

Ref. No. MCHI/PRES/24-25/220  
Date: 9/1/2025

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Dr. Adv. Harshul Savla

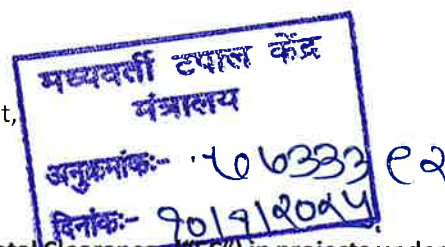
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**PROCUREMENT CONVENOR**  
Nimish Ajmera

**WOMEN'S WING CHAIRPERSON**  
Jesal Shah

To,  
**Smt. Vinita Vaid Singal [I.A.S.]**,  
Principal Secretary,  
Environment & Climate Change Department,  
Government of Maharashtra,  
Mantralaya, Mumbai - 400032



**Sub: Request for processing of Environmental Clearances ("EC") in projects under Schedule 8 of the EIA 2006 Notification in terms of Orders dated 2 February 2024 and 17 December 2024 passed by the Hon'ble Supreme Court in Writ Petition (Civil) No. 1394 of 2023 titled Vanashakti v. Union of India & Ors ("Vanashakti WP")**

Respected Ma'am,

1. The instant representation is being addressed with a request to process applications for amendment/modification of EC in terms of the Orders dated 2 February 2024 and 17 December 2024 passed by the Hon'ble Supreme Court in the Vanashakti WP.
2. The Office Memorandum dated July 7, 2021 ("Violation OM") issued by the MoEF&CC has been stayed by the Hon'ble Supreme Court vide Order dated 2 January 2024 in the Vanashakti WP ("Stay Order").
3. CREDAI has filed an application for Intervention and I.A. No. 25309 of 2024 in the Vanashakti WP seeking modification of the Stay Order. By way of an Order 2 February 2024 ("Clarification Order"), CREDAI's I.A. No. 25309 of 2024 was disposed of with the following directions:
  - (i) The stay order will not come in the way of competent authorities in considering proposals for modifications/alterations in the EC if area of such projects had any valid ECs prior to 07.07.21; and
  - (ii) directed that such applications for modifications / alterations would be considered by the competent authorities strictly in accordance with law as it existed prior to 07.07.2021.
4. On passing of the Clarification Order, the undersigned addressed a representation to MoEF & CC on 23<sup>rd</sup> November 2023 urging the authorities to process the pending proposals in terms of the law as it existed prior to July 7, 2021. However, despite the said representations, the authorities have not been processing these applications.
5. In various Interim Applications for clarification of the Order dated 2 February 2024 that were pending before the Hon'ble Supreme Court in the Vanashakti WP, a further clarification has been issued vide Order dated 17 December 2024 and the same is being reproduced below:

“...  
If the applicants have made applications under a provision other than clause 10(iii) of the Office Memorandum dated 7th July, 2021, it is obvious that the interim order does not come in the way of the applicants. To put it differently, no one can act upon the said Office Memorandum. If the case of the applicants is covered by clauses 5 to 7 of the order dated 2nd February, 2024 passed by this Court, it will be always open for the applicants to invite attention of the concerned authorities to the said fact.  
...”

**Maharashtra Chamber of Housing Industry**

Maker Bhavan II, 4<sup>th</sup> Floor, 18, V. Thackersey Marg, New Marine Lines, Mumbai - 400 020.  
Tel: 42121421, Fax: 4212 1411/407 Email: secretariat@mchi.net Website: [www.mchi.net](http://www.mchi.net)

CREDAI-MCHI CHAPTERS : THANE | KALYAN-DOMBIVLI | MIRA BHAYANDAR | RAIGAD | NAVI MUMBAI |  
BHIWANDI | PALGHAR BOISAR | SHAHAPUR-MURBAD | URAN-DRONAGIRI |  
VASAI VIRAR | ALIBAG | KARJAT-KHALAPUR-KHOPOLI | YOUTH NMR

6. By way of the Clarification Orders, the Hon'ble Supreme Court has allowed authorities to consider those proposals for modifications/alterations in the EC (if such projects had a valid EC prior to 7 July 2021) in accordance with the law that existed prior to 7 July 2021. It is submitted that such cases which have an EC in place prior to 7 July 2021 can be processed under Clause 7(ii) of the EIA 2006 Notification read with Section 3 and Section 5 of the Environment (Protection) Act, 1986 ("EP Act").
7. Hence, those projects which have a Prior EC before 7 July 2021 are covered under Paragraph 5-7 of the Clarification Order dated 2 February 2024 and do not fall within the ambit of Clause 10(iii) of OM dated 7 July 2021 since they have a valid existing EC. Such projects can apply to the authorities for processing of their pending EC applications and are unaffected by the Stay Order as has been clarified by the Hon'ble Supreme Court.
8. In light of the directions passed by the Hon'ble Supreme Court in the latest Clarification Order dated 17 December 2024, we request that those projects which have an EC prior to 7 July 2021 should be processed under Clause 7(ii) of the EIA 2006 read with Section 3 and Section 5 of the EP Act.
9. You are requested to consider this representation and direct the SEIAAs and SEACs to expeditiously appraise the pending proposals in cases which have a Prior EC before 7 July 2021 under Clause 7(ii) of the EIA 2006 read with Section 3 and Section 5 of the EP Act.

Thanking you,

Yours sincerely,  
For CREDAI-MCHI



**Dornic Romell**  
President



**Dhaval Ajmera**  
Hon. Secretary

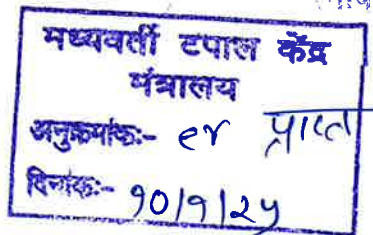
CC:

**Shri Devendra Fadnavis ji**  
Hon'ble Chief Minister  
Government of Maharashtra  
Mantralaya, Mumbai - 400032

**Smt. Pankaja Munde ji,**  
Hon'ble Minister for Environment and Climate Change,  
Government of Maharashtra,  
Mantralaya, Mumbai. 400032

**Enclosed:**

1. OM dated 7 July 2021
2. Order dated 2 January 2024
3. Order dated 2 February 2024
4. Order dated 17 December 2024
5. Legal Opinion of J. Kathawalla



मध्यवर्ती टपाल केंद्र  
मुख्यमंत्री सचिवालय  
महाराष्ट्र शासन  
मंत्रालय, मुंबई ४०० ०३२  
अ.क्र.....  
नांक:- 10/11/25

**PS: Contact Person Mr. Sanjay Phope - +91 9619345193**

**F. No. 22-21/2020-IA.III**  
Government of India  
Ministry of Environment, Forest and Climate Change  
Impact Assessment Division

\*\*\*\*\*

Indira Paryavaran Bhawan  
Jor Bagh Road, Aliganj  
New Delhi - 110003  
sujit.baju@gov.in

Date: 7<sup>th</sup> July, 2021

**Office Memorandum**

**Subject: Standard Operating Procedure (SoP) for Identification and handling of violation cases under EIA Notification 2006 in compliance to order of Hon'ble National Green Tribunal in O.A. No.34/2020 WZ - Regarding.**

The Ministry had issued a notification number S.O.804(E), dated the 14<sup>th</sup> March, 2017 detailing the process for grant of Terms of Reference and Environmental Clearance in respect of projects or activities which have started the work on site and/or expanded the production beyond the limit of Prior EC or changed the product mix without obtaining Prior EC under the EIA Notification, 2006.

2. This Notification was applicable for six months from the date of publication i.e. 14.03.2017 to 13.09.2017 and further based on court direction from 14.03.2018 to 13.04.2018.

3. Hon'ble NGT in Original Application No. 287 of 2020 in the matter of Dastak N.G.O. Vs Synochem Organics Pvt. Ltd. & Ors. and in applications pertaining to same subject matter in Original Application No. 298 of 2020 in Vineet Nagar Vs. Central Ground Water Authority & Ors., vide order dated 03.06.2021 held that "(...) **for past violations, the concerned authorities are free to take appropriate action in accordance with polluter pays principle, following due process**".

4. Further, the Hon'ble National Green Tribunal in O.A No. 34/2020 WZ in the matter of Tanaji B. Gambhire vs. Chief Secretary, Government of Maharashtra and ors., vide order dated 24.05.2021 has directed that "**...a proper SoP be laid down for grant of EC in such cases so as to address the gaps in binding law and practice being currently followed. The MoEF may also consider circulating such SoP to all SEIAAs in the country**".

