme (involving drawal of water from Krishna river) has undergone a change whereby the source of the water has been changed to get it only from the self – catchment system and Gandikota Reservoir. This is contrary to the claim made by SEIAA - AP in its counter affidavit. If such a change occurred, the G.O.Rt. No.461 dated 02-09-2020 should have been amended only by the Government and the amended order should have been submitted to SEIAA - AP and to the Tribunal. The Chief Engineer, NTR Telugu Ganga Project, Tirupati cannot amend a Government order as he is not the competent authority to amend a Government Order.
- 40.** The minutes of the meeting held by SEAC - AP and SEIAA - AP also do not reveal that modified EMP was called for by SEAC - AP or SEIAA - AP from the Project Proponent. The Form-I, Form-II and the EMP filed along with the application do not indicate that the project will be implemented in Phases and the documents only show that the project capacity is 2.5 TMC and the ayacut to be benefitted by Avulapalli Reservoir will be 9700 Hectares only. Whereas as per the Government Orders the capacity of Avulapalli Reservoir is 3.5 TMC, of which, it is proposed to utilize 2 TMC for providing irrigation facilities for 40,000 Acres of new ayacut, 1 TMC for stabilization of 20,000

Acres of existing ayacut under the MI Tanks and 0.5 TMC to provide drinking water for Punganur & Piler constituencies and this information was not furnished in the documents to SEIAA - AP.

41. If the contention of SEIAA - AP, as claimed in their counter affidavit, that the PP has informed that the ultimate capacity is 3.5 TMC and the full details of new ayacut to be benefited is true, the relevant document should have been produced to SEIAA - AP by the PP and in turn SEIAA - AP should have produced the same before the Tribunal, especially in the light of the orders of this Tribunal wherein SEIAA - AP was asked to produce all the documents relied by them for grant of EC.
42. In the absence of any discussion about the so called Phase -I and likely Phase-II in the Minutes of the meeting of SEAC and SEIAA-AP, the claims made in the counter have to be treated only as an afterthought and an attempt to justify their action. The counter affidavit transcends beyond the facts produced before SEIAA - AP and SEAC - AP and it is a blatant effort by the Officer who filed the counter to mislead the Tribunal.
43. It is clear that the PP has misled the SEAC and SEIAA - AP and it appears that SEIAA - AP is going out of its way to justify the grant of EC and in the process made false claims in their counter affidavit filed before this Tribunal.
44. In the decision reported in **Hanuman Laxman Aroskar Vs. Union of India (2019) 15 SCC 401**, the Hon'ble Apex Court has considered the importance of Form-I application and observed that:

"82....The failure on part of a project proponent to disclose material information in Form 1 as stipulated under the 2006 notification has a cascading effect on the salient PART E 48 objective which underlies the 2006 notification. The 2006 notification represents an independent code with the avowed objective of balancing the development agenda with the protection of the environment. An applicant cannot claim an EC, under the 2006 notification, based on substantial or proportionate compliance with the terms stipulated in the notification. The terms of the notification lay down strict standards that must be complied with by an applicant seeking an EC for a proposed project. The burden of establishing environmental compliance rests on a

project proponent who intends to bring about a change in the existing state of the environment. Whereas, in the present case, there has thus been a patent failure on part of the project proponent to make mandatory disclosures stipulated in Form 1 under the 2006 notification, that must have consequences in law. There can be no gambles with the environment: a 'heads I win, tails you lose' approach is simply unacceptable; unacceptable if we are to preserve environmental governance under the rule of law."

