

Item No. 01

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

Original Application No. 45/2019/EZ

R. K. Singh

Applicant(s)

Versus

Union of India & Ors

Respondent(s)

Date of hearing: 09.09.2020

**CORAM: HON'BLE MR. JUSTICE S. P. WANGDI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

For Applicant(s): Mr. Sourabh Sharma, Advocate
For Respondent(s): Mr. Gora Chand Roy Choudhury,
Advocate for Respondent No.1,
Mrs. Aishwarya Rajyashree, Advocate for
Respondent Nos. 2,4&5,
Mr. Ashok Prasad, Advocate for
Respondent No.3,
Mr. Surendra Kumar, Advocate for
Respondent No.6.
Mr. Sibojyoti Chakraborti, Advocate for
CPCB,

ORDER

1. The applicant has filed this case alleging non-implementation of Environmental Impact Assessment Notification, 2006 in the State of Jharkhand in respect of building constructions. It is stated that the State of Jharkhand has undertaken various major constructions of buildings particularly in the cities of Ranchi, Jamshedpur, Bokaro and Deogarh without obtaining mandatory *prior*

environmental clearance under the EIA Notification, 2006 even when it is mandatory in respect of structures having more than 20,000 Sq. Ms. which is categorized as Category 8(a) in the schedule to the notification. Specific mention has been made of the Jharkhand High Court Building, Jharkhand Vidhan Sabha, P & M Hi-Tech City Centre Mall, Jamshedpur, Vijaya Garden Homes and Aastha Twin City.

2. Apart from the above, it is stated that there are large number of other structures and, as per the information obtained from the State Government under the RTI application, only 20 buildings and construction projects have thus far applied for environmental clearance since the year 2006. As a consequence, the ecology of the State has been affected due to the detrimental impact on the air quality, depletion in the level and the quality of the ground water and on soil fertility caused by indiscriminate disposal of construction and demolition wastes. According to the applicant, if environmental clearance had been obtained, it would have taken care to ensure that such deleterious effect did not occur.
3. The matter was taken up on 02.09.2019 when notice was issued upon the respondents and, having regard to the

nature of the case, a committee was constituted comprising of the following: (i). a representative of the Regional Office of the MoEF & CC at Ranchi and (ii) a representative of the SEIAA, Jharkhand. The SEIAA Jharkhand was directed to the nodal agency for coordination and logistic support. The committee was directed to verify on the merits of the statements contained in the Original Application and to submit a report and further, if the factual statements made in the application were found to be correct, appropriate action was directed to be taken in accordance with law against those who were in violation.

4. On 23.09.2019 an affidavit was filed on behalf of the Respondent no. 3, SEIAA Jharkhand which clearly revealed that the Assembly Building (Vidhan Sabha, Jharkhand) had been constructed without environmental clearance and a proposal had been submitted on 11.09.2017 for environmental clearance to the MoEF & CC in the violation category. The SEIAA, Jharkhand, to which the matter was referred proceeded with the ToR process. By order dated 23.09.2019, we had also indicated that since the cases fell under the purview of the violation notification dated 14.03.2017, action to be taken against the violators and

payment of environmental compensation assessed by the CPCB for environmental damage caused due to constructions. Alarming state of affairs was also noted in our order dated 06.01.2020 and on the next date i.e. 16.03.2020, it was noted that the window provided under the MoEF Notification dated 14.03.2017 had expired and, therefore, its validity having lapsed, it would be appropriate for the MoEF & CC to arrive at a decision. The State Government on its part was directed to recover the environmental compensations assessed by the CPCB as conveyed vide their affidavit filed on 12.03.2020. Show was also directed to be filed by the State Government to showcase as to why compensation assessed by the CPCB be not directed to be paid. Order dated 27.07.2020 would reveal that according to the learned Counsel for the State Government, EIA proceeding in respect of the Vidhan Sabha building had been completed and environmental compensation also granted.

