BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH AT NEW DELHI
EXECUTION APPLICATION NO. 29 OF 2024
IN
APPEAL NO. 79 OF 2014

IN THE MATTER OF:

Debadityo Sinha & Ors... .... Appellants

Versus

Union of India & Ors.. ... ... Respondents

AND IN THE MATTER OF:

Debadityo Sinha ... . Applicant

Versus

M/s Mirzapur Thermal Energy (UP)
Private Limited & Ors ... ... Respondents

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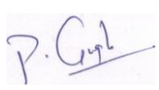

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Consolidated Rejoinder to the Replies filed by the Respondents in Execution Application No. 29 of 2024

IT IS MOST RESPECTFULLY SUBMITTED:

1. That the Applicant herein through the present rejoinder is filing a consolidated response to the replies filed by the Respondents in the above-mentioned matter. The applicant has also perused the contents of the replies filed by the State of UP dated 21.05.2025 and the MoEFCC dated 21.10.2024 in OA No. 883 of 2024, for purposes of the present rejoinder. It is important to inform the Hon'ble Tribunal that the State of UP, Respondent No. 2 has not filed any reply to the abovementioned Execution Application.

2. That the applicant is filing a point based and specific response to the replies filed by the respective Respondents and reserves its right to file a para wise rejoinder in case such need arises.

3. At the outset, the Applicant denies each and every statement, allegation, averment and contention made by the Respondents in their respective replies which is contrary to or inconsistent with what is stated in the original application. The Applicant prays

that nothing should be deemed to be admitted by the Applicant by virtue of not having been specifically denied herein.

4. That the applications (EA No. 29 of 2024 and OA No. 883 of 2024) are based on the fact that the project proponent has undertaken illegal construction activities at the project site in blatant violation of the judgement dated 21.12.2016 passed by this Hon'ble Tribunal in Appeal No. 79 of 2014 (Annexure A-1 to the EA No. 29 of 2024) and gross violations of the provisions of EIA Notification, 2006 and Van Adhiniyam, 1980.

5. That the Execution Application was filed in the month of July, 2024 by way of contempt proceedings under sections 25, 26 and 27 of the NGT Act, 2010 based on the fact that the project proponent started illegal construction activities by clearing and removing vegetation from the forest area by using massive earthwork including levelling of land, raising of boundary walls and constructing an illegal approach road passing through reserve forests.

6. That the Execution Application was listed for hearing on 16.08.2024, this Hon'ble Tribunal considering the issue of non-compliance of the judgment dated 21.12.2016 and after perusal of the contents the Execution Application, issued notices to the Respondents and directed them to file their responses. However, even when the issue was taken up by the Hon'ble Tribunal and all the Respondents were duly served, the Respondent No. 1 deliberately did not make any appearance in the matter and continued illegal construction activities at the project site. Thus, aggrieved by the same, the applicant preferred an Application for immediate Stay numbered as IA No. 110 of 2025 filed on 17.02.2025 as rampant construction work at the site including illegal construction of 10 feet boundary wall along the project

boundaries (approx. 1200 acres) and a large gate, construction of labour camps, blasting operations for hill cutting for levelling the land, tree felling and clearing of vegetation and forest in and around the project area using massive earth work and construction of more than 2 kilometers of approach road passing through the reserve forest in order to use it for transportation of vehicles, heavy machinery and equipments to access the proposed site which is deep inside Marihan Forest Range of Mirzapur Forest Division of U.P. The applicant has also stated that the project site is crucial from forest and wildlife perspective and has also been proposed as a "Sloth Bear Conservation Reserve".

7. That the fact that illegal construction activities have been carried over at the project site is corroborated by the photos annexed at pages 196-199 of the EA No. 29 of 2024 and at pages 222-224 of the IA No.110 of 2025. The photos indicate that significant construction activities have been done during the pendency of the present proceedings which has resulted into land use change thereby severely damaging the forest and its biodiversity which features hilly and rocky terrain.

8. It is important to point out that even as of today, the project proponent does not have any Environment Clearance and Forest Clearance for the project. The documents on record also reveal that they do not have valid Consent to establish by the UPPCB.