45. It is also observed in the same decision at Para 126 which reads as follows:

"126. Deliberate concealment or the submission of false or misleading information or data material for screening, scoping, appraisal or decision on the application makes it liable for rejection. That the project proponent must submit all information and data without concealing relevant features is a basic hypothesis and expectation of the 2006 notification." (emphasis supplied)

46. It is clear from the decision that the project proponent is expected to furnish all necessary details which will have impact on environment on account of the project in Form-I application and that is very important document which is being relied on by the Expert Appraisal Committee for the purpose of preparing the ToR which is intended for the purpose of conducting a detailed study on environment impact of the project. If any of the important aspects are deliberately or wilfully omitted by the project proponent, then there will be no possibility for the Expert Appraisal Committee to consider those aspects while formulating the ToR and also later consider the same at the time of appraisal and that will vitiate the proceedings.

47. In view of the reasons cited supra, it is clear that the Project Proponent has concealed information, furnished false information and has not furnished all details of the different phases of the project. Therefore, it cannot be said that the proposal was for Phase-I and it cannot also be said that PP has reported that the total capacity of the project as 3.5 TMC. The Issue Nos.1 & 2 are answered accordingly.

Issue No. 5:

48. It is also noted that along with the memo filed on 06.04.2023 on behalf of the 2nd respondent certain documents were furnished including the letter dt. 01.08.2022 addressed to the

Member Secretary – SEIAA by the Chief Engineer, NTR Telugu Ganga Project, Tirupati which is extracted below:

"With reference to the above application, the SEAC appraised the proposal of the "Construction of Avulapalli Reservoir" near Avulapalli (v) in Somala Mandal, Chittoor District in the meeting held on 29.07.2022. During the appraisal, the committee requested clarifications on some of the issue and modifications in the EMP submitted. In this connection, I am herewith submitting the requested documents related to the issues raised during the meeting and the revised documents for necessary action.

Therefore, I request you to issue environmental clearance to the phase I of the construction of the Avulapalli Reservoir at the earliest."

- 49.** However, no such letter is found in the documents filed along with the affidavit on 06-04-2023 and the minutes of the meeting of SEAC - AP also do not support the claim made in the above letter. In fact, the SEAC - AP in its meeting held on 29.07.2022 only refers to the Chief Engineer's letter dated 29.07.2022 which is said to have furnished the breakup of the ayacut area of 9,700 Hectares and there was no mention whatsoever about 'clarifications on some of the issue and modifications in the EMP submitted'.
- 50.** If the above documents were really called for by SEAC and are submitted to SEAC after 01.08.2022, as claimed in the letter dated 01.08.2022, the SEAC - AP would have conducted one more round of meeting to appraise the said documents called for and then only should have made a recommendation to the SEIAA - AP. However, on 29.07.2022 itself, the SEAC - AP recommended to issue EC with the four conditions:-

"1) The proponent shall comply with the proposals furnished in the Environmental Management Plan.

2) The project proponent shall not enhance the ayacut beyond 9,700 Hectares.

3) The project proponent shall have proper rehabilitation plan and shall implement the same.

4) This EC application is considered for construction of the project only and subsidiary canals not included."

The above conditions also do not relate to calling for further information/documents. Therefore, there is no value to the

above document and we are constrained to consider it to be a fabricated record.

- 51.** A perusal of the list of documents reveals that in spite of the specific direction of this Tribunal, the documents relating to Mudivedu Reservoir and Nethiguntapalli Reservoir and copies of the DPR were not furnished. These documents were called for to verify the veracity of certain claims made by SEIAA – AP in their counter affidavit to the allegations made by the appellant and correctness of the advisory given by the SEIAA-AP that construction of Mudivedu and Nethiguntapalli balancing reservoirs do not require prior EC. This verification is also necessitated in view of the orders passed by this Tribunal in O.A. No. 137 of 2021 dated 14.02.2022, wherein one of us (Hon'ble Expert Member) was a party, that a fresh EC is required for construction of Avulapalli, Mudivedu and Nethiguntapalli balancing reservoirs which were sanctioned as part of G.O.Rt.No.461 dated 02.09.2020.
- 52.** Moreover, in the counter affidavit filed by the 2nd respondent on 08.12.2022, the SEIAA – AP in Para (16) of the affidavit have stated that

"The culturable command area for balancing reservoir near Mudivedu Village was 832 hectares and that near Nethiguntapalli was 742 hectares. Also, Phase 1 of these were developed with the prime objective of supplying drinking water to lakhs of people in the area. Therefore, the projects did not require EC. In addition, the Answering Respondent states that the project proponent had approached the Answering Respondent for clarification before commencing construction of the reservoirs at Mudivedu and Nethiguntapally".

