F. No. No. IA3-3/87/2022-IA.III [E- 184931]
Government of India
Ministry of Environment, Forest and Climate Change
(Impact Assessment Division)

Level III, Vayu Wing,
Indira Paryavaran Bhawan,
Jor Bagh, Aliganj,
New Delhi-110003
Dated: 8th November, 2022

OFFICE MEMORANDUM

Subject: Order dated 18/10/2022 of Hon'ble NGT (PB) in OA No. 462/2022 (PB) titled Rajeev Suri vs. Union of India – reg.

Kind attention is drawn to the Order dated 18/10/2022 (*copy enclosed*) of Hon'ble NGT (PB) in OA No. 462/2022 (PB) titled Rajeev Suri vs. Union of India wherein the validity of OMs issued by MoEF&CC dated 11/04/2022 pertaining to consideration of developmental proposals for grant of Environment Clearance under the provisions of para7(ii) of the EIA Notification, 2006 and OM dated 07/05/2022 regarding special dispensation provided to coal mines for 10% expansion were challenged.

2. The Hon'ble NGT disposed of the matter vide order dated 18/10/2022 wherein while upholding the validity of both the OMs inter-alia directed that the increased pollution load should be offset to the satisfaction of Expert Appraisal Committee (EAC) by additional mitigation measures.

3. In this regard, it is hereby directed that necessary/appropriate action may be taken by the EACs and SEACs while appraising such projects and granting Environment Clearance for the same.

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

Encl: as above

8/11/22
(Sundar Ramanathan)
Scientist 'E'

To
1. Chairperson/Member Secretaries of all the EACs.
2. Chairperson/Member Secretaries of all the SEIAAs/ SEACs.
3. All Officers of IA Division

Copy to:
1. PS to Hon'ble MEFCC
2. PS to Hon'ble MoS (EF&CC)
3. PPS to Secretary (EF&CC)
4. PPS to DGF&SS (EF&CC)
5. PPS to AS(TK)/PPS to JS(SKB)
6. Website, MoEF&CC/Guard File

Item No. 05 Court No. 1

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

(By Video Conferencing)

Original Application No. 462/2022
(I.A. No. 155/2022)

Rajeev Suri Applicant

Versus

Union of India Respondent

Date of hearing: 18.10.2022

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER

Applicant: Mr. Vanshdeep Dalmia, Advocate

Respondent: Ms. Suhasini Sen & Ms. Rea Bhalla, Advocates for MoEF & CC

ORDER

1. Grievance in this application is against validity of OMs dated 11.04.2022 and 07.05.2022 issued by MoEF&CC. Thereby, core processes for grant of Environment Clearance (EC) for expansion of coal mining projects in terms of EIA notification dated 14.9.2006 have been diluted. Dilution is in respect of public hearing and submission of EIA/EMP studies before grant of EC. According to the applicant, the said OMs result in seriously undermining the EIA Notification dated 14.09.200 and defeat the 'Precautionary' and sustainable development principles. The EIA mechanism is part of Public Trust Doctrine and due appraisal of a projects

having environmental implication cannot be wished away with in view of its significance as laid down *inter-alia* in *Hanuman Laxman v. UoI*[1].

2. Vide order dated 12.07.2022, considering the above grievance, the Tribunal sought response of the MoEF&CC.

3. Accordingly, MoEF&CC has filed its reply on 27.09.2022 defending the OMs. It is submitted that the amendment is intended to streamline the procedure for seeking prior Environmental Clearance (EC) for expansion of the coal mining projects. The OMs clarify the situations in which exemption from public hearing and EIA/EMP is to be granted. As per OM dated 11.4.2022, situations subject to which such exemption is to be granted are:-

"

i. *The project should have gone through the public hearing process, at least once, for its existing EC capacity on which expansion is being sought, except those category of projects which have been exempted as per para 7 III (i) of EIA Notification 2006 and its amendments.*

ii. *There is no additional land acquisition or forest land diversion involved for the proposed expansion or there is no increase in lease area with regard to mining vis-à-vis the area mentioned in the EC, based on which public hearing has been held earlier.*

iii. *The proposed expansion shall not be more than 50% of production capacity as mentioned in the prior EC, issued on the basis of public hearing held and the same shall be allowed in minimum three phases.*

iv. *The project proponent should have satisfactorily complied the conditions stipulated in the existing EC(s) and satisfactorily fulfilled all the commitments made during the earlier public hearing/consultation proceedings and also the commitments given while granting previous expansion, as applicable. This shall be duly recorded in the certified compliance report may be issued by the IRO/CPCB/SPCB, which should not be more than one-year-old at the time of submission of application.*

v. *Public Consultation shall be undertaken, if applicable for obtaining response in writing, as per para 7 III (ii) (b) of EIA Notification 2006, expect those category of projects which have been exempted as per para 7 III (i) of EIA Notification 2006 and its amendments."*