5. The State of Jharkhand filed an affidavit on 09.08.2020 to place on record the present status in respect to the matter according to which is as follows:-

1.1 Status of EC of Buildings mentioned in the plea:-

Sl.	Name	of	Urban Local	Environmental	Action Taken
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No.	Building/Construction	Bodies (ULB)	Clearance (EC) Status	
1	P&M Hi-Tech City Centre Mall	Jamshedpur	Not Obtained yet	Directed by ULB to obtain the EC at the earliest (via letter no. 1312 dated 19.06.2020).
2	Vijaya Garder Homes	Jamshedpur		

1.2 Status of EC of other Buildings in the

Jharkhand:-

Sl. No.	Name of Applicant	Urban Local Bodies (ULB)	Environmental Clearance (EC) Status	Action Taken
1.	Ashiana housing Ltd. Building Permit No.	Adityapur Municipal Corporation	EC obtained via letter no. EC/SEIA/2018/19/2102/2018/334 dated 02.08.2019	Not Applicable
2.	Juidco Ltd. File No. Dhanbad Municipal Corporation/AH/0230/W37/2019	Dhanbad Municipal Corporation	EC had been applied for the old site (in fire zone) which was earlier selected for construction but as new site of construction is being looked for so EC status is not pertaining to this project unit finalization of new site.	
3.	P&M Infrastructure Pvt. Ltd.	Jamshedpur Notified Area Committee	Without EC	Directed by ULB to obtain the EC at the earliest via i. Lt. No. 1312 dated 19.06.2020 ii. Lt. No. 1845 dated 02.09.2020.
4	M/s Vijaya Homes Maker Pvt. Ltd.	Jamshedpur Notified Area	Without EC	Directed by ULB to obtain the EC at the earliest via i. Lt. No. 1312 dated 19.06.2020. ii. Lt no. 1845 dated 02.09.2020

5	Sri Phanidra Mahto, Director, Vijaya Homes Pvt. Ltd. 2 nd Floor Gajraj mention Bistupur Building Permit No. 27226	Jamshedpur Notified Area Committee	Without EC	Directed by ULB to obtain the EC at the earliest via i. Lt. N o. 1312 dated 19.06.2020. ii. Lt. No. 1845 dated 02.09.2020.
6	Sri Phanidra Mahto, Director, Vijaya Homes Pvt. Ltd. 2 nd Floor Gajraj mention Bistupur Building Permit No. 27226	Jamshedpur Notified Area Committee	Without EC	Directed by ULB to obtain the EC at the earliest via i. Lt. N o. 1312 dated 19.06.2020. ii. Lt. No. 1845 dated 02.09.2020
7	Director, Vijaya Homes Pvt. Ltd. 2 nd Floor Gajraj mention Bistupur Building Permit No. 27426	Jamshedpur Notified Area Committee	Without EC	Directed by ULB to obtain the EC at the earliest via i. Lt. N o. 1312 dated 19.06.2020. ii. Lt. No. 1845 dated 02.09.2020
8	Sri Phanidra Mahto, Director, Vijaya Homes Pvt. Ltd. 2 nd Floor Gajraj mention Bistupur Building Permit No. 27809	Jamshedpur Notified Area Committee	Without EC	Directed by ULB to obtain the EC at the earliest via i. Lt. N o. 1312 dated 19.06.2020. ii. Lt. No. 1845 dated 02.09.2020
9	Sri Phanidra Mahto, Director, Vijaya Homes Pvt. Ltd. 2 nd Floor Gajraj mention Bistupur Building Permit No. 27898	Jamshedpur Notified Area Committee	Without EC	Directed by ULB to obtain the EC at the earliest via i. Lt. N o. 1312 dated 19.06.2020. ii. Lt. No. 1845 dated 02.09.2020
10	Sri Phanidra Mahto, Director, Vijaya Homes Pvt. Ltd. 2 nd Floor Gajraj mention Bistupur Building Permit No. 28227	Jamshedpur Notified Area Committee	Without EC	Directed by ULB to obtain the EC at the earliest via i. Lt. N o. 1312 dated 19.06.2020. ii. Lt. No. 1845 dated 02.09.2020

