

**BEFORE THE NATIONAL GREEN TRIBUNAL  
EASTERN ZONE BENCH, KOLKATA**

**Original Application No. 29/2016/EZ**

**with**

**M.A. 953/2016/EZ**

**MS. I.D.I.O.CONSTRUCTION &  
INDUSTRIES (INDIA) LTD.**

**VS**

**UNION OF INDIA & ORS**

**CORAM:** Hon'ble Mr. Justice S.P.Wangdi, Judicial Member  
Hon'ble Prof. (Dr.) P. C. Mishra, Expert Member

**PRESENT:**

|                               |                                                 |
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| <b>Applicant</b>              | <b>: Ms. Arpita Chowdhury, Advocate</b>         |
|                               | <b>Mr. Somnath Ray Chowdhury, Advocate</b>      |
| <b>Respondent No. 1</b>       | <b>: Mr. Gora Chand Roy Chowdhury, Advocate</b> |
| <b>Respondent No. 2</b>       | <b>: Mr. Kumar Ravish, Advocate</b>             |
| <b>Respondents No. 3, 5-8</b> | <b>: Mr. Surendra Kumar, Advocate</b>           |
| <b>Respondent No. 9</b>       | <b>: Ms. Anamika Pandey, Advocate</b>           |

| Date & Remarks                                          | ORDER (ORAL)                                                                                                                                                                                                                                                                                                                                                                                                          |
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| <b>Item No. 1</b><br><b>27<sup>th</sup> July, 2016.</b> | <p style="text-align: center;"><b><u>Per Justice S.P.Wangdi, J.M. :</u></b></p> <p>This application has been filed by the applicant primarily because his application for Environmental Clearance (EC) dated 8.5.2015 submitted to the MOEF by E-mail had not been disposed of despite having repeatedly sought for an appropriate order on that count.</p> <p>Shorn of unnecessary details, it may be noted that</p> |

the applicant had commenced with mining operation of major minerals Quartzite and Quartz (Silica Stone) in the district of Lakshisarai in the State of Bihar in the year 2002. The stated case of the applicant is that he had no EC under the 1994 EIA Notification except clearance from different State Authorities. He was proceeding uninterruptedly with the mining operation until the year 2008 when the mining lease obtained by the applicant was cancelled on various grounds. He resumed the mining operation after June 2011 when the Hon'ble Patna High Court had quashed the order of cancellation and upon contempt proceedings being instituted by the applicant for non-compliance of the order of the said High Court. It is stated that thereafter he had been continuing with the mining operation until the month of November 2014 strictly in terms of the lease deed and other conditions imposed by the State Govt. The applicant has categorically averred that he had obtained Consent to Establish (No Objection) from the Bihar State Pollution Control Board on February 2,

2011 under Sections 25 and 26 of the Water (Prevention and Control of Pollution) Act, 1974 and under Sec. 21 of the Air (Prevention and Control of Pollution) Act, 1981. The consent under the AIR Act 1981, which was initially valid till December 31, 2014, was renewed till December 31, 2016 vide order dt. 4.6.2014.

The woe of the applicant appears to have begun when on October 21, 2013, the Collector, Lakshisarai vide letter dt. 21.10.2013 called upon him to show cause on the alleged violation of various provisions of the mining laws which was duly replied to by the applicant by a show cause dt. December 23, 2013. Later, Govt. of Bihar vide letter dt. 20.10.2014 addressed to the Collector, Lakshisarai raised the issue of the applicant not having EC which was followed by the District Mining Officer, Lakshisarai, issuing a letter dt. 5.11.2014 to the applicant directing him to stop the mining activities until EC was obtained by him.

There are other intervening incidents which have

been mentioned by the applicant. It is stated that on the applicant having been represented to the Mining Development Officer in detail vide his representation dated 11.11.2014 conveying to him the non-application of EIA Notification, 2006 in his case, the Department wrote to the State Environment Impact Assessment Authority (SEIAA), Bihar seeking clarification on the question raised by the applicant. A separate application was also submitted by the applicant to the Chairman, SEIAA, Bihar dated 20.12.2014 requesting that the Mining Development Officer, Lakshisarai, be directed to revoke the closure order and permit him to continue with the mining operation. This was followed by the SEIAA, Bihar, writing a letter dt. 3.2.2015 to the MOEF seeking clarification as to whether the applicant would require EC which was raised by the Bihar State PCB in its letter dt. 8.5.2013.