[1] *2019 (15) SCC 401*

4. The second OM dated 07.5.2022 was issued on the request of the Ministry of Coal, in light of the huge pressure on the domestic coal supply, for relaxing the requirement of Public Consultation and preparation of EIA/EMP report for expansion from 40% to 50% for enhancement of production of coal without any further delay and for seeking allowance for expansion of production capacity keeping in view the available reserves in the coal block and compliance of the conditions of the previous EC.

5. We have heard learned counsel for the parties.

6. Main contention on behalf of the applicant is that exemption from public consultation for expansion projects and grant of exemptions from EIA/EMP will militate against the primary objective of EIA Notification dated 14.09.2006 and defeat the 'Precautionary' and 'Sustainable Development' principles as per mandate in the judgement of the Hon'ble Supreme Court in *Hanuman Laxman v. UoI* and *Alembic Chemicals v Rohit Prajapati*[2].

7. As against the above, learned Counsel for the MoEF&CC submits that the exemption is not across the board nor beyond the mandate of EIA notification dated 14.9.2006. Exemptions are only in specified situations where public hearing had earlier taken place, where category of the project does not change, where no additional land acquisition for diversion of forest land is involved, where expansion is not more than 50%, where predicted environmental quality due to proposed expansion is within prescribed norms, where expansion does not result in reduction in green belt and where the track record of the PP is of compliance. These

[2] 2020 SCC OnLine SC 347

requirements are expressly mentioned in the OM dated 11.04.2022 in para 4. As far as OM dated 07.05.2022, requirement of submitting revised EIA/EMP for additional capacity before grant of EC has been relaxed but subject to safeguards and conditions mentioned in para 6 of the OM, including track record of compliance, expert appraisal and EIA/EMP being submitted within six months. It is further submitted that the applicant has not shown any concrete case of compromising environmental norms by the impugned OMs. Arguments are only hypothetical.

8. We have duly considered the rival submissions. While the contention that the OMs militate against the Precautionary and Sustainable Development principles as per statutory mandate of EIA Notification dated 14.09.2006 as interpreted by the Hon'ble Supreme Court inter alia in *Hanuman Laxman v. UoI* and *Alembic Chemicals v Rohit Prajapati,* appear to be attractive, it is difficult to hold that the OMs in question *per se* violate the Sustainable Development and Precautionary principles.

9. Relevant extracts from the OMs in question are reproduced below:-

"<u>OM dated 11.04.2022</u>

xxx.....xxx.....xxx

4 ...Accordingly, the Ministry deems it necessary to issue a guideline to deal with expansion proposals which are received under para 7(ii)(a) of EIA Notification, 2006 in respect of the developmental projects listed in the Schedule to the said notification seeking prior-EC involving expansion with increase in production capacity within the existing premises / mine lease area; or expansion due to modernization of an existing unit through change in process and or technology or involving a change in the product-mix; or enhancement of cargo handling capacity in ports & harbors, widening of roads; or enhancement in built-up area, subject to the fulfilment of the following criteria:

i. The project should have gone through the public hearing process, at least once, for its existing EC capacity on which expansion is being sought, except those category of projects which have been exempted as per para 7 III: (i) of EIA Notification 2006 and its amendments.

ii. There should not be change in Category of the project from 'B2' to 'Bi' or 'A' due to proposed modernisation or expansion.