9. At the outset it is important to point out that while replies of the project proponent and MoEFCC have stated that the project proponent has applied for a fresh EC on 08.05.2024 and the same is pending before the Ministry (para 5 of MoEFCC reply in EA No. 29/2024 at page 534), it is important to point out that the project has to be appraised in accordance with the

observations made in the judgment dated 21.12.2016 and the Review order dated 01.05.2017 which remains intact to date. The judgment of the Hon'ble Tribunal was clear that there cannot be any development work at the project site and the same be restored to its original condition. The subsequent Review order provided a clarification that the project proponent is at liberty to approach the MoEFCC or any other competent authority for processing of the applications for grant of EC upon making up for/rectifying the defects and deficiencies pointed out in the judgement and the authorities concerned to process the same in accordance with law while strictly adhering to the content of the judgment. The clear understanding of both the judgements is that the project proponent can reapply afresh for the Environment Clearance after rectification of the defects and deficiencies pointed out in the judgement. Now since the project proponent has applied for a fresh EC (with an increased capacity of 1600 MW and an increased land requirement of 365.19 ha), the construction of the project can be done only after the defects pointed out in the judgment are met out by the project proponent and a fresh EC is granted by the MoEFCC after duly considering the said observations. Thus, any construction activity, whatsoever, without complying with the requirements stipulated in the judgment and the subsequent review order would tantamount to violation of the same.

10. That the applicant is responding to the contentions/objections in the following paras:

I. **Whether the project involves forest land and attracts provisions of Van Adhiniyam, 1980**- That the project proponent has stated that the project land is a revenue land and not a forest land (para 20 and 21 at

page 258 of the Reply in EA 29/2024). It has further stated that it does not require forest clearance for the project and thus there is no violation of the Van Adhiniyam, 1980. It is important to clarify that the project proponent is actually referring to the “plant” and not the “project”. The project in question is a thermal power project of Category A which requires establishment of various components including the plant unit, approach road, water pipeline, transmission line and railway line. The power project cannot be established till all the components of the project obtain approval and in case any of the components passes through the forest lands, the same would require to obtain Forest Clearance before start of any construction activity both on the forest and non-forest land. However, in the present case the project proponent has deliberately concealed/suppressed the involvement of forest for construction/establishment of the project in question and have attempted to mislead the Hon’ble Tribunal and the competent authorities even on several occasions in the past. The applicant submits that there is involvement of forest land both within and outside the plant boundary and the project requires forest clearance for all its material components as mentioned above and no construction activity, whatsoever at the plant site can be undertaken without obtaining prior Environment Clearance and Forest Clearance under the relevant laws.

The applicant is relying upon the following documents in this regard:

i. ***MoEFCC reply in OA 883/2024*:**

(1) In its reply, the Ministry has clearly stated that the project involves forest land and that even in the past, the EC amendment letter was not issued as the project proponent failed to obtain Stage I FC for the project. The reply states,

> "*The EAC in its meeting held on 22.02.2019 recommended for EC amendment subject to submission of Stage-I Forest Clearance for further issuance of EC amendment letter. Since the project proponent did not submit the same, therefore the EC amendment letter was not issued.*" (para 10 at page 12 and point No. 2 at page 87 of the MoEFCC reply in OA No. 883/2024).

(2) In a letter dated 20.12.2019, the Ministry has sought clear response of the project proponent on Stage I Forest Clearance for the project. In the same letter, the Ministry has noted,

> "*4. It has been noted that proposed project involves acquisition of forest land of 9.3681 ha (water pipeline, approach road, within the project boundary) which requires diversion under Forest (Conservation) Act, 1980.*" (Annexure A-3 at page 72 of the MoEFCC reply in OA No. 883/2024)

(3) That again in the specific conditions of the TOR dated 29.07.2024, the EAC has again sought the following:

"1.19 PP shall obtain a letter from concerned forest department clearly mentioning the extent of forest land involved within and outside (other activities related to plant) plant area.

1.20 While preparing the EIA/EMP report, PP shall explore the possibility of optimizing forest land requirement to the extent possible and submit a detailed note on the same at the time of EC presentation. In case of any increase in forest land PP shall obtain the amendment in ToR.

1.21 List of Schedule-1 species needs to be authenticated by the concerned forest department."

(Page 108 of the MoEFCC reply in OA No. 883/2024)

(4) Further again in the TOR dated 29.07.2024 the Ministry has observed,

"*The Committee observed that PP has reported an area of 0.62 Ha (forest land) inside the plant boundary but at the same time applied for FC over an area of 4.0123 vide proposal No FP/UP/OTHERS/470227/2024 dated 22/04/2024. Further, PP submitted that application was submitted for the same area (0.62 Ha) but after joint inspection of DFO (Forest Office) & SDM (Revenue) was held on 3.04.2024 confirming that the above area is non-forest land. In addition to this PP also reported in PFR that there is a forest involvement in water pipeline (5.8162 ha) and approach road (2.5419 ha). Stage I Forest Clearance has already been applied for this vide Proposal no.*