In the meanwhile, the applicant had applied for EC to the MOEF without prejudice to his contention that EIA Notification, 2006, as amended, did not apply to his

case. It is the case of the applicant that even the EIA Notification, 2006, as it stood earlier, was not applicable to his case since the operation of his mining activity had commenced prior to 2006 i.e. from 2002. We are not going into this question as it has no relevance in view of subsequent developments as set out hereafter. Suffice it to state that the delay on the part of the Ministry in disposing of his application had led him to approach the Hon'ble Principal Bench, NGT by filing OA No. 42/2015/EZ praying for a direction upon the MOEF to dispose of his application for EC expeditiously in the spirit of the EIA Notification, 2006. Hon'ble Principal Bench of NGT by its order dt. June 3, 2015, apart from holding that the EIA Notification was applicable to the applicant's case, directed the Ministry to dispose of his application dated 8.5.2015 for EC in accordance with law scrupulously within the statutory period contemplated in EIA Notification, 2006. It is stated that the MOEF failed to comply even with this order of the Hon'ble Principal Bench of NGT and did not

dispose of the application as directed, which led him to approach this Bench with the present application seeking for compliance of the order of the Principal Bench dated June 3, 2015 passed in OA 42/2015/EZ for early disposal of his application.

We had issued notices upon all the Respondents including MOEF, SEIAA, Bihar and Bihar State PCB, Respondents No. 1,2 and 9 respectively.

In the affidavits filed by the SEIAA Bihar and the State PCB, it has been stated categorically that the letters dated 3.2.2015 (of SEIAA) and 8.5.2013 & 8.8.2013 (of PCB) were not responded to by the Ministry.

The Respondent No. 1, i.e., MOEF, filed two affidavits affirmed by one Shri Timir Haran Mahato said to be holding the post of Scientist 'C' in the Ministry. The first one was affirmed on 3.5.2016 and filed on 5.5.2016 and the other affirmed on 8.7.2016 and filed on 11.7.2016.

In the first affidavit, we find that the following

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|  | <p>averments have been made :-</p> <p>“3. That it is submitted that the proposal was considered for the issue of terms of reference in the MOEFCC by Expert Appraisal Committee in its meeting held during June 24-26, 2015 wherein it was informed by the M/s IDIO Construction and Industries (India) Limited that vide order dated 3<sup>rd</sup> June 2015, National Green Tribunal, Principal Bench, New Delhi, disposed of the application No. 42 of 2015 (EZ) (MA No. 131/2015(EZ) submitted by IDIO with a direction to MOEFFCC to consider the application for Environmental Clearance filed by the IDIO and pass appropriate order in accordance with law. The Committee observed that is a <b>violation case</b> as mine operated from 2001 to 2008 and 2011 to 2015 without obtaining prior environmental clearance. The Committee, therefore, recommended that MOEFCC may take actions on violations as per OM dated 12.12.2012 and 27.06.2013 (Annexures-I and II). Based on the information furnished and presentation made by the project proponent and discussions held, the Committee prescribed the TORs to the Project.</p> <p>4. That earlier the violation cases were dealt as per the OM dated 12.12.2012 and 27.06.2013. <b>However, it is</b></p> |
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submitted that after the stay on OM dated 12.12.2012 and 27.06.2013 by the Hon'ble NGT, Principal Bench at New Delhi, the processing of violation cases are pending in absence of a policy on the violation. In view of this the proposal is pending in the Ministry. It is humbly submitted that the policy on violation cases is being finalised in the Ministry and a decision on instant project will be taken based on the new policy on violation. " (emphasis supplied)

In the second affidavit the following averments have been affirmed :-

" 3. That it is submitted that the Hon'ble NGT, vide order dated 23.5.2016 and 31.5.2016 in the matter has directed the Ministry to file the reply that whether letters No. T-12176 dated 08.08.2013 and T-4057 dated 08.05.2013 mentioned as one of the conditions of consent order dated 04.03.2015 were responded by the Ministry. The clarification sought by Member Secretary, Bihar Pollution Control Board was replied by MoEFCC or not. The Hon'ble NGT has desired that stand of Ministry be clarified on framing of guidelines pertaining to the cases of violation.