- 53.** However, a perusal of the report accompanying the estimate for the formation of Avulapalli Balancing Reservoir reveals that the total capacity of all three reservoirs put together will be 6.5 TMC, of which, Avulapalli Reservoir will be 3.5 TMC, Mudivedu Reservoir will be 2 TMC and Nethiguntapalli Reservoir will be 1 TMC and it is proposed to irrigate 70,000 Acres of direct ayacut with 3.5 TMC of all the three reservoirs put together, of which, 40,000 Acres new ayacut area will be falling under Avulapalli

Balancing Reservoir and the remaining 30,000 Acres of new ayacut will be under the remaining two projects viz., Mudivedu and Nethiguntapalli Balancing Reservoirs. Therefore, the information provided before the SEIAA – AP that the ayacut to be benefited will be 832 Hectares and 742 Hectares under the Mudivedu and Nethiguntapalli Balancing Reservoirs respectively is blatantly false and by any stretch of imagination, the EC will be required for the two projects, since as admitted by the 2nd respondent that the irrigation project (Medium/Minor) needs a prior EC if the new ayacut to be benefited is more than 2,000 Hectare as per S.O.3977 (E) dated 14.08.2018.

- 54.** Moreover, these two projects are also part of the same G.O. where the source of drawal of water is reported to be from HNSS. In O.A. No.137 of 2021 (SZ), the Special Bench of the National Green Tribunal has held that a fresh EC has to be obtained for the project. As admitted by the SEIAA – AP, the advisory given that prior EC is not required for the above two balancing reservoirs is based on the false assertion of the project proponent that the new ayacut to be benefited under the Mudivedu Balancing Reservoir is 832 Hectares and Nethiguntapalli Balancing Reservoir is 742 Hectares. Therefore, we hold that the issue of construction of the Mudivedu and Nethiguntapalli Reservoirs is illegal and the issue No.5 is held accordingly.

Issue No. 3:

- 55.** Failure to seek required information only reveals that there was no application of mind on the part of the SEIAA – AP and adverse inference has to be drawn that they were too eager to grant the EC, without detailed scrutiny of DPR and the documents associated with the G.O.Rt. No.461 dt.02.09.2020 and simply based on the false information and also offered advisory for two projects that EC is not required, though they require prior EC.
- 56.** We also fail to understand when this Tribunal has held that prior EC is required for all the three balancing Reservoirs what

prompted the Project proponent to seek clarification from SEIAA without furnishing full details as well as the orders of this Tribunal in O.A 137 of 2021 (SZ). The act of the project proponent smacks of malafide which also calls for a detailed probe.

- 57.** It is extremely disturbing to note that a Government Department, in gross violation of the environmental laws, can go to the extent to implement an Irrigation Project by resorting to falsehood, misrepresentation and cheating the SEIAA. If a Government Department can stoop to the levels they have as in the instant case, nothing can prevent an agency with commercial gains to split the project into different phases to avoid EC or change the category from 'A' to 'B1' or even 'B2' category.
- 58.** Reverting to the contention that there is no illegality in splitting a project into phases it is pertinent to fall back on decision reported in **Keystone Realtors Private Limited Vs. Anil V. Tharthare and Ors. (2020) 2 SCC 66**, wherein the Hon'ble Apex Court observed in respect of the EIA Notification, 2006 that