11	Sri Shyam Sundar Gaur, Director Vijaya Homes Pvt. Ltd. 2 nd Floor Gajraj Mention Bistupur Building Permit No. 28314	Jamshedpur Notified Area Committee	Without EC	Directed by ULB to obtain the EC at the earliest via i. Lt. N o. 1312 dated 19.06.2020. ii. Lt. No. 1845 dated 02.09.2020
12	Sri Shyam Sundar Gaur, Director Vijaya Homes Pvt. Ltd. 2 nd Floor Gajraj Mention Bistupur Building Permit No. 28322	Jamshedpur Notified Area Committee	Without EC	Directed by ULB to obtain the EC at the earliest via i. Lt. N o. 1312 dated 19.06.2020. ii. Lt. No. 1845 dated 02.09.2020
13	Sri Shyam Sundar Gaur, Director Vijaya Homes Pvt. Ltd. 2 nd Floor Gajraj Mention Bistupur Building Permit No. 28333	Jamshedpur Notified Area Committee	Without EC	Directed by ULB to obtain the EC at the earliest via i. Lt. N o. 1312 dated 19.06.2020. ii. Lt. No. 1845 dated 02.09.2020
14	Sri Shyam Sundar Gaur, Director Vijaya Homes Pvt. Ltd. 2 nd Floor Gajraj Mention Bistupur Building Permit No. 28453	Jamshedpur Notified Area Committee	Without EC	Directed by ULB to obtain the EC at the earliest via i. Lt. N o. 1312 dated 19.06.2020. ii. Lt. No. 1845 dated 02.09.2020
15	Sri Shyam Sundar Gaur, Director Vijaya Homes Pvt. Ltd. 2 nd Floor Gajraj Mention Bistupur Building Permit No. 28557	Jamshedpur Notified Area Committee	Without EC	Directed by ULB to obtain the EC at the earliest via i. Lt. N o. 1312 dated 19.06.2020. ii. Lt. No. 1845 dated 02.09.2020
16	M/s Tribhumi Housing Pvt. Ltd. Sri Shyam Sundar Gaur, Director,	Jamshedpur Notified Area	Without EC	Directed by ULB to obtain the EC at the

	Vijaya Homes Pvt. Ltd. 2 nd Floor Gajraj Bistupur Building Permit No. 28612	Committee		earliest via i. Lt. N o. 1312 dated 19.06.2020. ii. Lt. No. 1845 dated 02.09.2020
17	M/s Gailtricks Developers Pvt. Ltd. Sri Shyam Sundar Gaur, Director, Vijaya Homes Pvt. Ltd. 2 nd Floor Gajraj Bistupur Building Permit No. 28625	Jamshedpur Notified Area Committee	Without EC	Directed by ULB to obtain the EC at the earliest via i. Lt. N o. 1312 dated 19.06.2020. ii. Lt. No. 1845 dated 02.09.2020
18	M/s Gailtricks Developers Pvt. Ltd. Sri Shyam Sundar Gaur, Director, Vijaya Homes Pvt. Ltd. 2 nd Floor Gajraj Bistupur Building Permit No. 28722	Jamshedpur Notified Area Committee	Without EC	Directed by ULB to obtain the EC at the earliest via i. Lt. N o. 1312 dated 19.06.2020. ii. Lt. No. 1845 dated 02.09.2020
19	P&M Infrastructure Pvt. Ltd. Khata No. 2 Plot No. 952(P), 966(P), 9723(P), Ward No. 4, Jamshedpur Building Permit No. 28846	Jamshedpur Notified Area Committee	Without EC	Directed by ULB to obtain the EC at the earliest via i. Lt. N o. 1312 dated 19.06.2020. ii. Lt. No. 1845 dated 02.09.2020
20	M/s Samay Construction Pvt. Ltd. Plot No. 3621(P), 3642(P), 3643(a,b,c), 3645(P). Khata No. 312 Mauza-Paridih. Ward No. 8. Old Purulia Road, Mango	Mango Municipal Corporation	Without EC	Directed by ULB to obtain the EC at the earliest via i. Lt. N o. 1312 dated 19.06.2020. ii. Lt. No. 1845 dated 02.09.2020
21	Panchwati IV Y	Ramgarh Municipal Council	Without EC	Notice by ULB to stop construction via Lt. no. 913 dated 20.08.2020