5. Therefore, in compliance to the directions of the Hon'ble NGT a Standard Operating Procedure (SoP) for dealing with violation cases is required to be drawn. The Ministry is also seized of different categories of 'violation' cases which have been



pending for want of an approved structural/procedural framework based on 'Polluter Pays Principle' and 'Principle of Proportionality'. It is undoubtedly important that action under statutory provisions is taken against the defaulters/violators and a decision on the closure of the project or activity or otherwise is taken expeditiously.

6. In the light of the above directions of the Hon'ble Tribunal and the issues involved, the matter has accordingly been examined in detail in the Ministry. A detailed SoP has accordingly been framed and is outlined herein. The SoP is also guided by the observations / decisions of the Hon'ble Courts wherein principles of proportionality and polluters pay have been outlined.

**7. Relevant Court Cases on the issue:** It is noted that while deciding issues related to violations of the Environment Protection Act, 1986 on account of running the project/activity without prior environmental clearance or in excess of capacity allowed in such clearances, **the Hon'ble courts have, *inter-alia*, deliberated on various facets involving 'violation' cases and have enunciated principles of 'Proportionality' and 'Polluter Pays' in various decisions viz. Industrial Council for Enviro-Legal Action Vs Union of India (the Bichhri village industrial pollution case) (1996 SCC [3] 212); Alembic Pharmaceuticals Ltd. Vs Rohit Prajapati & Ors. (C.A. No. 1526 of 2016, order dated 1.4.2020) and Hindustan Copper Limited Vs Union of India in (W.P. (C) No. 2364 of 2014, order dated 28.11.2014).** The salient extracts of the judgements are as under:

**Issue 1: Proposal for grant of Environmental Clearance in violation cases – to be considered on merits:**

**i. Hon'ble High Court of Jharkhand in the matter of Hindustan Copper Limited Vs Union of India in W.P. (C) No. 2364 of 2014, vide order dated 28.11.2014**

*Held: "(...) action for alleged violation would be an independent and separate proceeding and therefore, consideration of proposal for environment clearance cannot await initiation of action against the project proponent."*

*"(...) the proposal of the petitioner company for **environmental clearance must be examined on its merits, independent of any proposed action for the alleged violation of the environmental laws.**"*

**ii. Hon'ble Madras High Court in the matter of Puducherry Environment Protection Association Vs The Union of India in W.P. No. 11189 of 2017, vide order dated 13.10.2017**

*Held "27. The question is whether an establishment contributing to the economy of the country and providing livelihood to hundreds of people should be closed down only because of failure to obtain prior environmental clearance, even though the establishment may not otherwise be violating*

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pollution laws or the pollution, if any, can conveniently and effectively be checked. **The answer necessarily has to be in the negative.**"

"29. It is reiterated that protection of environment and prevention of environmental pollution and degradation are non-negotiable. At the same time, the Court cannot altogether ignore the economy of the Nation and the need to protect the livelihood of hundreds of employees employed in projects, which as stated above, otherwise comply with or can be made to comply with norms."

**Issue 2: Environmental Clearance – Prospective & not ex-post facto:**

**Hon'ble Supreme Court in the matter of Common Cause Vs Union of India in W.P. (C) No. 114 of 2014, vide order dated 2.8.2017**

*Held: "(...) an EC will come into force **not earlier than the date of its grant.**"*

**Issue 3: 'Principles of Proportionality' – to be applied:**

**Hon'ble Supreme Court in the matter of Alembic Pharmaceuticals Ltd. Vs Rohit Prajapati & Ors. in C.A. No. 1526 of 2016, vide order dated 1.4.2020**

*Held: "(...) **this Court must take a balanced approach** which holds the industries to account for having operated without environmental clearances in the past without ordering a closure of operations. The directions of the NGT for the revocation of the ECs and for closure of the units do not accord **with the principle of proportionality**"*

**Issue 4: 'Polluter pays' principle &**

**&**

**Issue 5: Costs for remedial measures implicit in Sections 3 & 5 of Environment (Protection) Act, 1986.**

**Hon'ble Supreme Court in the matter of Indian Council for Enviro- Legal Action Vs Union of India (the Bichhri village industrial pollution case) in (1996 SCC [3] 212)**

**Held:**

a) The Central Government is empowered to take all measures and issue all such directions as are called for the above purpose. The said powers will **include giving directions ...** and also the power to **impose the cost of remedial measures** on the offending industry and utilize the amount so recovered for carrying out remedial measures.....

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b) **Levy of costs required for carrying out remedial measures is implicit in Sections 3 and 5** which are couched in very wide and expansive language. Sections 3 and 5 of the Environment (Protection) Act, 1986, apart from other provisions of Water and Air Acts, empower the Government to make all such directions and take all such measures as are necessary or expedient for protecting and promoting the 'environment', which expression has been defined in very wide and expansive terms in Section 2 (a) of the Environment (Protection) Act. This power includes the power to prohibit an activity, close an industry, direct to carry out remedial measures, and wherever necessary impose the cost of remedial measures upon the offending industry.

c) The question of liability of the respondents to defray the costs of remedial measures can also be looked into from accepted universally sound principle, viz., the **"Polluter Pays" Principle**. "The polluter pays principle demands that the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause the pollution, or produce the goods which cause the pollution".

## **8. Legal provisions:**

i. The Environment (Protection) Act, 1986 mandates the Central Government to take all measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution (reference sub-section (1) of Section 3 of Environment (Protection) Act, 1986). Further, clause (xiv) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986 specifies that the measures stipulated under sub-section (1) of Section 3 of the Environment (Protection) Act 1986 includes 'such other matters as the Central Government deems necessary or expedient for the purpose of securing effective implementation of the provisions of this Act'.

ii. Further, notwithstanding anything contained in any other law but subject to the provisions of the Environment Protection Act, 1986, Section 5 of the Environment (Protection) Act, 1986, provides that the Central Government may, in the exercise of powers and performance of Central Government functions under the said Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions.

## **9. Definition of Violation and Non-compliance:**

The Standard Operating Procedure (SoP) considers 'Violation' & 'Non-compliance' from the following perspective:

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i. "Violation" means cases where projects have either started the construction work or installation or excavation, whichever is earlier, on site or have expanded the production capacity and / or project area beyond the limit specified in the Environmental Clearance (Prior-EC) without obtaining Prior-EC or change of scope without prior approval from the Ministry.

ii. "Non-compliance" means non-compliance of terms and conditions prescribed by the Regulatory Authority in the Prior Environment Clearance accorded to the project.

#### **10. Standard Operating Procedure – Guiding Principles:**

i. Without prejudice to any other consequences, **action has to be initiated under section 15 read with section 19 of The Environment (Protection) Act, 1986 against all violations.**

ii. Projects not allowable/permissible, for grant of EC, as per extant regulations: **To be demolished.**

iii. Projects allowable/permissible, if prior EC had been taken as per extant regulations: **To be closed until EC is granted (if no prior EC has been taken) or to revert to permitted production level (in case prior EC has been granted).**

iv. **Polluter pays:** Violators to pay for violation period - proportionate to the scale of project and extent of commercial transaction.

v. Setting up a mechanism for reporting of violation to the regulatory authority(ies).

#### **11. SOP for dealing with the violation cases:**

##### **Step 1: Closure or Revision**

<b>Sl no.</b>	<b>Status of EC</b>	<b>Actions</b>
1	If no prior EC has been taken	Order to <b>close</b> its operation
2.	If prior EC is available for existing/old unit	Order to <b>revert the activity/production to permissible limits.</b>
3.	If prior EC was not required for earlier production level but is now required	<b>Restrict the activity/production</b> to the extent to which prior EC was not required.

##### **Step 2: Action under Environment (Projection) Act, 1986**

Action under section 15 read with section 19 of the Environment (Protection) Act, 1986 shall be initiated against the violators.

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### **Step: 3: Appraisal under EIA Notification, 2006**

The permissibility of the project shall be examined from the perspective of whether such activity/project was at all eligible for the grant of prior EC.

#### **A. If not permissible:**

- i. The project shall be **ordered for the demolition/closure after issuing show cause notice and providing an opportunity of hearing.**

*Ex. If a red industry is functioning in a CRZ-I area which means that the activity was, in the first place, not permitted at the time of commencement of project. Therefore, the activity is not permissible and therefore it shall be **closed & demolished.***

- ii. Respective regulatory authorities shall issue directions under section 5 of the Environment (Protection) Act, 1986 for such closure & demolition of the project/activity.

