

Shri. Vishal Arinjay Shah vs Sou. Smita Pradeep Shah on 31 August, 2023

Item No.2

(Pune Bench)

BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE

(By Video Conferencing)

REVIEW APPLICATION NO.09 OF 2023 (WZ)
IN
APPEAL NO.68 OF 2019 (WZ)

M/s Grenelis Pvt. Ltd.

.... Applicant

Versus

Mr. Vishal Arinjay Shah & Ors.

.... Respondents

Date of hearing : 31.08.2023

CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER

Applicant : Mr. Sangramsingh Bhonsale, Advocate along with
Ms. Aarti Bhonsle, Ms. Samridhi S. Jain, Mr. Nrupal
Dingankar, Ms. Pushkara Bhonsle, Advocates

ORDER

1. This Review Application has been filed to seek review of the judgment dated 09.08.2023 passed by this Tribunal in Appeal No.68 of 2019 (WZ) on the grounds that there is an error apparent on the face of it as reliance has been placed by the Tribunal on a letter dated 30.01.2019 issued by respondent No.5 - SEIAA, which is otherwise contrary to the Notification dated 14.03.2017, which has the force of law. The letter dated 30.01.2019 could not override the Notification dated 14.03.2017. Further it is mentioned that the Enforcement Management Plan was to comprise of the Remediation Plan and the Natural and Community Resource Augmentation Plan corresponding to the ecological damage assessed and economic benefit derived due to violations of conditions of EC in terms of Clause 13(6) and Clause 13(7), which required the Project Proponent to submit a Bank Guarantee equivalent to the amount of the Remediation Plan and Natural and Community Resource Augmentation Plan with the State Pollution Control Board, which was to be released after successful implementation of the Remediation Plan and the Natural Community Resource Augmentation Plan. There was no time limit stipulated in Notification dated 14.03.2017 for executing the Remediation

Plan. Clause 13 sub-clause (7) of the Notification shall prevail over the letter dated 30.01.2019 and therefore, no restriction with regard to the specific timeline was necessary for the purpose of implementation of Remediation Plan and the Natural and Community Resource Augmentation Plan. A specific time-bound action plan was not necessary in terms of the Notification dated 14.03.2017.

2. The learned counsel for the Review Applicant has drawn our attention to page 187 of the paper-book, which is "Environmental Management Plan: Natural Resource & Community Resource" and attention is drawn to page 227 of it, which contains, according to the learned counsel for the applicant, the Environmental Audit Report, which is given in tabular form, the corrective measures as suggested by the Monitoring Agency, which is as follows:

Cost - Environment Management Plan Sr. Pollution Control & Other Capital Cost
Annual O & M No. Environment Infrastructure In Rs. Lakhs Cost In Rs. Lakhs A
During Construction Phase:

1 Site Sanitation & Safety	0.00	2.44	2 Environmental Monitoring	0.00	3.16	3
Disinfection	0.00	1.20	4 Health Check up	0.00	2.90	Total (A)
				0.00	9.7	B During
				Operation Phase		
1 Rain Water Harvesting	4.50	0.50	2 Sewage Treatment Plant	45.00		
1.50	3 Organic Waste Composting	14.00	4.75	4 Tree Plantation	8.50	2.00
5 Solar					water heater	
3.20	0.06	4 6 Solar street lights	10.0	0.50	7 Enviro monitoring	0.00
						3.16
8 Basement Parking & storm water	10.00	0.20	pumping	9 Laying of Storm & Sewer	line up to Included in the cost of the final disposal point project Total (B)	
						95.2 12.67

3. It is emphasized by the learned counsel that this work was required to be done at the site in question, details of which are already there. He has also drawn our attention to pages 256 to 285, which is a letter dated 30.01.2019 written by the Scientist-2, SEIAA to the Chairman, SEAC-1, SEAC-2 and SEAC-3, wherein it is recorded that in pursuance of the Notification dated 14.03.2017 and O.M. dated 15.03.2018 and 16.03.2018, issued by the MoEF&CC on procedure to be adopted for dealing with the FC violation cases, the development of a protocol for Assessment for Environmental Damage and Estimation of Remediation Costs for Building Construction Projects was considered and with this, an Approach Paper for Assessment for Environmental Damage and Estimation of Remediation Costs for Building Construction Projects has been annexed. Our attention is drawn to paragraph 16 sub-clause (c), which reads as under:

"Both the remediation and NCRAP needs to be implemented by PP independently which needs to be verified by regulatory authority. There is no time limit or verification methodology defined for such implementation. Still however, the time limit can always be considered by authority as a part of EMP while approving the EMP and EC."

4. At page 284 of this Approach Paper, at clause 34 thereof, the following areas have been identified for resource allocation through such EMP cost which were subject to final decision for both activities and allocation by SEIAA and the Govt. of Maharashtra.

Sr. No.		% allocation	Implementing Agency	Remarks
1	Afforestation (can include plantation, garden development)	25	Social Forestry and Local Body	The afforestation can be either through social forestry or the local body, preferably within 50 km from project site
2	Water conservation program (Jalyukt shivar, etc.)	25		Preferably within 50 km radius of project site
3	Urban environment and sanitation (can include Swatccha Bharat, playground development, urban ground-water recharge schemes etc)	20	Local body	
4	Sewerage lines and STP, solid waste management,	20	Local body	
5	Urban air/noise pollution control initiatives	10	Local body	

5. The above paragraph of the Approach Paper states that the outer limit for execution of the project could be maximum two years.

6. We have considered the arguments advanced by the learned counsel for the applicant and find that our judgment was delivered keeping in mind that the description of activities and the allocation made as per clause 34 of the Approach Paper, the details of the same were not given and yet, the SEIAA had granted ex post facto Environmental Clearance (EC) to the Project Proponent (applicant herein), which was found to be erroneous.

7. The learned counsel for the applicant has also emphasized that the works were to be done by the implementing agency, which was to be other body and not the Project Proponent and names of those bodies have also been added in the above chart at clause 34. Therefore the Bank Guarantee of an amount of Rs.1.95 crore, which has also been deposited by the applicant, should be treated to be adequate compliance at his end and whatever works were to be done within that amount of Rs.1.95 crore was to be done by different authorities. Therefore, it was their burden and not to be discharged by the applicant.

8. We find that the SEIAA ought to have been careful in ensuring before granting EC. As to what are the activities to be done, details of the same should have been obtained. Because after completion of those activities, the Bank Guarantee could be released. Therefore, we have found the work of the SEIAA to be faulty based on which the ex post facto EC was set aside.

9. Therefore, we admit this Review Application and direct the Registry to issue notices to the respondents, returnable within four weeks. Till the next date, the status quo shall be continued and the judgment, review of which has been sought in the present Review Application, shall remain inoperational.

10. Put up this matter for next consideration on 21.11.2023.

Dinesh Kumar Singh, JM Dr. Vijay Kulkarni, EM August 31, 2023 R.A. No.09/2023(WZ