22	Green Valley	Ramgarh Municipal Council	Without EC	Notice by ULB to stop construction via i. Lt. no. 333 dated 05.03.2020 ii. Lt. No. 673 dated 26.05.2020 iii. Lt. no. 913 (A) dated 20.08.2020
23	(i) Vibgyor Estates Pvt. Ltd (ii) High Street Enterprises (P) Ltd. (ii) File No. Building Permit Wo2/0162/17	Ramgarh Municipal Council	The Proposal is pending at SEAC, Jharkhand.	Directed by ULB to obtain the EC at the earliest via Lt. no. 507 dated 02.09.2020
24	M/s Assotech New City LLP& Assotech Sun Growth Abade LLP File No. Building Permit W04/0165/16	Ramgarh Municipal Council	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 507 dated 02.09.2020
25	Chalice Real Estate LLP through its designated partner Mr. Bishnu Kumar Agarwal File No. Building Permit /W06/0031/18	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 509 dated 02.09.2020
26	Chalice Real Estate LLP through its designated partner Mr. Bishnu Kumar Agarwal File No. Building Permit /W06/0310/17	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 510 dated 02.09.2020
27	Estate Buidcon Pvt. Ltd Director Sumeet Kumar Agarwal File No. Buidling Permit/WO6/0419/17	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 511 dated 02.09.2020
28	Ankroday Kumar File No. Building Permit /WO7/0419/17	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 512 dated 02.09.2020

29	Ranchi Municipal Corporation File No. Building Permit/W22/0315/17	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 513 dated 02.09.2020
30	Arvind Ram Sahu, Shyam Kishor Ram, Asha Devi, Arvind Kishor Ram, Babloo Ram, Rajendra Ram, Basant Prased, Power of Attorney Holder-Land Owner Name Manorma Barju Ram Sahu File No. Building Permit/W36/0364/18	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 514 dated 02.09.2020
31	Amrit Mahto, Basant Kumar Sahu, Gopal Sahu, Kanhai Mahto and Ramdayal Mahto File No. Building Permit W36/0821/18	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 515 dated 02.09.2020
32	Shobha Mandal, Dinesh Mandal, Kapil Ram, Kashi Ram Sahu, Parichan Sahu, Lalchand Sahu, Dharichand Sahu, Devendra Ram Sahu, Devanand Sahu, Permanad Ram, Shukhlal Ram, Dinesh Ram, Jaglal Ram, Chotelala Ram, Barju Ram Sahu, Smt. Sushila Devi, Smt. Jitan Devi File No. Building Permit W37/0298	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 516 dated 02.09.2020
33	Udit Ram and Sadhu Mahto File No. Building Permit W38.0133.17	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 517 dated 02.09.2020
34	Anita Srivastava, Ratan Lal Kasyap, Yogesh Kumar Sahu, Bhago	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no.

	Devi, Pawan Kumar Sahu, Praveen Kumar Sahu, Prabht Kumar Sahu, Rama Mahto, Neelam Devi, Jagnarayan Sahu, Nirmala Devi, Bigal Ram, Govardhan Sahu, Jugal Ram Sahu, Madan Ram, Sandeep Kumar, Kuldeep Kumar, Umesh Ram Sahu, Lt No. 507 dated 02.09.2020 Rupesh Kumar, Prakash Kumar, Sud Lt. No. 507 dated 02.09.2020 hir kumar File No. Building			518 dated 02.09.2020
35	Mahavir Kanshi, Urmila Devi, Parmand Kumar, Shivanad Kumar, Sachidanand Kumar File No. Building Permit W52/0353/18	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 519 dated 02.09.2020
36	Ranchi Smart City Corporation Limited File No. Building Permit W54/0317/17	Ranchi Municipal Corporation	Accorded vide letter no EC/SEIAA/2018 19/2089/2018/287 dated 20.06.19	Directed by ULB to obtain the EC at the earliest via Lt. no. 520 dated 02.09.2020
37	Jharkhand Urban Infrastructure Development Limited File No. Building Permit W54/0317/17	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 521 dated 02.09.2020
38	Laxmi Devi, Meen Devi, Ajay Kumar, Hila Devi, S. Ram, RR Sahu, S.K. Ram, A.K. Ram, A. Devi R. Ram, B. Sahu, S. Prasad, P. Kuar, S. Kasyap, S. Kasuap, D. Kasyap, R Kasyap, R. B. Kasyap M. Kasyap, B. Kasyap, S. Kasyap, R. Kumar	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 522 dated 02.09.2020