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|  | <p>4. That it is submitted that <b>as per the available records and information the letters No. T-12176 dated 08.08.2013 and T-4057 dated 08.05.2013 mentioned as one of the condition of consent order dated 04.03.2015 were not dealt with in the Ministry. The clarification sought by Member Secretary, Bihar Pollution Control Board was also not dealt in the Ministry.</b> It is also mentioned that the draft notification on violation has been notified vide S.O. 1705 (E) dated 10.05.2016. The copy of the notification is enclosed as Annexure-I. The comments/suggestions from the stake holders have been sought for a period of sixty days from the date of notification. The notification will be finalised after considering the comments of all the stake holders. “<br/><b>(emphasis supplied)</b></p> <p>As regards the averments contained in paragraphs 3 and 4 of the first affidavit dated 3.5.2016, we find that the MOEF has not disclosed certain facts. Apparent from the above, it is the case of the Ministry that the proposal submitted by the applicant had been considered by the Expert Appraisal Committee in its</p> |
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meeting held on June 24-26, 2015 wherein it was recorded that the applicant had informed that vide order dated 3<sup>rd</sup> June 2015, the Hon'ble Principal Bench of NGT, New Delhi, had disposed of the Application No. 42 of 2015(EZ) with a direction that the MOEFF & CC should consider the application for EC filed by him and pass appropriate order in accordance with law. Further that considering the observation that the case of the applicant was a violation case as he had operated the mines from 2001 to 2008 and 2011 to 2015 without obtaining prior EC, the Committee had recommended that the Ministry may take action on the violation as per OM dated 12.12.2012 and 27.06.2013. It is then stated in the subsequent paragraph that since the two OMs had been stayed by the Hon'ble Principal Bench of NGT, the process of dealing with violation cases remained pending in the absence of policy on such matters and, that a decision on the project of the applicant would be taken up based on the new policy on violation which was being finalised.

It is undisputed that the matters pertaining to EC for mining operations are being considered by the Hon'ble Supreme Court in various cases where directions have been issued from time to time. It is also undisputed that the order dated 7.7.2016 passed by the Hon'ble Principal bench of NGT quashing the operation of the aforesaid two OMs was stayed by the Hon'ble Supreme Court by order dated 16.11.2015. Unfortunately, in the affidavit of 3.5.2106 filed by the MOEF this fact has conveniently been suppressed to give an impression that it had ceased to be inoperative after it had been quashed by the Hon'ble Principal Bench of the NGT.

The matter gets worse when we consider the averments made in the second affidavit. From paragraphs 3 and 4 thereof we find that it is remarkably stated that the letters dated 8.8.2013 and 8.5.2013 of the Bihar State PCB seeking clarification as to whether or not in the case of the applicant, the provisions of EIA Notification, 2006 would apply, were not dealt with in the Ministry. We are at a loss to

understand the logic of such averment when the entire subject matter pertaining to the EIA Notification, 2006 falls within the domain of the Ministry.

Record further reveals that the Ministry had also failed to respond to the Bihar SEIAA letter seeking clarification on the subject by its letter dt. 3.2.2015.

From the sequence of events set out above, it would clearly reveal that the two OMs, which are in question, were in fact in operation at the time when the applicant had made its application for EC which is dated 8.5.2015 until it was quashed by the Principal Bench of NGT by order dt. 7.7.2015 i.e., after a period of more than two months. In our considered opinion, the OMs got revived as soon as the order of the Principal Bench was stayed by the Hon'ble Supreme Court by its order dt. 16.11.2015. It was, therefore, open for the Ministry to have carried forward the process of dealing with violation case of the applicant under those OMs.

Mr. Kumar Ravish, Ld. Counsel for the SEIAA, Bihar,

has brought to our notice various orders and directions issued by the Hon'ble Supreme Court on this subject to impress upon us that since the matter is *in seisin* of the Hon'ble Supreme Court, it would, perhaps, not be appropriate for us to pass any order. We, however, respectfully differ with the submission of Kumar Ravish as the subject matter, which is presently being considered by us, is not before the Hon'ble Supreme Court and the order that we intend to pass shall not in any manner interfere with the proceedings before the Hon'ble Apex Court.

For the reasons discussed above, OMs dated 12.12.2012 and 27.06.2013 would still survive and remain operative of which we are in no doubt. During the proceeding before us, the MOEF for the first time on 21.5.2016, informed us that a draft policy notification on violation cases was at its final stage and likely to be published shortly. This was followed by the next date when Mr. Gora Chand Roy Chowdhury, Ld. Counsel for MOEF placed before us the draft

notification dated 10.5.2016.