#### **B. If permissible:**

- i. As per extant regulations at the time of scoping, if it is viewed that the project activity is otherwise permissible, Terms of Reference (TOR) shall be issued with directions to complete the impact assessment studies & submit Environmental Impact Assessment (EIA) report & Environmental Management Plan (EMP) in a time bound manner.
- ii. Such cases of violation shall be subject to appropriate
  - (a) Damage Assessment
  - (b) Remedial Plan and
  - (c) Community Augmentation Plan by the Central level Sectoral Expert Appraisal Committees or State/Union Territory Level Expert Appraisal Committees, as the case may be.
- iii. The Competent Authority shall issue directions to the project proponent, under section 5 of the Environment (Protection) Act, 1986 on case to case basis mandating payment of such amount (as may be determined based on Polluters Pay principle) and undertaking activities relating to Remedial Plan and Community Augmentation Plan (to restore environmental damage caused including its social aspects).
- iv. Upon submission of the EIA & EMP report, the project shall be appraised by the Central Sectoral Expert Appraisal Committees or the State/Union Territory Level Expert Appraisal Committees, as the case may be, as if it was a new proposal. If, on examination of the EIA/EMP report, the project is considered permissible for operation as per extant regulations, the requisite Environmental Clearance shall be issued **which shall be effective from the date of issue.**
- v. However, during appraisal after examination if it is found that even though the project may **be permissible but not environmentally sustainable in its present**

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**form/configuration/features** then the project shall be directed to be **modified so that the project would be environmentally sustainable.**

vi. If, however, it is not considered appropriate to issue EC, the project shall be directed to be **demolished/ closed. If such proposal is a case of expansion, the project shall be directed to revert back to the extent of activity for which EC had been granted earlier or to revert back to the extent of activity for which EC was not required (as the case may be).**

vii. Central Sectoral Expert Appraisal Committees or the State/Union Territory Level Expert Appraisal Committees, as the case may be, may insist upon public hearing to be conducted for such categories of projects for which the EIA Notification 2006, as amended from time to time, requires the public hearing to be conducted.

viii. The project proponent will be required to **submit a bank guarantee equivalent to the amount of Remediation Plan and Natural & Community Resource Augmentation Plan with Central / the State Pollution Control Board (depending on whether it is appraised at Ministry or by SEIAA).** The quantification of such liability will be recommended by Expert Appraisal Committee and finalized by Regulatory Authority. The bank guarantee shall be deposited prior to the grant of environmental clearance and **will be released after successful implementation of the Remediation plan and Natural & Community Resource Augmentation Plan.**

**Note** - The activities, as per above clauses, shall be undertaken simultaneously wherever feasible. Environmental Clearance, if granted, to such projects or activities, after due appraisal of EIA/EMP report, **shall be effective only from the date of issuance of such clearance** and shall be subject to compliance of obligations towards Damage Assessment, Remedial Plan & Community Augmentation Plan, etc. finalized in each case.

## **12. Penalty provisions for Violation cases and applications:**

### **a. For new projects:**

- i. **Where operation has not commenced:** 1% of the total project cost incurred up to the date of filing of application along with EIA/EMP report; [Ex: Rs.1 lakh for project cost of Rs.1 Cr]
- ii. **Where operations have commenced without EC:** 1% of the total project cost incurred up to the date of filing of application along with EIA/EMP report **PLUS** 0.25% of the total turnover during the period of violation. [Ex: For Rs.100 Cr project cost and Rs.100 Cr total turnover, the penalty shall be Rs.1 Cr + Rs. 0.25 Cr = Rs.1.25 Cr]

*SL*

**b. For expansion projects:**

- i. **Where operation/production with expanded capacity has not commenced:**  
1% of the project cost, attributable to the expansion, incurred up to the date of filing of application along with EIA/EMP report.
- ii. **Where operation/ production with expanded capacity have commenced:**  
1% of the project cost (attributable to the expansion activity) incurred upto the date of filing of application along with EIA/EMP report PLUS 0.25% of the total turnover (attributable to the expanded activity/capacity) involved during the period of violation.

12.1. Without prejudice to obligation as per (a) & (b) above, where the project or activity is considered for appraisal as above & the project proponent fails to provide required information or requisite documents or complete the requisite study for the purpose of EIA/EMP reports or does not furnish such reports within such period, as specified by the appraisal committee, without reasonable cause, it shall be inferred that the project proponent is not serious enough and the project or activity shall be directed to be demolished / closed.

12.2. The percentage rates, as above, shall be halved if the project proponent *suo-moto* reports such violations without such violations coming to the knowledge of the Government either on inquiry or complaint.

12.3. The penalty, as above, shall be in addition to liability for carrying out various remedial measures which shall be worked out based on the damage assessment for quantifying the environmental damage caused due to unauthorized project activity [as per Step 3 enumerated above].

**13. Identification of Violation cases:**

With a view to protecting the environment and to expeditiously bring violators into a regulatory regime so as to prevent & control environment damage caused by such violation & to determine whether operation of such projects is permissible and to take action stipulated under Section 15 of the Environment (Protection) Act, 1986 for contravention of the provisions of the said Act, Rules, orders and directions, it is expedient to also identify the cases of violation, examine and appraise such projects so as to refrain them from causing further environmental damage and also to compensate for causing damage to the environment. Therefore, in exercise of the powers conferred under Section 5 of the Environment (Protection) Act, 1986, the Central Government hereby directs that:-

- i. State Pollution Control Boards & Union Territory Pollution Control Committees, before grant or renewal of Consents under Water(Prevention & Control of Pollution) Act, 1974 & Air (Prevention& Control of Pollution) Act, 1981, shall ensure that the project proponents applies for or possess valid Prior



Environmental Clearance in terms of extant EIA Notification and shall not grant or renew CTO (Consent to Operate) unless Environment Clearance (if applicable) has been obtained.

- ii. The Central Pollution Control Board, all State Pollution Control Boards and all Union Territory Pollution Control Committees shall identify cases of violation under their respective jurisdiction, report such cases to the Ministry or State/Union Territory Level Environmental Impact Assessment Authority, as the case may be and also revoke CTO, if granted to the unit after giving an opportunity of being heard.
- iii. The Central Pollution Control Board, all State Pollution Control Boards and all Union Territory Pollution Control Committees shall expeditiously examine the references, received from public and other bodies, relating to violations and take necessary steps as per (ii) above.

14. This is issued with the approval of the Competent Authority.

  
(Dr. Sujit Kumar Bajpayee)  
Joint Secretary (IA)

To

1. Chairperson/Member Secretary of Central Pollution Control Board
2. Chairperson/Member Secretaries of all the SEIAAs/SEACs
3. Chairman/Members of all the Expert Appraisal Committees
4. Chairman/Members of all the State Pollution Control Boards and Union Territory Pollution Control Committees

Copy for information:

1. PS to Hon'ble Minister for Environment, Forest and Climate Change
2. PS to Hon'ble MoS for Environment, Forest and Climate Change
3. PPS to Secretary(EF&CC)
4. PPS to AS(RS) / AS (RA)/ AS (UD)/ JS(JT) / JS (MP)/ JS (NPG)
5. All the officers of IA Division
6. Website of MoEF&CC/PARIVESH/Guard file

Copy (by email) also forwarded to the Registrar, NGT, in compliance to instruction given in O.A No. 34/2020 WZ in the matter of Tanaji B. Gambhire vs. Chief Secretary, Government of Maharashtra and ors.(order dated 24.05.2021).

ITEM NO.23

COURT NO.3

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Writ Petition(s)(Civil) No(s). 1394/2023

VANASHAKTI

Petitioner(s)

VERSUS

UNION OF INDIA  
(FOR ADMISSION  
ORDERS/DIRECTIONS )

and

IA

Respondent(s)  
No.257416/2023-APPROPRIATE

Date : 02-01-2024 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.R. GAVAI  
HON'BLE MR. JUSTICE SANDEEP MEHTA

For Petitioner(s) Mr. Gopal Sankaranarayanan, Sr. Adv.  
Mr. Vanshdeep Dalmia, AOR  
Ms. Anisha Jian, Adv.  
Ms. Tanya Shrivastava, Adv.


For Respondent(s)

UPON hearing the counsel the Court made the following  
O R D E R

1. Issue notice returnable in four weeks.
2. Until further orders, there shall be stay of operation of the Office Memoranda dated 7<sup>th</sup> July, 2021 and 28<sup>th</sup> January, 2022 issued by the Ministry of Environment, Forest and Climate Change.