	File No. RMC/AH/0009/W36			
39	Assotech Sun Growth Abode LLP File No. RMC/AH/0139/W04/2019	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 523 dated 02.09.2020
40	Rizwan Ahmad Mahadeo Oraon, Bhadwa Oraon, Dilip Oraon, Karma Oraon File No. RMC/Building Permit/0232/W01/2019	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 524 dated 02.09.2020
41	Nandlal Mahto, Lav Mahto, PParth Mahto, Manoj Mahto, Santosh Mahto, Sahdeo Mahto, Nilamber Mahto, Rohit Mahto, Hiral Mahto, Radheshyam Ram, Munna Sahu, Kailash Sahu, Prakash Sahu, NisithKumar, Keshari Babita Kumari and Kari Devi File No. RMC/GH/0294/W36/20	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 526 dated 02.09.2020
42	ESIC Hospital, Industrial Area, Namku, Ranchi (Built up Area-25876.56)	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 527 dated 02.09.2020
43	Shakabari Builders Pvt. Ltd. Shri Pawan Bojan, Sri Ram Garden, 2 nd Floor, Kanke Road, Ranchi (Built up Area-86339.92)	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 528 dated 02.09.2020
44	Jitendra Kumar Singh and Others, Ganpat Palace, Near Nayak Talak, Dumsa Toli, Ranchi- 834001)	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 529 dated 02.09.2020

	(Built up Area-34277.3)			
45	Pranami Estates Pvt. Ltd and Others, 4 th Floor, Cross Wear Katchary Rod, Ranchi (Built up Area-25505.51)	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 530 dated 02.09.2020
46	Satish Kumar and Others at Vashundhara Homes Pvt. Tld Balbir Villa, Near Gate No. 02, Main Ashok Nagar Road, P.S Argora, Ranchi (Built up Area-33695.35)	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 531 dated 02.09.2020
47	Viabhay Saraf and Others, Upper Bazar, Ranchi (Built up Area-22069.35)	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 532 dated 02.09.2020
48	Morias Infrastructure Pvt. Ltd. Pustal Bhawan, Cout Road, Ranchi 834001 (Built up Area-31245.17)	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 533 dated 02.09.2020
49	City Select Developers and Others, City Select Developers, 57A, main Road, Ranchi (Built up Area-27656)	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 534 dated 02.09.2020
50	Sri Ram Ozone Housing Development Pvt. Ltd. 301, Sunrise forum, 100 Bhudwan Compound, Circular Road, Ranchi (Built up Area-30012.303)	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 535 dated 02.09.2020
51	Morias Infrastructure Pvt. Ltd. Pustal Bhawan, Cout Road, Ranchi 834001 (Built up Area-45795.9)	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 536 dated 02.09.2020
52	Sarawgi Builders and Promoters Ltd. 201 2 nd Floor, MR tower, Sharda BabuStreet,	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 537 dated

	Line Tank Rod, Ranchi 834001 (Built up Area- 24888.13)			02.09.2020
53	Adarsh Heights Pvt Ltd. Room No. 08, 9 th Floor Shanti Niketan Building 8 Canal Street, Kokata-700017, West Bengal (Built Up Area- 33897.83)	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 538 dated 02.09.2020
54	Sheo Narayan Jaiswal, Ranchi Distillery, Old Hazaribagh Road, Lalpur, Ranchi - 834001 (Built up Area- 9043.24)	Ranchi Municipal Corporation	Not Obtained yet	Directed by ULB to obtain the EC at the earliest via Lt. no. 539 dated 02.09.2020
55	IIM Ranchi (Area of Construction 81109.80)	Ranchi Municipal Corporation	Details not available. However, as per MoEF & CC Clarification vide letter no 19-20/2013 IA-III dated 09.06.2015 Educational Institutes are exempted from obtaining prior EC subject to Sustainable Environment Management.	