"In a case where the text of the provisions requires interpretation, this Court must adopt an interpretation which is in consonance with the object and purpose of the legislation or delegated legislation as a whole. The EIA Notification was adopted with the intention of restricting new projects and the expansion of new projects until their environmental impact could be evaluated and understood. It could not be disputed that as the size of the project increases, so does the magnitude of the project's environmental impact. This Court could not adopt an interpretation of the EIA Notification which would permit, incrementally or otherwise, project proponents to increase the construction area of a project without any oversight from the Expert Appraisal Committee or the SEAC, as applicable. It was true that there may exist certain situations where the expansion sought by a project proponent is truly marginal or the environmental impact of such expansion was non-existent. However, it was not for this Court to lay down a bright-line test as to what constitutes a 'marginal' increase and what constitutes a material increase warranting a fresh Form 1 and scrutiny by the Expert Appraisal Committee. If the government in its wisdom were to prescribe that a one-time 'marginal' increase in project size, within the threshold limit stipulated in the Schedule, could be subject to a lower standard of scrutiny without diluting the urgent need for environmental protection, conceivably this Court may give effect to such a provision. This would be subject to any challenge on the ground of their being a violation of the precautionary principle. However, as the EIA Notification currently stands, an expansion within the

limits prescribed by the Schedules would be subject to the procedure set out in the notification.

A core tenet underlying the entire scheme of the EIA Notification was that construction should not be executed until ample scientific evidence had been compiled so as to understand the true environmental impact of a project. By completing the construction of the project, the appellant denied the third and fourth respondents the ability to evaluate the environmental impact and suggest methods to mitigate any environmental damage."

- 59.** From the above, it is clear that it is categorically held by the Hon'ble Supreme Court that until ample scientific evidence has been compiled to understand the true environmental impact of the project, construction should not be executed.
- 60.** Further, in **Key Stone Realtors Private Limited Vs. Anil V. Tharthare & Ors. (2020) 2 SCC 66**, the Hon'ble Apex Court had deprecated the practice of dividing the project and starting the project within a lesser threshold limit and thereafter, slowly increase the extent of construction which will deny the proper impact assessment of the entire project on environment which will have to be assessed by the Expert Appraisal Committee before considering the project and before granting EC.
- 61.** In the instant case, the project proponent has deliberately furnished false information before the SEIAA – AP and has claimed in the counter affidavit that the project is only Phase – I and application will be made for EC for Phase – II separately, though the administrative sanction was obtained for 3.5 TMC (Phase I - 2.5 TMC + Phase II – 1 TMC). Even without going into the issue of whether the source of water is from interstate rivers, in which case it becomes "A – Category", the mischievous attempt by the project proponent in falsely claiming that the project is for 2.5 TMC and it will benefit only 9,700 Hectares is basically an attempt to secure the EC under "B2 – Category" to avoid the rigors of EIA Study and public scrutiny.
- 62.** Had the project proponent furnished the details of the approval accorded by the Government or SEAC/SEIAA summoned full

details and documents and carried out due diligence, it would have been very clear that the total capacity of the Avulapalli Balancing Reservoir is 3.5 TMC which will benefit 40,000 Acres of new ayacut, stabilization of 20,000 Acres of the existing ayacut under MI tank and apportionment of 0.5 TMC for drinking water purpose. This will change the category of the project from "B2 - Category" to "B1 - Category", in case the source of water does not involve the interstate rivers. The G.O. Rt. No.461 dated 02.09.2020 categorically states that the source of water is from HNSS and it involves drawl of water from Krishna River which is an interstate river and this Tribunal in **O.A. No.137 of 2021 (SZ)** by Judgment dated 14.02.2022 held that a fresh EC has to be obtained for the project. It is relevant to be noted that the State of Andhra Pradesh in its affidavit filed on 07.02.2022 in the O.A 137 of 2021 stated as follows:-

"11. Further an additional affidavit filed on the same day, it is stated as follows:-