(ASHA SUNDRIYAL)  
ASTT. REGISTRAR-cum-PS

(BEENA JOLLY)  
COURT MASTER (NSH)

Signature Not Verified  
Digitally signed by  
ASHA SUNDRIYAL  
Date: 2024.01.05  
16:37:23 IST  
Reason: 



ITEM NO.56

COURT NO.3

SECTION PIL-W

**S U P R E M E C O U R T O F I N D I A**  
**RECORD OF PROCEEDINGS**

**Writ Petition(s)(Civil) No(s). 1394/2023****VANASHAKTI****Petitioner(s)****VERSUS****UNION OF INDIA****Respondent(s)****(IA No. 257416/2023 - APPROPRIATE ORDERS/DIRECTIONS)****Date : 02-02-2024 These matters were called on for hearing today.****CORAM :**

**HON'BLE MR. JUSTICE B.R. GAVAI**  
**HON'BLE MR. JUSTICE SANDEEP MEHTA**

**For Petitioner(s)**

**Mr. Gopal Sankaranarayanan, Sr. Adv.**  
**Mr. Vanshdeep Dalmia, AOR**  
**Ms. Anisha Jian, Adv.**  
**Mr. Sarthak Dora, Adv.**  
**Ms. Trisha Chandran, Adv.**

**For Respondent(s)**

**Mr. Tushar Mehta, Solicitor General**  
**Ms. Aishwarya Bhati, A.S.G.**  
**Mr. Gurmeet Singh Makker, AOR**  
**Mr. Ketan Paul, Adv.**  
**Ms. Ruchi Kohli, Adv.**  
**Ms. Swarupama Chaturvedi, Adv.**  
**Mr. Rajat Nair, Adv.**

**Mr. Puneet Bali, Sr. Adv.**  
**Mr. Akhil Anand, Adv.**  
**Mr. Samit Shukla, Adv.**  
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**Mr. A Yogeswaran, Adv.**  
**Ms. B Poongkhulali, Adv.**  
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Mr. Vanshdeep Dalmia, AOR  
 Mr. Anisha Jain, Adv.  
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 Mr. Abhishek Salian, Adv.  
 Ms. Nitika Grover, Adv.  
 Mr. Devansh, Adv.

Mr. Atmaram Nadkarni, Sr. Adv.  
 Mr. Kunal Mimani, AOR  
 Mr. Samit Shukla, Adv.  
 Mr. Kunal Vajani, Adv.  
 Ms. Sakshi Saboo, Adv.  
 Mr. Anuj Savla, Adv.  
 Mr. Shubhang Tandon, Adv.  
 Ms. Shraddha Chiramia, Adv.

UPON hearing the counsel the Court made the following  
 O R D E R

I.A. Nos. 25197, 25309 and 25150 of 2024

1. The application (IA No. 25150 of 2024) for intervention is allowed.
2. The applicant(s) approached this Court seeking modifications/alterations of the order dated 02<sup>nd</sup> January, 2024.
3. Vide order dated 2<sup>nd</sup> January, 2024, we had granted stay of operation of the Office Memoranda dated 07<sup>th</sup> July, 2021 and 28<sup>th</sup> January, 2022 issued by the Ministry of Environment, Forest and Climate Change.
4. Mr. A.N.S. Nadkarni and Mr. Puneet Bali, learned senior counsels appearing for the applicant(s) submit that though their projects had acquired environmental clearances much

prior to the Office Memoranda dated 07<sup>th</sup> July, 2021 and only certain modifications/alterations are required therein, the same cannot be considered in view of the order dated 2<sup>nd</sup> January, 2024.

5. We clarify that our orders dated 02<sup>nd</sup> January, 2024 would not come in the way of the competent authorities in considering the proposals for modifications/alterations in the Environmental Clearances if area of such projects had any valid environmental clearances prior to 07<sup>th</sup> July, 2021.

6. Needless to state that such applications for modification/alteration would be considered by the competent authorities strictly in accordance with law as it existed prior to 07<sup>th</sup> July, 2021.

7. The applications are, accordingly, disposed of.

I.A. Nos. 13975, 16527, 21877, 21878 and 24981 of 2024

1. Mr. Gopal Sankaranarayanan, learned senior counsel appearing for the petitioner-Vanashakti seeks four weeks' time to file reply affidavit to these applications.

2. List these applications alongwith main matter after four weeks.

(DEEPAK SINGH)  
COURT MASTER (SH)

(ANJU KAPOOR)  
COURT MASTER (NSH)

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGSWRIT PETITION (CIVIL) NO(S). 1394/2023

VANASHAKTI

Petitioner(s)

VERSUS

UNION OF INDIA

Respondent(s)

(IA No. 185306/2024 - APPROPRIATE ORDERS/DIRECTIONS, IA No. 168851/2024 - APPROPRIATE ORDERS/DIRECTIONS, IA No. 284215/2024 - APPROPRIATE ORDERS/DIRECTIONS, IA No. 151031/2024 - APPROPRIATE ORDERS/DIRECTIONS, IA No. 263588/2024 - APPROPRIATE ORDERS/DIRECTIONS, IA No. 100111/2024 - APPROPRIATE ORDERS/DIRECTIONS, IA No. 66491/2024 - APPROPRIATE ORDERS/DIRECTIONS, IA No. 203965/2024 - CLARIFICATION/DIRECTION, IA No. 185580/2024 - INTERVENTION APPLICATION, IA No. 284149/2024 - INTERVENTION APPLICATION, IA No. 151027/2024 - INTERVENTION APPLICATION, IA No. 203838/2024 - INTERVENTION APPLICATION, IA No. 66486/2024 - INTERVENTION/IMPLEADMENT, IA No. 24981/2024 - INTERVENTION/IMPLEADMENT, IA No. 263584/2024 - INTERVENTION/IMPLEADMENT, IA No. 100108/2024 - INTERVENTION/IMPLEADMENT AND IA No. 285446/2024 - MODIFICATION)

Date : 17-12-2024 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ABHAY S. OKA

HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

For the Parties

Mr. Gopal Sankaranarayanan, Sr. Adv.  
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Ms. Anisha Jain, Adv.  
Ms. Shambhavi Singh, Adv.  
Mr. Shourya Dasgupta, Adv.  
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Ms. Aishwarya Bhati, A.S.G.  
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Dr. A.M. Singhvi, Sr. Adv.  
Mr. A.N.S. Nadkarni, Sr. Adv.



Mr. Mahesh Agarwal, Adv.  
Mr. Arshit Anand, Adv.  
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Mr. Ranjit Kumar, Sr. Adv.  
Mr. Amar Dave, Sr. Adv.  
Ms. Nandini Gore, Adv.  
Ms. Sonia Nigam, Adv.  
Mr. Akhil Abraham Roy, Adv.  
Mr. Mohammad Shahyan Khan, Adv.  
For M/S. Karanjawala & Co., AOR

Mr. Tapesht Kumar Singh, Sr. Adv.  
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Ms. Aishwarya Bhati, ASG  
Mr. Gudapati G. Kashyap, Adv.  
Mr. Rose Verma, Adv.  
Mr. Ronvijay Gohain, Adv.  
Mr. Sarvesh Chaubey, Adv.  
Mr. Rahul Yadav, Adv.  
Ms. Manisha Ambwani, AOR

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Mr. Tarun Gupta, AOR  
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Mr. Sidhant Ranta, Adv.  
Mr. Sameer Chaudhary, Adv.

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Mr. Sunil Fernandes, Adv.  
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Mr. Anubhav Mishra, Adv.  
Mr. Amritesh, Adv.  
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Mr. V. Chitambaresh, Sr. Adv.  
Mr. Karthik S.D., AOR  
Mr. C. Govind Venugopal, Adv.

Mr. Vinay Navare, Sr. Adv.  
Mr. Sirish K. Deshpande, Adv.  
Mr. S. Patil, Adv.  
Mrs. Rucha Praveen Mandlik, Adv.  
For M/S. S-legal Associates, AOR  
Mr. Jyotish Pandey, Adv.  
Mr. Abhay Singh Tomar, Adv.

Mr. Atmaram Nadkarni, Sr. Adv.  
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Mr. Yash Misha, Adv.  
Mr. Anuj R., Adv.  
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Dr. Abhishek Manu Singhvi, Sr. Adv.  
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Mr. Kunal Vajani, Adv.  
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Mr. Shubhang Tandon, Adv.  
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Mr. Ss Rebello, Adv.  
Ms. Deepti Arya, Adv.