On a perusal of the draft notification, it is quite obvious to us that it would take considerable time for it to culminate to a Gazette Notification. No other order of any kind putting on hold operation of the two OMs, has been brought on record. None of the parties before us, including the MoEF could also produce any order to that effect.

Admittedly, the application for EC submitted by the applicant on 8.5.2015 has yet not been disposed of which ought to have been done within the specified period as prescribed in the EIA Notification, 2006. Even the longest period that is permissible under clause 8(i) of the Notification to dispose of such application is 105 days and, the period commencing from 16.11.2015, the date of stay order passed by the Hon'ble Apex Court, until today, would certainly amount to much more than 105 days. No doubt, the period indicated in clause 8(i) would be computed from the date of receipt of final Environment Impact Assessment (EIA) Report. But from

the very averments contained in the affidavits of the MOEF, it is clear that the Expert Appraisal Committee in their meeting dated 24-26<sup>th</sup> June 2015 had held that the case of the applicant was a case of violation recommending that the MOEF should take action on violation as per OM dated 12.12.2012 and 27.06.2013. It is also no doubt true that the Committee had prescribed TORs in respect of the project of the applicant but, as would appear from paragraph 4 of the affidavit dated 3.5.2016 of the Ministry, nothing further proceeded in that regard except considering the case of the applicant as a case of violation but again, not proceeding further on the ground that the two OM's prescribing guidelines for dealing with violation cases had been quashed by the Hon'ble Principal of NGT, as already alluded to earlier.

Upon consideration of the entire facts and circumstances of the case, we are constrained to observe that the Ministry has been absolutely callous in their approach in dealing with the case of the applicant.

In the first instance, they did not bother to respond to the letters even of its own arm i.e. SEIAA, Bihar and the Bihar State PCB and, when countered with the situation, they have come forward with an explanation which, in our view, is quite preposterous, to state the least. Not only did they not dispose of the application of the applicant for EC within a reasonable time but also resorted to taking pleas that were untrue to explain their failure to dispose of the applicant's case for the reason already discussed earlier, i.e. the two OMs had been quashed by the Principal Bench of NGT, when in fact it had been stayed by the Hon'ble Supreme Court on 16.11.2015 and, therefore, operative.

We are not, as of now, inclined to proceed against the officer affirming the affidavit containing the untruth as we rather intend to dispose of the case on its merit without getting mired in extraneous proceedings.

In view of the above circumstances, we direct as follows :-

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|  | <p>i) Having regard to the fact that there has been unexplained and inordinate delay on the part of the Respondent No. 1, MOEF, in disposing of the application for EC, the applicant shall be permitted to operate the mines until the EC application submitted by the applicant is disposed of;</p> <p>ii) The applicant shall deposit Rs. 5 lakh each per year against revenue commencing from the first date of its operation till the date of its closure i.e. from 2001 to 2008 (8 years) and again from 2011 to 2015 (5 years) i.e., total 13 years as environmental compensation. The entire amount shall be kept in a joint FDR A/C of Bihar State PCB and Bihar SEIAA opened in a nationalised bank at Patna, Bihar.</p> <p>iii) Apart from this, the applicant shall also furnish Bank Guarantee of Rupees one Crore with the Respondent No. 1, i.e., MOEF.</p> <p>iv) The applicant shall be permitted to commence with the mining operation only after the above directions are complied with. The Mining Development Commissioners, Respondents No. 4 and 5, shall issue necessary permission on the applicant submitting a compliance report.</p> |
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- v) The applicant shall strictly adhere to the conditions prescribed by the State PCB failing which the PCB shall be at liberty to proceed against the applicant as per law under the powers vested in them.
- vi) The MOEF shall endeavour to dispose of the application of the applicant for EC within three months after the new draft notification is published in the official Gazette.
- vii) The applicant shall extend all his cooperation in ensuring that the proceeding with regard to his application is completed expeditiously.
- viii) It is made clear that grant of permission to the applicant as directed above shall be subject to the outcome of the violation case that would be initiated under the new guidelines to be published.

**With the above directions, the OA as well as MA stands disposed of.**

**No order as to costs.**

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Justice S.P.Wangdi, JM

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Prof. (Dr.) P. C. Mishra, EM

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