"6. It is submitted that at this stage it is relevant to point out that the quantum of water in Srisaillam Reservoir is filled up through various means and channels i.e., through natural flows of river, flood water and rain water. In the recent time, one scheme namely Rayalaseema Lift Scheme, a new Lift Scheme, is being proposed in the foreshore of Srisaillam Reservoir, depending up on the flood waters of Krishna as well as inflows from self-catchment, to cater the needs of various canals. It is pertinent to mention here that the GNSS and HNSS projects are independently in operation and functioning from foreshore of Srisaillam Reservoir well before the initiation of Rayalaseema Lift Scheme without any dependency on Rayalaseema Lift Scheme. Unlike Rayalaseema Lift Scheme the proposed inter-linked GNSS-HNSS Lift irrigation scheme takes off from GNSS Canal system depending not only on the flood waters of River Krishna but also on the inflows received from self-catchment of River Penna. Hence, it is tangible that GNSS-HNSS Lift irrigation scheme is not reliance of Rayalaseema Lift Scheme and is not linked. This scheme is formulated chiefly to provide drinking water facilities to the tail end areas of HNSS project which are severe drought prone in Chittoor District to fulfill the scope and aim of HNSS project and as specified in the environmental clearance given by MoEF to HNSS project. This scheme utilizes the surplus flood water of River Krishna from GNSS main canal and also contemplates to lift water by restricting 38 TMC of water from Srisaillam Reservoir, for which Environmental Clearance is already accorded and it is a part of approved Projects of GNSS and HNSS to fulfil the drinking water needs of drought prone areas of Chittoor district, as covered in the approved Environmental Clearances. Hence there is no modification in the scope of both approved GNSS and HNSS projects. As such, the matter of record that an Original Application No. 71 of 2020 was filed by one Gavinolla Srinivas in which validity of Rayalaseema Lift Scheme was questioned on the ground that such water pumping schemes should be mandatorily allowed only with the prior Environmental Clearance, is not applicable to the proposed GNSS-HNSS Lift Irrigation Scheme.

7. It is submitted that the applicant in the present case is trying to induce the thought that judgment of OA No. 71 of 2020 is applicable on the sole ground that the source of both the GNSS and HNSS projects and Rayalaseema Lift scheme is Srisaillam Reservoir. As a matter of fact GNSS & HNSS projects are functioning independently well before the formulation of Rayalaseema Lift scheme without any dependency on it. **The GNSS-HNSS Lift Irrigation Scheme is proposed to utilize the self catchment inflows of Penna basin in addition to flood waters of Srisaillam Reservoir....."**

- 63.** From the above, it is revealed that the project relies on drawal of the excess water from the Srisaillam Reservoir (on Krishna River) which is an interstate river and consequently, the category may become "A – Category" to be granted by the MoEF&CC as per S.O 1886(E) dated 20-4-2022 which stipulates that "Irrigation projects involving Inter-State issues shall be appraised at Central level without change in category".
- 64.** The contention of the 2nd respondent that *"there is no illegality in splitting the proposed plan into two phases and the EIA Notification itself provides for a mechanism for granting fresh EC for expansion projects"* without furnishing the full details of the new ayacut to be benefitted by the Project as conceived and approved by the Government, if accepted will negate the very objective of categorization of the projects as per the EIA Notification and such an argument, if accepted, is fraught with serious environmental consequences since all the projects can be split into phases either to avoid EC or to shift the project category into "B2 – Category" to avoid rigors of EIA Study and public hearing as happened in the instant case.
- 65.** In **O.A. No.149 of 2016 (SZ) [V. Ramasubbu Vs. Union of India & Ors.]**, this Tribunal has held that the entire composite project should be subjected to the scrutiny of the appropriate authorities for securing the EC and it cannot be split into phases which will deny the assessment of the impact of the entire project on the environment. Having conceived the project of higher capacity, the project proponent cannot attempt to obtain clearances from the regulatory authorities in piecemeal which will deny the opportunity of the Expert Appraisal Committee to conduct a scientific assessment of the

impact of the entire project on the environment. The order of the Tribunal in **O.A. No.149 of 2016 (SZ)** was upheld by the Hon'ble Supreme Court in **Civil Appeal Diary No.42311 of 2022 (M/s. Bahri Estates Pvt. Ltd. Vs. Union of India & Ors.)** dated 25.01.2023.