Mr. Samit Shukla, Adv.  
Mr. Saakshi Saboo, Adv.  
Mr. Chandra Prakash, Adv.  
For M/S. D.S.K. Legal, AOR

Mr. A. Karthik, AOR  
Ms. Smrithi Suresh, Adv.  
Mr. Sugam Agrawal, Adv.  
Mr. Ujjwal Sharma, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

(I) APPLICATIONS SEEKING MODIFICATION/CLARIFICATION/DIRECTION:

(1) IA NO. 66491/2024 (APPROPRIATE ORDERS/DIRECTIONS); (2) IA NO.292275/2024 (FOR DIRECTIONS); (3) IA NO.284215/2024 (FOR DIRECTIONS); (4) IA NO.285446/2024 (FOR MODIFICATION AND CLARIFICATION); (5) IA NOS.94025/2024 (FOR CLARIFICATION) AND 94026/2024 (EXEMPTION FROM FILING O.T.); (6) IA NO.151031/2024 (FOR DIRECTIONS); (7) IA NO.168851/2024 (FOR DIRECTIONS); (8) IA NO.185306/2024 (FOR DIRECTIONS); (9) IA NO.263588/2024 (FOR DIRECTIONS) AND IA NO.263589/2024 (EXEMPTION FROM FILING O.T.); (10) IA NO.190123/2024 (FOR DIRECTION); (11) IA NO.250733/2024 (FOR DIRECTIONS); (12) IA NO.60485/2024 (FOR CLARIFICATION/DIRECTION) ; (13) IA NO.281791/2024 (FOR CLARIFICATION/DIRECTION); AND (14) IA NO.166225/2024 (FOR CLARIFICATION/DIRECTION)

1. This Court is examining the validity of the Office Memorandum dated 7<sup>th</sup> July, 2021. This Court has stayed the operation of the Office Memorandum dated 7<sup>th</sup> July, 2021. Therefore, the applications made under clause 10(iii) of the Office Memorandum dated 7<sup>th</sup> July, 2021 cannot be entertained so long as the order of stay continues to operate. If the applicants have made applications under a provision other than clause 10(iii) of the Office Memorandum dated

7<sup>th</sup> July, 2021, it is obvious that the interim order does not come in the way of the applicants. To put it differently, no one can act upon the said Office Memorandum. If the case of the applicants is covered by clauses 5 to 7 of the order dated 2<sup>nd</sup> February, 2024 passed by this Court, it will be always open for the applicants to invite attention of the concerned authorities to the said fact.

2. Subject to what is observed above, the Applications are disposed of. Consequently, the applications seeking exemption from filing official translation also stand disposed of.

(1) IA No. 100111/2024 (APPROPRIATE ORDERS/DIRECTIONS) AND (2) IA No. 203965/2024 (CLARIFICATION/DIRECTION)

3. Ms. Aishwarya Bhati, learned ASG, submitted that she is not seeking any relief in terms of these applications at this stage and the same may be considered along with the main Writ Petition. Ordered accordingly.

(II) APPLICATIONS SEEKING INTERVENTION:

IA NO. 203838/2024 FOR INTERVENTION FILED ON BEHALF OF NBCC (INDIA) LIMITED

4. The Application is allowed.

(1) IA NO.185580/2024 (FOR INTERVENTION); (2) IA NO.284149/2024 (FOR INTERVENTION); (3) IA NO.151027/2024 (FOR INTERVENTION); (4) IA NO.190487/2024 (FOR INTERVENTION); (5) IA NO.60609/2024 (FOR INTERVENTION); (6) IA NO.281790/2024 (FOR INTERVENTION) (7) IA NO.166248/2024 (FOR INTERVENTION)

5. We are not inclined to entertain these Applications. The same are, accordingly, disposed of.



**(III) APPLICATIONS SEEKING IMPLEADMENT:**

**IA NO. 100108/2024 FOR IMPLEADMENT FILED ON BEHALF OF HSCC (INDIA) LIMITED**

6. The Application seeking impleadment as a party respondent is allowed. The amended cause title shall be filed within a period of one week from today.

**(1) IA NO.66486/2024 (FOR IMPLEADMENT); (2) IA NO.263584/2024 (FOR IMPLEADMENT); AND (3) IA NO.250732 (FOR IMPLEADMENT)**

7. We are not inclined to entertain these Application. The same are, accordingly, disposed of.

**WRIT PETITION (CIVIL) NO(S).1394/2023**

8. List the Petition for final hearing on 19<sup>th</sup> February, 2025 in first five matters.

**(ASHISH KONDLE)  
COURT MASTER (SH)**

**(AVGV RAMU)  
COURT MASTER (NSH)**

**LEGAL OPINION**

**CREDAI – MCHI**

**... Querist**

**1. BACKGROUND**

- 1.1. The Querist is seeking an opinion with regard to the interpretation of the Office Memorandum dated 5 May 2022 bearing no. F. No. IA3-22/10/2022-IA.III (captioned “*Clarification with regard to non-requirement of EC amendment due to change in conceptual plan arising out of statutory requirements in building and construction sector - regarding.*”) issued by the Ministry of Environment and Forest and Climate Change (MOEF).
- 1.2. The 2022 OM is reproduced below in full:

**“OFFICE MEMORANDUM**

***Sub.: Clarification with regard to non-requirement of EC amendment due to change in conceptual plan arising out of statutory requirements in building and construction sector- regarding.***

*The EIA Notification 2006 as amended from time to time states that the construction of new projects or activities or the expansion or modernization of existing projects or activities listed in the Schedule to the notification entailing capacity addition with change in process and or technology shall be undertaken in any part of India only after prior environmental clearance.*

*2. Building or Construction projects or Area Development projects and Townships are covered under the schedule 8 of the above Notification and require prior Environmental Clearance (EC) from the State Environment Impact Assessment Authority (SEIAA) for projects with built up area of 20,000 sq. mts., and above.*

*3. The projects under Schedule 8 of the Notification are appraised for the grant of EC, based on the building plan, which may undergo further changes*

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**FORMER JUDGE**  
**BOMBAY HIGH COURT**

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*necessitated because of local site conditions before the final building/construction/ township/ area development project is undertaken by the project proponent.*

*4. The Ministry is in receipt of representations from various stakeholders requesting that amendment of prior EC for building construction/area development projects may not be insisted upon for minor changes in building projects at the time of execution/implementation of the project so long as they do not adversely impact the environment and are within the scope of already approved Environmental Management Plan.*

*5. Accordingly, matter has been examined and it has been decided that any change in configuration / planning / design of the appraised building Project for which EC was granted shall not require amendment of EC, subject to no change in (i) Built Up Area (ii) Floor Area Ratio (FAR) (iii) change in exterior spaces / green belts, parking, walkways and driveways that are covered including attics and outdoor sports courts. Further there shall be no change in the designated use of the building, number of dwelling units, height of the building, number of floors & basements and total excavation of earth of the building / construction / township / area development project so as not to require any changes in the already approved Environmental Impact Analysis (EIA) and Environmental Management Plan (EMP).*

*6. The above dispensation shall be applicable subject to the Project Proponent filing an application in prescribed format on PARIVESH portal and obtaining a self-generated acknowledgement to this effect from the portal.*

*7. Any addition, alteration, modification in the conceptual plan, as stated at para- 6 of the EIA Notification 2006 for which prior EC was granted other than the changes falling under the category of permissible changes as explained in para 5 above which results in the increase in pollution of any type beyond the approved levels necessitating fresh EIA/EMP shall be treated as Violation and shall be dealt with accordingly as per the provisions of the Office Memorandum dated 7th July 2021.*

*8. This issues with the approval of the Competent Authority.*

*Sd/-*

*Dr. Ashish Kumar*  
*Additional Director"*

**2. QUERIST'S CASE**

- 2.1. MOEF has issued the 2022 OM for Building and Construction projects and Townships covered under Project / Activity No. 8 to the Schedule to the Ministry of Environment and Forests Notification No. S.O. 1533(E) dated 14 September 2006 ("**EIA Notification 2006**") which requires prior Environmental Clearance ("**EC**") from the State Environment Impact Assessment Authority ("**SEIAA**") for Building and Construction projects with built up area of 20,000 sq. mts. to 1,50,000 sq. mts.
- 2.2. The OM had been issued after representations were received from various stakeholders that when minor changes are being made in building projects (covered under Project / Activity No. 8 to the Schedule to the EIA Notification 2006) at the time of execution/implementation of the projects and when such changes do not consequently impact the environmental parameters of the project, then in such cases amendment of EC should not be insisted upon.
- 2.3. The letter and spirit of the OM is to be found in the EIA Notification and the OM dated 19 June 2013 issued by MOEF, which have clearly set out the scope and power of the SEIAA and SEAC when appraising projects under Schedule 8 of the EIA Notification 2006. Hence, when conceptual changes are being made to projects owing to statutory requirements and when the same do not in any way change the parameters contained in the Environment Management Plan, such project proponents need not once again approach the SEIAA for amendment in EC.
- 2.4. The reason and logic behind such exemption is that SEIAA and SEAC have been constituted under the EIA Notification 2006 for a specific purpose i.e. to appraise the environmental sustainability of 'Building and Construction' and 'Township and Area Development' projects. The scope of appraisal of projects by the SEIAA and SEAC is limited to testing the environmental impact of such projects.



- 2.5. The environmental factors to be considered by SEIAA and SEAC while appraising projects have been laid down by the Dr. K. Kasturirangan Committee. These factors are limited to variables affecting the environment like waste management, water management, solid management, air quality, energy impact, ground water impact etc.
- 2.6. Clause 2(iii) of the MoEF OM dated 19 June 2013 enlists all these factors. Importantly, the Committee has stated that "*The SEIAA/SEAC need not focus on the other issues which are normally looked after by the concerned local bodies/State Government Departments/SPCBs*". This has been reiterated by the MOEF vide OM dated 10 November 2015.