6. The MoEF has also filed an affidavit in which it is *inter alia* stated as follows:-

“11. It is submitted that the Answering Respondent issued Notification No. S.O. 804 (E) dated 14.03.2017 to deal with the cases of violation by ensuring immediate arrest of environmental damage and bringing the enterprise in compliance regime rather than letting it go as such or completely restore the ante original state. It is further submitted that the

Answering Respondent vide the said Notification dated 14.03.2017 opened a window of 6 months for the projects which failed to obtain prior environmental clearance in accordance with EIA Notification, 2006.

12. It is submitted that the Notification dated 14.03.2017 was challenged by way of WP No. 11189/2017 before the Hon'ble High Court of Madras and the same has been upheld by the judgment dated 13.10.2017. However, during pendency of the case, the Notification was stayed vide order dated 06.06.2017. The Answering Respondent sought clarification with respect to the expiry of the Notification after the judgment dated 13.10.2017 and the Hon'ble Court granted a further period of 30 days for the window provided in the Notification. It is further submitted that as on date, the window provided for the projects which failed to obtain prior environmental clearance has expired and there is no prevailing provision whereby the concerned authority can deal with such violation cases.

13. It is submitted that the in compliance of order dated 06.01.2020 passed by this Hon'ble Tribunal, matter has been discussed in the Ministry and it has

observed that violation case being recurring in nature may come to the notice in future during the process of appraisal or monitoring or inspection by Regulatory Authorities, Ministry also deems it necessary to lay down the procedure to bring such violation projects under the regulations in the interest of environment at the earliest point of time rather than leaving them unregulated and unchecked, which will be more damaging to the environment. Therefore, Ministry is in the process a comprehensive review of the EIA Notification, 2006. It is further submitted that the Ministry has issued a draft EIA Notification, 2020 vide Notification No. S. O. 1199 (E) dated 23.02.2020. To deal with the violation cases, following mechanism inter-alia has been proposed in para 22 of draft EIA Notification, 2020, as follows:-

I. The cognizance of the violation of the EIA Notification shall be made on the:

a. suo moto application of the project or

b. reporting by any government authority or

c. found during the appraisal of the Expert Committee

or

d. during the processing of application, if any by the Regulatory Authorities.

II. The cases of violation will be appraised by the Appraisal Committee with a view to assess that the project has been constructed or carried at a site, which under prevailing laws is permissible and expansion has been done which can be run sustainably under compliance of environmental norms with adequate environmental safeguards. In case, where the finding of the Appraisal Committee is negative, closure of the project shall be recommended along with other actions under the law;

III. In case, where the finding of the appraisal Committee are positive, the project under this category will be prescribed with appropriate specific terms of Reference (ToR) on assessment of ecological damage, remediation plan and natural and community resource augmentation plan in addition to the standard applicable to the project.

IV. The CPCB shall issue guidelines for assessment of ecological damage from time to time.

V. The project proponent shall prepare the report of assessment of ecological damage as per the

guidelines issued by the CPCB in this regard from time to time, along with remediation plan natural and community recourse augmentation plan as an independent chapter in the EIA report through an Accredited Consultant Organization.

VI. The Appraisal Committee shall stipulated the implementation of EMP, comprising remediation plan and natural and community resource augmentation plan corresponding to the one and half times the ecological damage assed and economic benefit derived due to violation in case of the suo moto application or two times the ecological damage assessed and economic benefit derived due to violation in cases reported by any Government Authority or found during the appraisal of Appraisal Committee or during the appraisal of Appraisal Committee or during the processing of the Application if any by the Regulatory Authority, as a condition of Environment Clearance or Environment Permission as the case may be.