iii. *There is no additional land acquisition or forest land diversion involved for the proposed expansion or there is no increase in lease area with regard to mining vis-a-vis the area mentioned in the EC, based on which public hearing has been held earlier.*

iv. *The proposed expansion shall not be more than 50% of production capacity as mentioned in the prior EC, issued on the basis of public hearing held and the same shall be allowed in minimum three phases.*

v. *Predicted environmental quality parameters arising out of proposed expansion/modernization shall be within the prescribed norms and the same shall be maintained as per prescribed norms.*

vi. *The proposed expansion should not result in reduction in the greenbelt area as stipulated in the earlier EC, or if the existing ratio of greenbelt is more than 33%, after expansion it should not reduce below 33%.*

vii. *The project proponent should have satisfactorily complied the conditions stipulated in the existing EC(s) and satisfactorily fulfilled all the commitments made during the earlier public hearing/consultation proceedings and also the commitments given while granting previous expansion, as may be applicable. This shall be duly recorded in the certified compliance report issued by the IRO/ CPCB/ SPCB, which should not be more than one year old at the time of submission of application.*

viii. *Public Consultation shall be undertaken [if applicable as per table below] by obtaining response in writing, as per para 7 III (ii) (b) of EIA Notification 2006, except those category of projects which have been exempted as per para 7 III (i) of EI Notification 2006 and its amendments.*

ix. *Effluent monitoring including air quality monitoring systems as specified in the existing EC, if stipulated, should have been installed.*

5. Subject to the fulfilment of the conditions at Para 4 (i) to (viii) above, following procedure shall be adopted for processing the application for considering expansion of proposed project up to 50% of capacity as mentioned in the existing EC, in minimum three phases under para 7(ii)(a) of ETA Notification, 2006.

Scenario	***Intended change through modernization/ change of product mix/ expansion***	***Requirement of revised EIA/ EMP report***	***Requirement of Certified Compliance Report***	***Requirement of fresh Public Consultation***	***Whether reference to Appraisal Committee is required***
I	*Projects which involve modernization/ change of product mix without increase in production capacity but with increase in pollution load.*	*Yes*	*Yes*	*No*	*Yes*
II	*Up to 20 percent based On environmental safeguards conditions.*	*Yes*	*Yes*	*No*	*Yes*

III	***Up to 40 percent based On successful compliance of previous environmental safeguard Conditions***	***Yes***	***Yes •***	***No***	***Yes***
IV	*More than 40 percent but less than 50 Percent based on successful compliance of Previous environmental safeguard conditions related to expansion of 40 percent.*	*Yes*	*Yes*	*Yes*	*Yes*

6. Project Proponent shall apply in the requisite form on the PARIVESH Portal under para 7(ii) of EIA Notification 2006, along with EIA/ EMP reports based on standard ToRs and Public consultation report, if applicable. The concerned EAC/SEAC shall appraise the project proposal and it may prescribe additional sector specific and/or other environmental safeguards after due diligence, as required.

7. Other statutory requirements like Consent to Establish/Operate, Clearance from CGWA, approval of Mining Plan, Mine Closure Plan, Mine Closure Status Report, approval of DGMS, Forest Clearance, Wildlife Clearance, etc., if applicable, are to be satisfactorily fulfilled at the time of application.

8. The projects that do not qualify with the above requirement shall continue to be considered on a case-to-case basis by the concerned EAC/ SEAC as per the provisions of para 7(ii)(a) who will decide whether Environment Impact Assessment and public consultations need to be carried out."

OM dated 07.05.2022

xxx.....xxx.....xxx

5. The Matter has been examined in the Ministry. Considering the exigency that has arisen, it has been decided, as a special dispensation, that those Coal mining projects which have been granted expansion of EC up to 40% of original EC capacity as per provisions of above referred OMs, shall be granted expansion EC to increase their production capacity to 50% of original EC capacity, within the same mine lease area ***without requiring revised EIA/ EMP*** *report for additional capacity and public consultation.*

6. The special dispensation mentioned at para 5 above shall be subject to the following conditions:

i. An application shall be made on PARIVESH portal for expansion under Para 7p of EIA Notification 2006.

ii. *In view of the exigency as detailed above and as per the provisions of Para 4(iiia) of the EIA Notifica on 2006 as amended, all such expansion proposals, irrespective of the mine area, shall be considered by the Ministry at the Central level.*

iii. *The increase in production capacity up to 50% of original EC shall be allowed within the same mine lease area, based on the available reserves in the coal block, on same terms and conditions of the existing EC granted for 40% expansion of production capacity.*

iv. *Certified Compliance Report of the EC granted for 40% expansion, along with EIA/ EMP report, prepared based on standard ToRs for 'the additional capacity of 10% shall be submitted on PARIVESH portal within six months of enhancement of production beyond 40%.*

v. *Based on the documents as mentioned in Para (iv) above, Ministry shall ascertain the adequacy of the proposed environmental safeguards and stipulate necessary conditions, if required, which shall be monitored as a part of the EC compliance monitoring.*