### **3. QUERIES RAISED**

- 3.1. In this background, the following queries are raised:
- (i) *Whether, on a fair reading of the of the Office Memorandum dated 5th May 2022 bearing no. F. No. IA3-22/10/2022-IA.III issued by the MOEF, more so when viewed against the backdrop of the EIA 2006 Notification and the OM dated 19th June 2013 issued by the Ministry of Environment and Forest and Climate Change (MOEF), a project proponent is required to obtain an amendment of the Environmental Clearance granted to the Project Proponent, when changes are made, owing to statutory requirements or changes in market conditions, to the conceptual plans of the project on the basis of which EC has been obtained, where such changes do not consequently impact the environmental parameters contained in the Environment Management Plan.*
  - (ii) *Whether in light of the OM dated 19 June 2013, OM dated 15 November 2015, and OM dated 5 May 2022, a Project Proponent is required to submit a conceptual plan for full potential of the*

*land/plot or the sanctioned plan for the purpose of determining  
EMP?*

#### **4. PREFATORY REMARKS**

- 4.1. In exercise of the powers conferred by Section 3(1) and Section 3(2)(v) of the Environment (Protection) Act, 1986 (“**Act**”), read with Rule 5(3)(d) of the Environment (Protection) Rules, 1986 (“**Rules**”) and in supersession of the notification number S.O. 60(E) dated the 27 January 1994, except in respect of things done or omitted to be done before such supersession, the Central Government has directed that on and from the date of its publication, the required construction of new projects or activities or the expansion or modernization of existing projects or activities listed in the Schedule to the 2006 EIA Notification entailing capacity addition with change in process and or technology shall be undertaken in any part of India only after the prior environmental clearance from the Central Government or as the case may be, by the State Level Environment Impact Assessment Authority, constituted by the Central Government under Section 3(3) of the Act in accordance with the procedure specified in the 2006 EIA Notification.
- 4.2. Paragraph 2 of the 2006 EIA Notification states that the projects or activities stated in Paragraph 2 shall require prior environmental clearance (EC) from the concerned regulatory authority, i.e. the MOEF for matters falling under Category ‘A’ in the Schedule to the 2006 EIA Notification and the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category ‘B’ in the said Schedule. The prior EC is required before any construction work, or preparation of land is started on the project or activity (except for securing the land). The projects or activities specified in Paragraph 2 of the 2006 EIA Notification (for which EC is required) are reproduced below:

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FORMER JUDGE  
BOMBAY HIGH COURT

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- (i) All new projects or activities listed in the Schedule to the 2006 EIA Notification;
- (ii) Expansion and modernization of existing projects or activities listed in the Schedule to the 2006 EIA Notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization;
- (iii) Any change in product-mix in an existing manufacturing unit included in Schedule beyond the specified range.

4.3. Paragraph 3 of the 2006 EIA Notification provides for the constitution and composition of the SEIAA.

4.4. Paragraph 4 of the 2006 EIA Notification provides for the categorization of projects and activities. All projects and activities are broadly categorized into two categories - Category A and Category B, based on the spatial extent of potential impacts and potential impacts on human health and natural and man-made resources. Paragraph 4 of the 2006 EIA Notification reads as under:

**“4. Categorization of projects and activities**

- (i) *All projects and activities are broadly categorized in to two categories-Category A and Category B, based on the spatial extent of potential impacts and potential impacts on human health and natural and man made resources.*
- (ii) *All projects or activities included as Category 'A' in the Schedule, including expansion and modernization of existing projects or activities and change in product mix, shall require prior environmental clearance from the Central Government in the Ministry of Environment and Forests (MoEF) on the recommendations of an Expert Appraisal Committee (EAC) to be constituted by the Central Government for the purposes of this notification;*
- (iii) *All projects or activities included as Category 'B' in the Schedule, including expansion and modernization of existing projects or activities as specified in sub paragraph*

*(ii) of paragraph 2, or change in product mix as specified in sub paragraph (iii) of paragraph 2, but excluding those which fulfill the General Conditions (GC) stipulated in the Schedule, will require prior environmental clearance from the State/Union territory Environment Impact Assessment Authority (SEIAA). The SEIAA shall base its decision on the recommendations of a State or Union territory level Expert Appraisal Committee (SEAC) as to be constituted for in this notification. "In the absence of a duly constituted SEIAA or SEAC, a Category 'B' project shall be considered at Central Level as a Category 'B' project;"*

- 4.5. Paragraph 5 of the 2006 EIA Notification provides for Screening, Scoping and Appraisal Committees and their constitution and composition. It states, *inter alia*, that the EACs and SEACs shall screen, scope and appraise projects or activities in Category 'A' and Category 'B' respectively.
- 4.6. Paragraph 6 of the 2006 EIA Notification provides for the Application for Prior Environmental Clearance. It states that an application seeking prior environmental clearance in all cases shall be made in the prescribed Form 1 annexed as Appendix 1 to the 2006 EIA Notification and Supplementary Form 1A, if applicable, as given in Appendix II, after the identification of prospective site(s) for the project and/or activities to which the application relates, before commencing any construction activity, or preparation of land, at the site by the applicant.
- 4.7. Paragraph 6 of the 2006 EIA Notification provides that the applicant shall furnish, along with the application, a copy of the pre-feasibility project report **except that, in case of construction projects or activities (item 8 of the Schedule) in addition to Form 1 and the Supplementary Form 1A, a copy of the conceptual plan shall be provided, instead of the pre-feasibility report.** (*emphasis supplied*)
- 4.8. Paragraph 7 of the 2006 EIA Notification provides that the EC process for new projects will comprise of a maximum of four stages, all of which may

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**FORMER JUDGE**  
**BOMBAY HIGH COURT**

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not apply to particular cases as set forth below in this notification. These four stages in sequential order are:

- (i) Stage (1) Screening (Only for Category 'B' projects and activities)
- (ii) Stage (2) Scoping
- (iii) Stage (3) Public Consultation
- (iv) Stage (4) Appraisal

4.9. Stage (1)- Screening: In case of Category 'B' projects or activities, this stage will entail the scrutiny of an application seeking prior environmental clearance made in Form 1 by the concerned SEAC for determining whether or not the project or activity requires further environmental studies for preparation of an Environmental Impact Assessment ("EIA") for its appraisal prior to the grant of EC depending upon the nature and location specificity of the project. **The projects requiring an Environmental Impact Assessment report shall be termed Category 'B1' and remaining projects shall be termed Category 'B2' and will not require an Environment Impact Assessment report.** (*emphasis supplied*) For categorization of projects into B1 or B2 except item 8(b) [*Townships and Area Development projects*], the MOEF shall issue appropriate guidelines from time to time. In this regard, it may be noted that the MOEF has issued:

- (i) Office Memorandum dated 19 June 2013 bearing the subject '*Environment Clearance for buildings and real estate projects.*'
- (ii) Office Memorandum dated 10 November 2015 bearing the subject '*Environment Clearance by State Level Environmental Impact Assessment Authority/ State Level Expert Appraisal Committee with special reference to buildings and construction sector projects under Item 8 (a) and 8(b) of the Environment Impact Assessment Notification, 2006- regarding*'



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The Government of Maharashtra, following the aforesaid MOEF OMs has issued Guidelines for SEACs to appraise 'Building and Construction' and 'Township and Area Development' projects.

- 4.10. Stage (2) 'Scoping' refers to the process by which the EAC (in the case of Category 'A' projects or activities), and SEAC (in the case of Category 'B1' projects or activities), determine detailed and comprehensive Terms of Reference ("TOR") addressing all relevant environmental concerns for the preparation of an EIA Report in respect of the project or activity for which prior EC is sought.
- 4.11. The EAC or SEAC concerned shall determine the TOR on the basis of the information furnished in the prescribed application Form1 / Form 1A including TOR proposed by the applicant, a site visit by a sub-group of EAC or SEAC concerned only if considered necessary by the EAC or SEAC, TOR suggested by the applicant if furnished and other information that may be available with the EAC or SEAC concerned. **All projects and activities listed as Category 'B' in Item 8 of the Schedule (Construction / Township / Commercial Complexes / Housing) shall not require Scoping and will be appraised on the basis of Form 1/Form 1A and the conceptual plan. (emphasis supplied).**
- 4.12. The TOR shall be conveyed to the applicant by the EAC or SEAC concerned within sixty days of the receipt of Form 1. The approved TOR shall be displayed on the website of the MOEF and the concerned SEIAA. Applications for prior EC may be rejected by the regulatory authority concerned on the recommendation of the EAC or SEAC concerned at this stage itself. In case of such rejection, the decision together with reasons for the same shall be communicated to the applicant in writing within sixty days of the receipt of the application.
- 4.13. Stage (3)-Public Consultation refers to the process by which the concerns of local affected persons and others who have plausible stake in the

environmental impacts of the project or activity are ascertained with a view to taking into account all the material concerns in the project or activity design as appropriate. **All Category 'A' and Category B1 projects or activities shall undertake Public Consultation, except, inter alia, all Building or Construction projects or Area Development projects (which do not contain any category 'A' projects and activities) and Townships (item 8(a) and 8(b) in the Schedule to the notification).**

