

Satendra Pandey vs Moef on 29 July, 2022

Item No. 01

Court No. 1

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

(By Video Conferencing)

Appeal No. 35/2022
(I.A. No. 182/2022 & I.A. No. 183/2022)

Satendra Pandey

Appellant

Versus

Ministry of Environment, Forest
and Climate Change & Ors.

Respondent(s)

Date of hearing: 29.07.2022

CORAM: HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER

Appellant: Mr. Arvind Kumar Rai & Ms. Ankita Rai, Advocates

ORDER

1. This appeal under Section 18(1) read with Sections 14, 15, 16 & 17 of National Green Tribunal Act, 2010 (hereinafter referred to as 'NGT Act, 2010') has been filed challenging Environmental Clearance (hereinafter referred to as 'EC') dated 08.06.2022 issued by State Environment Impact Assessment Authority, Uttar Pradesh (hereinafter referred to as 'SEIAA, UP') granting EC for expansion of the project in question.

2. PP has not been impleaded as party in this case. Let PP - Ecity Entertainment Pvt. Ltd., Fun Republic Mall, Near Eldeco Greens, Gomtinagar-226010 through its General Manager be impleaded as Respondent No. 5.

3. Shri Arvind Kumar, learned Counsel assisted by Ankita Rai submitted that construction was initiated by Project Proponent on the site in question much before grant of EC. In fact, even an application for grant of prior EC was not submitted. The Project Proponent illegally obtained Consent to Establish (hereinafter referred to as 'CTE') on 04.11.2020; though a prior EC under the provisions of EIA Notification, 2006 was necessary and mandatory. Thus, in violation of the

provisions of EIA Notification, 2006, only on the basis of CTE dated 04.11.2020, construction commenced at the site where-against appellant made complaint and, thereafter, CTE was cancelled by UPPCB.

4. It is submitted that EC granted to the appellant is illegal, particularly, before grant of EC, SEIAA, UP or its appraisal Committee has not visited the site and made any physical inspection and the fact that construction was already raised has been ignored/omitted.

5. In our view, the allegations made in the appeal, per se do not satisfy the requirement for vitiating the EC, but submission that construction was raised in violation of the provisions of EIA Notification, 2006 amounts to violation of environmental laws and, therefore, a substantial question relating to environment arising from implementation of the Scheduled Acts under NGT Act, 2010, under Section 14 read with 15 has arisen and, therefore, in our view, this appeal may be converted in Original Application under Sections 14 and 15 and Registry is directed to register the same accordingly.

6. In order to ascertain factual aspects before taking any further action, we find it appropriate to constitute a Joint Committee comprising Regional Officer, MoEF&CC; CPCB and District Magistrate, Lucknow who shall submit a report to this Tribunal within one month by e-mail at judicial- ngt@gov.in preferably in the form of searchable PDF/OCR Support PDF and not in the form of Image PDF.

7. We also require UPPCB, Respondent No. 4 through Member Secretary to explain as to in what circumstances CTE was issued before grant of EC when project in question was within the ambit of EIA Notification, 2006 and a prior EC was mandatory. It shall also point out the officials responsible for such illegality and what action has been taken against erring officials in this regard.

8. Notice shall also be issued to Respondent No. 5 who may submit its response to the allegations made in the application. Respondent No. 5 will also explain, whether information of prior construction before grant of EC was disclosed in the application Form-1 and Form-1A, under EIA Notification, 2006, and if not, why this should not be taken as sufficient ground for vitiating the EC since concealment of material information by itself is a sufficient ground to nullify EC. The response shall be submitted by Respondent No. 5 within one month.

9. Further, we also direct the joint Committee constituted above to serve copy of report upon applicant as well as PP so as to enable them to submit their objections/comments, if any, within two weeks after receipt of copy of the report by them.

List for further consideration on 30.09.2022.

A copy of this order be forwarded to Regional Officer, MoEF&CC, CPCB, Member Secretary, UPPCB, District Magistrate, Lucknow and Respondent No. 5 by e-mail for compliance.

I.A. No. 182/2022 & I.A. No. 183/2022 Both the applications stand disposed of in view of the order passed in the main application itself.

Sudhir Agarwal, JM Prof. A. Senthil Vel, EM July 29, 2022 I.A. No. 182/2022 & I.A. No. 183/2022
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