VII. The Project Proponent will be required to submit a blank guarantee valid for five years equivalent to the amount of Remediation plan and Natural and

Community Resource Augmentation plan with the SPCB or UTPCB as the case may be and the quantification will be recommended by Appraisal Committee and finalized by the Regulatory Authority, with a condition to implement the same within a period of three years.

VIII. The project proponent shall prepare the EIA report and conduct public consultation as per the provisions in the EIA Notification.

IX. The appraisal of the proposals shall be carried as per the provisions given in EIA Notification.

X. Further, the action will be taken against the project proponent by the respective State Government or Union Territory Administration or SPCB or UTPCC as the case may be, under the provisions of section 19 of the Environment (Protection) Act, 1986.

A copy of draft notification dated 23.03.2020 is annexed herewith as Annexure-I

14. It is submitted that at present no mechanism available with the Answering Respondent to deal with the cases which are in violation of the EIA Notification, 2006.

15. It is submitted that the mechanism to deal with the cases which are in violation of the EIA Notification, 2006, proposed in para 13 above is in draft stage and published and uploaded in the website of the Ministry for seeking objections or suggestions on the proposal contained in the draft notification.”

7. The status report of the State of Jharkhand reveals as many as 35 major structures which have been constructed admittedly without obtaining *prior* Environmental Clearance.
8. Admittedly, the violation notification dated 14.03.2017 has ceased to have effect and it is admitted by the MoEF that at present no mechanism is in existence to deal with the situation as prevailing in the present case except that a draft EIA Notification, 2020 has been published under paragraph 22 in which procedure has been laid down to deal with the situation. The notification is yet to be published leaving a vacuum in the procedure to deal with such matters.
9. In the above circumstance the Tribunal is faced with the serious dilemma as regards the course of action to be taken. Mr Sourabh Sharma, learned Counsel for the Applicant has suggested that Environmental Compensation ought to be

recovered from those violating the EIA Notification and to direct institution of prosecution under section 19 of the Environment (Protection) Act, 1986 against those responsible for the violation. It is further submitted that in the meanwhile the ongoing constructions of structures being undertaken without EC be directed to be stopped until it is obtained by the project proponents.

10. We have considered the various affidavits filed by the parties, considered the oral submissions of the learned Counsel for the parties and we are of the view that it would be necessary to take action to remedy the situation keeping in view that principle of sustainable development and the precautionary principle.

11. We, therefore, direct as follows :-

- i. The State Government through the Urban Development Department shall ensure that Environment Impact Assessment is undertaken in respect of all the structures which have been raised in the municipal areas expeditiously in accordance with the procedure laid down in the EIA Notification 2006. Accordingly, the Environmental Management Plan be prepared

and mitigation measures proposed therein be implemented so as to address the environmental issues arising on account of such constructions without EC.

Similar action shall be taken in respect of the structures falling within notified Nagarpalika areas and Gram Panchayats, if there be any.

- ii. Environmental Compensation shall be assessed in respect of all the structures which have been raised without EC and shall be recovered from the appropriate authorities/persons/builders/project proponent (as the case maybe) within a period of three months from hence. Environmental Compensation in respect of those which have already been assessed shall also be recovered within the said period.
- iii. All ongoing constructions undertaken without obtaining *prior* EC shall be stopped forthwith until the environmental clearance is obtained.
- iv. Action shall be initiated under section 19 of the Environment (Protection) Act, 1986 by the State Pollution Control Board forthwith against those who are responsible for the violations.

v. Since the violations were being committed under the gaze of the concerned authorities, we direct initiation of disciplinary proceedings against the concerned Officers, the Municipal Commissioners and the State Pollution Control Board at the earliest.

12. With the above directions the Application stands disposed off. However the State Government of Jharkhand and the State Pollution Control Board shall file their reports of the action taken in terms of the above directions within 6 (six) months from hence by e-mail at judicial-ngt@gov.in.

S.P. Wangdi, JM

Dr. Nagin Nanda, EM

9th September, 2020
Original Application No. 45/2019/EZ
pk