- 4.14. Stage (4)-Appraisal means the detailed scrutiny by the EAC or SEAC concerned of the application and other documents like the Final EIA report, outcome of the public consultations including public hearing proceedings, submitted by the applicant to the regulatory authority concerned for grant of EC. This appraisal shall be made by EAC or SEAC concerned in a transparent manner in a proceeding to which the applicant shall be invited for furnishing necessary clarifications in person or through an authorized representative. On conclusion of this proceeding, the EAC or SEAC concerned shall make categorical recommendations to the regulatory authority concerned either for grant of prior EC on stipulated terms and conditions, or rejection of the application for prior EC, together with reasons for the same.
- 4.15. The appraisal of an application shall be completed by the EAC or SEAC concerned within sixty days of the receipt of the final EIA report and other documents or the receipt of Form 1 and Form 1 A, where public consultation is not necessary and the recommendations of the EAC or SEAC shall be placed before the competent authority for a final decision within the next fifteen days.
- 4.16. Paragraph 8 of the 2006 EIA Notification provides for the grant or rejection of prior EC. It provides that the regulatory authority shall consider the recommendations of the EAC or SEAC concerned and convey its decision to the applicant within forty five days of the receipt of the recommendations of the EAC or SEAC concerned or in other words within one hundred and

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five days of the receipt of the final EIA Report, and where EIA is not required, within one hundred and five days of the receipt of the complete application with requisite documents, except as provided in the 2006 EIA Notification.

- 4.17. The regulatory authority shall normally accept the recommendations of the EAC or SEAC concerned. In cases where it disagrees with the recommendations of the EAC or SEAC concerned, the regulatory authority shall request reconsideration by the EAC or SEAC concerned within forty five days of the receipt of the recommendations of the EAC or SEAC concerned while stating the reasons for the disagreement. An intimation of this decision shall be simultaneously conveyed to the applicant. The EAC or SEAC concerned, in turn, shall consider the observations of the regulatory authority and furnish its views on the same within a further period of sixty days. The decision of the regulatory authority after considering the views of the EAC or SEAC concerned shall be final and conveyed to the applicant by the regulatory authority concerned within the next thirty days. In the event that the decision of the regulatory authority is not communicated to the applicant within the period specified, as applicable, the applicant may proceed as if the EC sought for has been granted or denied by the regulatory authority in terms of the final recommendations of the EAC or SEAC concerned.
- 4.18. On expiry of the period specified for decision by the regulatory authority, the decision of the regulatory authority, and the final recommendations of the EAC or SEAC concerned shall be public documents.
- 4.19. Importantly, Paragraph 8(v) of the 2006 EIA Notification provides that clearances from other regulatory bodies or authorities shall not be required prior to receipt of applications for prior EC of projects or activities, or screening, or scoping, or appraisal, or decision by the regulatory authority concerned, unless any of these is sequentially dependent on such clearance either due to a requirement of law, or for necessary technical reasons.

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4.20. The Schedule to the 2006 EIA Notification provides under Item No. 8 that 'Building and Construction projects > 20000 sq. mts. and < 1,50,000 sq. mts. of built-up area (built up area for covered construction; in the case of facilities open to the sky, it will be the activity area) shall be categorized as **Category B**, i.e. which means that prior EC for such projects shall be granted by the SEIAA.

4.21. Appendices to the 2006 EIA Notification:

- (i) **Appendix I** to the 2006 EIA Notification prescribes the format of Form 1 in which the application for prior EC under Paragraph 6 of the 2006 EIA Notification is to be made.
- (ii) **Appendix II** to the 2006 EIA Notification prescribes the format of Supplementary Form 1A titled 'CHECK LIST OF ENVIRONMENTAL IMPACTS'. Form 1A accompanies Form 1 i.e. the application for prior EC under Paragraph 6 of the 2006 EIA Notification. **Form 1A is only for construction projects listed under Item 8 of the Schedule.** The checklist for environmental impact provides for:
  - 1) Land Environment
  - 2) Water Environment
  - 3) Vegetation
  - 4) Fauna
  - 5) Air Environment
  - 6) Aesthetics
  - 7) Socio-Economic Aspects
  - 8) Building Materials
  - 9) Energy Conservation
  - **10) Environment Management Plan\***

\* The Environment Management Plan ("EMP") i.e. the last checklist item for environmental impact under Form 1A (which is only for construction projects listed under Item 8 of the Schedule),

consists of all mitigation measures for each item wise activity to be undertaken during the construction, operation and the entire life cycle to minimize adverse environmental impacts as a result of the activities of the project. It would also delineate the environmental monitoring plan for compliance of various environmental regulations. It will state the steps to be taken in case of emergency such as accidents at the site including fire.

- (iii) **Appendix III** to the 2006 EIA Notification provides for the generic structure of a EIA document.
- (iv) **Appendix IIIA** provides for the contents of summary EIA. The Summary EIA shall be a summary of the full EIA Report condensed to ten A-4 size pages at the maximum. It should necessarily cover in brief the following Chapters of the full EIA Report:— 1. Project Description 2. Description of the Environment 3. Anticipated Environmental impacts and mitigation measures 4. Environmental Monitoring Programme 5. Additional Studies 6. Project Benefits 7. Environment Management Plan.
- (v) **Appendix IV** provides for the procedure for conduct of public hearing.
- (vi) **Appendix V** provides for the procedure prescribed for appraisal.
- (vii) **Appendix VI** provides for the composition of the sector/project specific EAC for Category A projects and the State/UT level EAC for Category B projects to be constituted by the Central Government.

**Parameters contained in Environment Management Plan**

- 4.22. As stated above, the 2006 EIA Notification provides that for construction projects listed under Item 8 of the Schedule, a supplementary Form 1A is to be filed along with Form 1 for prior EC. Form 1A sets out the 'CHECK LIST OF ENVIRONMENTAL IMPACTS'.



- 4.23. Environment Management Plan i.e. the last checklist item for environmental impact under Form 1A (which is only for construction projects listed under Item 8 of the Schedule), consists of all mitigation measures for each item wise activity to be undertaken during the construction, operation and the entire life cycle to minimize adverse environmental impacts as a result of the activities of the project. It would also delineate the environmental monitoring plan for compliance of various environmental regulations. It will state the steps to be taken in case of emergency such as accidents at the site including fire.

**Office Memorandum dated 19 June 2013**

- 4.24. The MOEF vide OM dated 11.12.2012, had constituted a Committee under the Chairmanship of Dr. K. Kasturirangan, to review the provisions of the Environment Impact Assessment Notification, 2006. One of the terms of reference (ToR) of the Committee was to review the requirement of environment clearance for buildings and real estate projects to avoid duplication considering that such projects will be covered by the local civic authorities and under the relevant building control regulations. The Committee laid down guidelines to be followed by SEIAA/SEAC to focus only on thrust areas of environmental sustainability while appraising the 'Building and Construction' and 'Township and Area Development' projects.

**Office Memorandum dated 5 May 2022**

- 4.25. The OM dated 5 May 2022 (quoted in full above) provides that any change in configuration / planning / design of the appraised building Project for which EC was granted shall not require amendment of EC, subject to no change in (i) Built Up Area (ii) Floor Area Ratio (FAR) (iii) change in exterior spaces / green belts, parking, walkways and driveways that are covered including attics and outdoor sports courts. Further there shall be no change in the designated use of the building, number of dwelling units,

height of the building, number of floors & basements and total excavation of earth of the building / construction / township / area development project so as not to require any changes in the already approved EIA and Environmental Management Plan.