- 66.** Therefore, the claim that for administrative convenience the project can be implemented in phases by securing prior EC for Phase-I only, that too without furnishing the full details of the other Phases of the project already conceived and sanction obtained from the Government, is not sustainable and the issue No.3 is answered accordingly.

Issue No. 4:

- 67.** The contention of the second respondent that the capacity of the reservoir project does not determine the category under which the project must be classified for the purpose of obtaining EC could be true only to some extent. The capacity of the Reservoir which determines the potential for irrigation extent of ayacut /culturable command is also relevant since the irrigation extent of ayacut/culturable command area due to the reservoir determines the category of the project and requirement of obtaining EC. In the instant case, the sanction accorded by the Government of Andhra Pradesh vide G.O. Rt. No.461 dt. 02-09-2020 is for three reservoirs and the irrigation extent of new ayacut is 70,000 Acres, which clearly pushes the category of the project at least into 'B1' instead of 'B2' category. Moreover, the said Government order also approves the source of water as HNSS and the EMP also indicates source of water as HNSS and GNSS besides self catchment and surplus waters from Gandikota Reservoir, as a result the project may have to be treated as Category 'A' since it involves drawal of waters from Krishna river an interstate river as per the latest notification of MoEF&CC. In the result, it is held that the SEIAA – AP has erred considering the project as falling under 'B2 – Category' by blindly relying on the details furnished by the project proponent.

- 68.** In addition, the PP has violated the EC condition by not obtaining the clearance from NCS DP prior to commencement of the project and the contention in the counter affidavit of SEIAA - AP that it was a routine condition is not acceptable. For any change in the conditions, the matter has to be referred to SEAC - AP/SEIAA - AP for examination and amendment of the EC condition(s).
- 69.** The importance of appraisal by the SEAC - AP prior to the grant of EC has been emphasised in several cases by National Green Tribunal and the Hon'ble High Courts. The Hon'ble Supreme Court in **Bengaluru Development Authority Vs. Mr. Sudhakar Hegde and Ors., Civil Appeal No. 2566 of 2019** held that appraisal by the SEAC being structured and defined by the EIA Notification, 2006, the SEAC is required to conduct a detailed scrutiny of the application and other documents submitted by the applicant for the grant of EC. It was also held by the Hon'ble Supreme Court that:

".....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 provides¹⁸, 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.

.....

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."

- 70.** From the above, it is clear that SEAC is under an obligation to record the specific reasons upon which it recommended the grant of EC and the reasons furnished by the SEAC constitute the link upon which the SEIAA either grants or rejects the EC. However while sanctioning the EC, the SEAC - AP and SEIAA - AP have miserably failed in securing all the relevant documents for carrying out a detailed scrutiny and it appears that they were too eager to enable the PP to undertake construction of Avulapalli Reservoir without EIA study and Public Hearing by categorising it as 'B2'. They also enabled construction of Mudivedu and Nethiguntapalli reservoirs without EC which amounts to abject failure of their duties and abuse of power vested in them. Therefore, issue No.4 is held accordingly.
- 71.** The Tribunal strongly expresses its displeasure that the mechanical manner in which the SEAC - AP and SEIAA - AP are casually scrutinizing the proposals without summoning the required details to ascertain the actual category under which the project needs EC and also to ascertain whether it can be granted by the SEIAA - AP in the first place or not.
- 72.** In several cases, this Tribunal has noted that with regard to the State Government projects, the SEIAA is showing tendency to trust the information provided by the project proponent in respect of the State Government projects and without due diligence and critical scrutiny, ECs are being granted under 'B2 - Category' and in some cases, under 'B1 - Category', though it needs to be considered as 'A - Category' project.
- 73.** Change of category will have serious implications, since under 'B2 - Category', Environmental Impact Assessment and public hearing are dispensed with and projects which require critical scrutiny by national level experts are being considered at the state level that too without due diligence. This can have serious and long lasting impacts on the environment and defeat