7. *Further, this dispensation is provided as a special case for a period of six months from the date of issue of this OM, for submission of the application on PARIVFSH portal and this shall not be treated as a precedent."*

10. The impugned OMs are reiteration of earlier such arrangements. Earlier OM dated 15.9.2017 contained identical stipulation for grant of EC for production capacity expansion up to 40% without Public Hearing with specified conditions, subject of recommendation of the EAC. The matter was considered by the Tribunal vide order dated 28.3.2022 in Appeal No.6/2022(CZ), *Budhsen vs. UOI.* The Tribunal held that instead of EC being bad for want of public hearing, question to be considered was whether adverse impact was caused to the environment. Relevant observations are as follows:

> *"Contentions raised on behalf of the Appellant are that requisite procedure laid down under the EIA Notification dated 14.09.2006 has not been followed, particularly with regard to public hearing.* ***OM dated 15.09.2017 could not have the effect of modifying the EIA Notification dated 14.09.2006.*** *No proper evaluation has been conducted. The data of 2002 was considered while granting original EC on 28.07.2005 which is stale for considering expansion. The Project Proponent has failed to comply with EC conditions of 2005 with regard to preparation of subsidence map and its monitoring on*

monthly basis which was required to be submitted before expansion which has not been done. Plantation has also not been done as required. Digital monitoring studies of land use have not been submitted. Occupational Health Surveillance Programme of the workers has not been undertaken. The area is energy surplus and thus there is no requirement of energy to be produced from coal as per Central Electricity Authority's Load Generation Balance Report ("LGBR") for 2018-2019. The PP has not shown justification for the project with the evidence of confirmed end user. No Cumulative Impact Assessment and Carrying Capacity studies have been done in respect of the mining area in question

.... ***First point to be considered is the validity of exemption from public hearing for expansion of the project, as permissible as per OM dated 15.09.2017.*** *Similar issue was considered vide order dated 25.08.2020 in Appeal no. 78/2018, Laxmi Chuhan vs. Union of India & Ors. It was held that* ***since public hearing had been earlier conducted, there was no prejudice by exemption from public hearing, public of the area was benefitted by expansion of the project, exempting public hearing in terms of OM dated 15.9.2017 could not be held to be illegal nor against EIA notification dated 14.9.2006.*** *In the present case, we have already noted the basis for exemption in terms of 36th and 41st Meetings on 31.08.2018 and 13-14.12.2018 of the EAC and conditions subject to which EC for expansion was granted. In absence of any prejudice to the environment or interest of the inhabitants, exemption from public hearing per se cannot be held illegal. However, whether prejudice has been caused or not needs to be looked into.*

.....In these circumstances, ***even if exemption from public hearing is held to be legally permissible, an independent investigation of impact of expansion and status of compliance of conditions for expansion has to be undertaken.****"*

11. Order of the Tribunal dated 25.9.2020 in Appeal Nos.78-79/2018, *Laxmi Chouhan Vs. UOI*, referred to above also dealt with identical issue. Upholding dispensation of public hearing and grant of EC for expansion, the Tribunal held:

"Public consultation ordinarily includes public hearing and response. There is no doubt about importance of public hearing in the process. At first sight, it is an impressive argument that EC granted without public hearing is vitiated. However, in the present case, ***public hearing was done when main EC was granted. For expansions, no public hearing was done. In this regard, it is pointed out that clause (v) of para 7 of the Notification, under the heading III. Stage (3) – Public Consultation, provides that if owing to a local situation it is not possible to conduct public hearing, such facts can be reported to the regulatory authority, on which public consultation may not include public hearing. Though 'ocal situation as such may refer to a particular situation, may oe like pandemic or law and order etc., it is submitted that there may be situations when it is possible to dispense with***

such hearing. Such dispensation can be valid, unless shown to be arbitrary. In the present case public hearing having taken place, a conscious decision has been taken by way of OM that such public hearing may be unnecessary for expansion to the extent specified if the unit is compliant. Public hearing was dispensed with earlier for first and second expansions without any objection from any quarter. Same way, there can be no objection to such course now.

Learned counsel for the respondents submit that when mining to the extent of 31 MTPA has been taking place without objection, it may be permissible to dispense with public hearing having regard to compliance status in the last 14 years, after evaluation of impact of current operations by the EAC and also considering the benefit to the inhabitants. The OM, which has not been independently challenged, cannot be held to be alien to the main notification but clarificatory and regulatory, limited to specified situations where such course may not serve any purpose.