**5. Answer to Query (i)**

- 5.1. The first Query is whether, on a fair reading of the Office Memorandum dated 5 May 2022 bearing no. F. No. IA3-22/10/2022-IA.III issued by the MOEF, more so when viewed against the backdrop of the EIA 2006 Notification and the OM dated 19 June 2013 issued by the Ministry of Environment and Forest and Climate Change (MOEF), a project proponent is required to obtain an amendment of the Environmental Clearance granted to the Project Proponent, when changes are made, owing to statutory requirements or changes in market conditions, to the conceptual plans of the project on the basis of which EC has been obtained, where such changes do not consequently impact the environmental parameters contained in the Environment Management Plan.
- 5.2. The MOEF issued OM dated 11 December 2012 constituting a committee under the Chairmanship of Dr. K. Kasturirangan, Member, Planning Commission to review the provisions of the 2006 EIA Notification relating to granting environment clearances for roads, buildings, SEZ projects and the provisions under the OM dated 7 February 2012 related to high-rise buildings.
- 5.3. One of the terms of reference (ToR) of the aforesaid Committee was to review the requirement of environment clearance for buildings and real estate projects to avoid duplication, considering that such projects are covered by the local civic authorities under the provisions of the relevant master plan, building control regulations and safety regulations.
- 5.4. The recommendation of the Committee on this ToR was accepted and MOEF issued an OM dated 19 June 2013 deciding, *inter alia*, that to speed-

up the process of scrutiny, SEIAA/SEAC may only focus on the following thrust areas of environmental sustainability while appraising the 'Building and Construction' and 'Township and Area Development' projects (**"Environmental Parameters"**):

- a. Brief Description of the Project in terms of location and surroundings.
- b. Environmental Impacts on Project Land and its surrounding developments and vice-versa.
- c. Water Balance Chart with a view to promote waste water treatment, recycle, reuse and water conservation.
- d. Wastewater Treatment and its details including target standards.
- e. Alterations in the natural slope and drainage pattern and their environmental impacts on the surroundings.
- f. Ground water potential of the site and likely impacts of the project.
- g. Solid Waste Management during construction and post construction phases.
- h. Air Quality and Noise Levels; likely impacts of the project during construction and operational phases.
- i. Energy requirements with a view to minimize power consumption and promote use of renewal energy sources.
- j. Traffic Circulation System and connectivity with a view to ensure adequate parking, conflict free movements, Energy efficient Public Transport.
- k. Green Belt / Green cover and the Landscape Plan.
- l. Disaster/Risk Assessment and Management Plan.
- m. Socio Economic Impacts of the project and CSR.
- n. EMP during construction and operational phases.
- o. Any other related parameter of the project which may have any other specific impact on environmental sustainability and ecology.

Importantly, the OM dated 19 June 2013 provides that '*SEIAA/SEAC need not focus on the other issues which are normally looked after by the concerned local bodies/ State Government Departments / SPCBs*'.

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5.5. Thereafter, in view of the various representations received from various stakeholders, the Central Government issued a further Office Memorandum dated 5 May 2022 with a view to clarify the position as to whether an Environmental Clearance granted by the authorities would require amendment on account of subsequent changes in the conceptual plans on the basis of which the Environmental Clearance was originally granted. The present opinion has been sought with regard to the difficulty posed in interpretation of the 2022 OM on account of what is set out in paragraph 5 of the said OM.

5.6. Paragraph 5 of the OM dated 5 May 2022 is reproduced below:

*"5. Accordingly, matter has been examined and it has been decided that any change in configuration / planning / design of the appraised building Project for which EC was granted shall not require amendment of EC, subject to no change in (i) Built Up Area (ii) Floor Area Ratio (FAR) (iii) change in exterior spaces / green belts, parking, walkways and driveways that are covered including attics and outdoor sports courts. Further there shall be no change in the designated use of the building, number of dwelling units, height of the building, number of floors & basements and total excavation of earth of the building / construction / township / area development project so as not to require any changes in the already approved Environmental Impact Analysis (EIA) and Environmental Management Plan (EMP)."*

5.7. In this connection, it would be useful to appreciate the background and the context in which the 2022 OM has been issued. Paragraphs 3 and 4 of the OM provide useful guidance for the reasons or circumstances which necessitated the 2022 OM.

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- 5.8. Paragraph 3 of the OM recognizes the practical difficulty that the 2006 EIA Notification poses in respect of projects covered by Schedule 8 thereof, which is, that whilst such projects are appraised for grant of EC based on the conceptual building plan, the projects often undergo further changes that may be necessitated by local site conditions before the project is finally undertaken by the Project Proponent.
- 5.9. Paragraph 4 of the OM records that the Government has received representations from various stakeholders requesting that amendment of the prior EC granted for such projects should not be insisted upon in respect of minor changes in building projects that are required at the time of execution / implementation of the project so long as they do not adversely impact that environment and are within the scope of already approved Environment Management Plan.
- 5.10. Paragraph 5 of the OM, which is the operative clause of the OM, begins with the words "*Accordingly, the matter has been examined and it has been decided that ...*". It is therefore clear that the provisions of paragraph 5 of the OM are intended to remedy or cure or mitigate the difficulties adverted to in paragraphs 3 and 4 of the OM.
- 5.11. Further, paragraph 7 of the same OM refers to "*category of permissible changes as explained in para 5 above*".
- 5.12. It is therefore clear that what paragraph 5 of the OM intends to do is to permit certain changes in the configuration/ planning / design of the conceptual plans on the basis of which the EC shall have been obtained, without having to go back to the concerned authority for amendment of the EC, so long as such changes do not (i) impact the environment, and (ii) are within the scope of the approved Environmental management Plan.
- 5.13. We may now examine paragraph 5 of the 2022 OM in the context of the above discussion. At first blush, it would appear that paragraph 5 of the OM exempts revised / modified / amended plans from obtaining an amended



EC, with regard to the criteria set out in paragraph 5. However, such an interpretation would be contrary to paragraphs 3, 4 and 7 of the same OM. It is clear that if paragraph 5 of the 2022 OM is to be read as furthering the intention of the framers of the OM (as set out in paragraphs 3, 4 and 7 of the OM), then the only logical interpretation would be that paragraph 5 in fact permits changes in the criteria specified in paragraph 5 so long as the same do not adversely impact the environment and are within the scope of the already approved Environment Management Plan. Pertinently, paragraph 7 of the same OM refers to the categories mentioned in paragraph 5 as “*category of permissible changes as explained in paragraph 5 above*”.

- 5.14. Therefore, on a combined reading of the EIA Notification, the recommendation of the Kasturirangan Committee, the OM dated 19 June 2013, and a contextual reading of paragraphs 3, 4 and 7 of the 2022 OM, it appears that the 2022 OM does not contemplate amendment of the EC where changes are made to conceptual plans of the Project (on the basis of which the EC has been granted), so long as those changes do not adversely impact the Project’s Environmental Parameters of the nature specified in the OMs dated 19 June 2013 and 10 November 2015.
- 5.15. The aforesaid construction of paragraph 5 of the 2022 OM is also fortified by the fact that the EIA Notification 2006 and the OM dated 19 June 2013 clearly provide that SEIAA is not required to focus on issues which are normally looked after by the concerned local bodies/ State Government Departments / SPCBs. This is also in consonance with the intent of the EIA Notification and the OM dated 19 June 2013 which restrict the scope and power of SEIAA or SEAC to only ascertain environment parameters/environmental sustainability of projects while granting the EC.
- 5.16. Any other construction or interpretation of paragraph 5 of the 2022 OM would defeat the very purpose of issuance of that OM as adumbrated in paragraphs 3 and 4 of the same OM, and would also amount to a negation

of the spirit of the OM's dated 19 June 2013 and 10 November 2015, which clearly does not appear to be the intent or purpose of the 2022 OM.

5.17. Therefore, in view of the above, the 2022 OM does not require amendment of the Environmental Clearance obtained by the Project Proponent when changes are made, owing to statutory requirements or changes in market conditions, to the conceptual plans of the Project on the basis of which EC has been obtained, when such changes do not consequently impact the environmental parameters contained in the Environment Management Plan.

5.18. Query (i) is answered accordingly.

**6. Answer to Query (ii)**

6.1. The next query is whether, in light of the OM dated 19 June 2013 and OM dated 15 November 2015, a Project Proponent is required to submit a conceptual plan for full potential of the land/plot or the sanctioned plan for the purpose of determining EMP.

6.2. It is standard for sanctions in respect of development of a plot / layout to be granted in stages. The object of the 2006 EIA Notification is to provide for an impact assessment of the Project as a whole.

6.3. In fact, the 2022 OM itself contemplates that local site conditions may necessitate changes in Projects covered by Schedule 8 of the 2006 EIA Notification after grant of EC based on conceptual building plans. The very purpose of the 2022 OM is to clarify that EC granted on the basis of conceptual changes would not require to be amended when minor changes are made to the project so long as the same do not adversely impact the Environmental Parameters and the changes are within the scope of the approved Environment Management Plan.

6.4. A project proponent is therefore advised to submit a conceptual plan for full potential of the land/plot and not the sanctioned plan for the purpose of

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determining EMP. In the case of building and construction projects, it is not possible to secure all sanctions prior to applying for EC. As such, a project proponent may submit a conceptual plan for full potential of the land/plot at the time of seeking EC.

6.5. Query (ii) is answered accordingly.

Dated this 13<sup>th</sup> day of November, 2023



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**Former Judge, Bombay High Court.**