the very purpose of Environment (Protection) Act, 1986. This Tribunal considers such a situation arises because the SEIAA functions under the direct supervision of the State Government. The MoEF&CC may examine the possibility of bringing the SEIAAs under the direct administrative control of MoEF&CC even if the officers are drawn from the pool of State Government/All India Service officials of the concerned State.

74. For the reasons discussed supra, the SEIAA – AP and SEAC – AP have erred in granting EC under 'B2 - Category', as the project falls either under 'B1' or 'A' category. Therefore, the EC is liable to be set aside.

75. In the result,

- I.** The appeal is allowed setting aside the EC granted by the 2nd Respondent dated 08.09.2022 in favour of the State of Andhra Pradesh for construction of the Avulapalli Balancing Reservoir.
- II.** A penalty of Rs.100 Crores is imposed on the Project Proponent /Water Resources (Project – III) Department, State of Andhra Pradesh payable to the Krishna River Management Board within a period of 03 (Three) months for their attempt to secure EC under 'B2 – Category' to avoid a detailed environmental impact study, public hearing, etc. The said amount may be utilized for pollution abatement in Krishna River.
- III.** In view of the Clause (I) cited supra, the project works in Avulapalli, Mudivedu, and Nethiguntapalli Balancing Reservoirs should be stopped forthwith and an affidavit of compliance to be filed on or before 25.05.2023.
- IV.** A Committee comprising (i) the senior most Scientist from Integrated Regional Office - MoEF&CC Vijayawada, (ii) a Senior Engineer from CPCB and (iii) a Senior Engineer of Krishna River Management Board to be constituted to assess the environmental damage caused and arrive at the environmental compensation to be levied on the Project Proponent.

- V.** It is recommended that the Secretary to GOI, Ministry of Jalsakthi to constitute a committee of Engineers from Central Water Commission and Krishna River Management Board to study the scheme sanctioned by Government of Andhra Pradesh vide G.O.Rt No.461 dated 02-09-2020 has been modified and if yes, assess whether the source of water involves drawal of water from Krishna river and submit a report to MOEF&CC for deciding the category of the project as "A" or "B1" for consideration of grant of EC.
- VI.** It is recommended that the Secretary – MoEF&CC to order an enquiry **(i)** to ascertain the officers of the SEIAA – AP responsible for attempting to create the evidence to show that the prior EC proposal was for Phase – I of the project, **(ii)** to ascertain the officers representing the project proponent, responsible for filing the fabricated documents before this Tribunal through the SEIAA – AP, and **(iii)** to ascertain whether there is any collusion by officers of the SEIAA – AP and officers representing the project proponent to falsify the reports.
- VII.** The MoEF&CC may examine the possibility of bringing the SEIAAs under the direct administrative control of MoEF&CC even if the officers are drawn from the pool of State Government/All India Service officials of the concerned State.
- 76.** With the above directions the Appeal is allowed and there will be no costs.

.....Sd/-J.M.

(Smt. Justice Pushpa Sathyanarayana)

.....Sd/-.....E.M.

(Dr. Satyagopal Korlapati)

Internet – Yes/No
All India NGT Reporter – Yes/No

Appeal. No.56/2022(SZ)
11th May, 2023 (AM)&(MN).

Copy to:

1. Water Resource Department, Andhra Pradesh,
2. MoEF&CC, Regional Office, Vijayawada,
3. Central Pollution Control Board,
4. Krishna River Management Board,
5. Ministry of Jal Sakti.