As already noted, in the present case, no resident of the area has come forward to raise any objection either to earlier expansion or even to the current expansion and subsequent extensions.

There has been independent appraisal of all relevant facts, including the benefit for the inhabitants.

Dispensing with the public hearing or public consultation, for expansion to a small extent, where public hearing has already been conducted for the entire leased area cannot, in the circumstances, does not vitiate the EC."

12. In view of above, since there are safeguards and conditions and compliance thereof is to be overseen by this Tribunal also in any statutory appeal, it is difficult to hold that principle of Sustainable Development is compromised. It is not that no public hearing is to take place. It can be dispensed in certain circumstances only where it has already taken place and there is no extra area added. Expansion is to be permitted considering earlier compliance track record and appraisal by experts. It is seen from para 5 of OM dated 11.04.2022 that though requirement of fresh public consultation is dispensed with in respect of projects involving expansion upto 40%, it is not across the board but only in situations specified therein viz. when public hearing had earlier taken place, category of the project does not change, no additional land acquisition for diversion of forest land is involved, expansion is not more than 50%, predicted environmental quality due to proposed expansion is within prescribed norms, expansion

does not result in reduction in green belt and track record of the PP is of compliance. Similarly, with regard to OM dated 07.05.2022 also, exempting EIA/EMP for expansion EC for increased production capacity upto 40% is permissible only as per conditions mentioned in para 6 of the OM, including that within six months of enhancement of production.

13. We are of the opinion that the impugned OMs should be read consistent with EIA Notification dated 14.9.2006 and when there is increase in pollution load, public consultation is to be required. There appears to be some inconsistency in dispensing with such requirement when there is increase in pollution load. Thus, to make the impugned OMs consistent with the Notification dated 14.9.2006, we direct that the increased pollution load should be offset to the satisfaction of EAC by additional mitigation measures.

14. Further whether in any individual case, public hearing has been arbitr. rily dispensed with can be examined in the light of prejudice, if any, instead of holding the impugned OMs to be *per se* illegal. OMs apply to situations where public hearing has taken place, EIA/EMP submitted and appraisal conducted for the main project and no prejudice to the environment takes place as per opinion of EAC. Both the OMs restrict exemptions to specified exceptional situations. Thus, substance of the safeguards continues and is not diluted. Change is procedural without affecting the core requirements. However, such coal mining projects which have been accorded environmental clearance and subjected to public hearing, EIA & EMP prepared for the leased mining area and now proposes to undertake expansion within the said lease, area for such projects, MoEF may stipulate additional conditions as a part of post environmental clearance monitoring in accordance with para 10 of EIA Notification, 2006.

These conditions shall include preparation of fresh EMP for the expansion area, as the same would not have been studied in detail while obtaining the Environmental Clearance for the lease area such fresh EMP preparation shall not be affected by the ongoing activities of the expansion project. The MoEF & CC while stipulating these additional conditions for the expansion project may consider higher Afforestation measure, increase in CSR amount. Additional public service activities for the local inhabitants and project affected people such as providing drinking water, oad facility, schools, dispensary, street lighting, health campaign, adult education and skill development etc that shall be a part of fresh EMP. The fresh EMP is required as the EIA and EMP prepared for the entire lease area would have been done few years back ranging from 3 to 7 years. The environment and the project activities being dynamic, the ground situation would have undergone change and fresh issues might have cropped up hence these needs to be addressed comprehensively. EAC in the course of its appraisal may consider adequacy of anti-pollution control devices to offset additional pollution load on increase of production capacity by way of retrofitting of such devices or additional devices, as may be required in the circumstances. In such appraisal, change in raw material, products, technology process, carrying capacity and compliance of ambient standards may be duly considered and suitably addressed.

15. We are thus unable to hold that the OMs *per se* militate against the concept of Sustainable Development and Precautionary principles or dilute the mandate of EIA notification dated 14.9.2006.

16. It is further made clear that upholding the OMs will not preclude challenge to individual ECs for expansion if it can be shown that exemption

from public hearing or EIA/EMP is not justified and prejudicial to the environment in any manner.

The application stands disposed of accordingly.

I.A. No. 155/2022 also stands disposed of.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Prof. A. Senthil Vel, EM

Dr. Afroz Ahmad, EM

October 18, 2022
O.A. No. 462/2022
A