FP/UP/THE/14236/2015 and the same is under due consideration with MoEF&CC. The Committee is of the view that although PP has submitted a copy of joint inspection report but for more clarity PP shall obtain a letter in this regard from concerned forest department clearly mentioning the extent of forest land involved within and outside (other activities related to plant) plant area. The EAC also suggested that while preparing the EIA/EMP report, PP shall explore the possibility of optimizing forest land requirement to the extent possible and submit a detailed note on the same at the time of EC presentation. In case of any increase in forest land PP shall obtain the amendment in ToR." (Page 104 of MoEFCC reply in OA 883/2024)

The perusal of the above stated conditions shows that even the MoEFCC has time and again sought clear response of the project proponent on the involvement of forest land both within and outside the plant boundary and have also sought details of the presence of wildlife in the given area which itself indicates that the project proponent is trying to mislead the concerned authority with incomplete information and have concealed the presence of forest and wildlife which is a substantial issue to be determined by the EAC for the grant of EC.

ii. ***Observations made in the judgment dated 21.12.2016***- The Hon'ble Tribunal has made significant observations (para 36,41,42,48,50 of the judgement) that the project and its material components passes through

forest lands, a substantial fact which was not revealed by the project proponent even for the previous EC. Some of the observations are mentioned below:

"*48. Undoubtedly, the approach road, rail line and water line have to pass through forest lands, and these being material components of the project, the Project Proponent ought to have revealed the involvement of the forest land, in Form-1 filed for the purposes of getting EC. Paragraph 8 (v) of the EC Regulation, 2006 stipulates that clearances from other regulatory bodies or authorities shall not be required prior to receipt of applications for prior environmental clearance of project or activities, or screening, scoping and appraisal or decision by regulatory authority concerned, unless any of these is sequentially dependent on such clearance either due to requirement of law, or for necessary technical reasons.*

50. Learned Counsel appearing on behalf of the appellants further brought to our notice that not only the project involves use of forest land for coal transportation, water pipeline but there is no discussion in the EIA report regarding the potential impact of the fragmentation of the forest and disturbance of wildlife due to the passing of the railway line for coal transportation, construction of transmission line, water pipeline and approach road. From the facts noticed herein above, it is evident that the project is surrounded by forest and involves 'Parti Bhumi' (fallow land) thereby signifying least anthropogenic activity at or

around the project site and, thus the issue of wildlife in the area deserves serious consideration."

iii. ***Project cannot be constructed without diversion of forests land for non-forest use under Van Adhiniyam, 1980**:*

The State of UP in its reply has clearly stated that the *"project site at Village Dadari Khurd, tehsil-Sadar, District Mirzapur is situated adjoining Danti Reserve Forest (south), Sukhnai Reserve Forest (north), and Dadhiram Reserve Forest (east). Hence, the presence of wildlife in the vicinity is natural."* (para 6 at page 336 of the State's reply in OA No. 883/2024)

This fact was also observed in the judgment dated 21.12.2016 at para 40,41 and 42 that the project is surrounded by reserve forest from all sides (pages 60-62 of the EA No. 29/2024). Thus, if the project has to be established at this particular site, then all material components i.e the railway line for transporting coal, water pipeline, transmission lines and approach road had to pass through the forest lands which would require the project proponent to obtain FC for all these components before any construction is undertaken.

iv. ***State of UP reply in OA 883/2024:***

As per the State's reply, a committee was constituted by the PCCF, UP vide letter dated 25.10.2024 which gave its report on 02.01.2025 (Copy of the report is at page 348-359 of the reply). The conclusions of the committee report are provided by the PCCF in the reply (para 6 at page 329-333 of the reply). The applicant submits that the

committee's report is highly unreliable and questionable as several discrepancies are found in the same:

(1) ***Inconsistency in documents regarding involvement of forest land for the project***: Para 6 (i) of the reply at page 330 states that, "*…it has been concluded that no land has been identified as "Forest Like Area" by the district level committee as per government directives in village Dadri Khurd under Madihan range of District Mirzapur. Further, in the proposed project by Mirzapur Thermal Energy U.P Pvt Ltd in village dadri khurd, out of the total area of 262.16 acres notified under section 20 of the Indian Forest Act, 1927, an area of 1.63 hectares is proposed for non-forestry purposes for access road and pipeline. The proposal for this is under due process for approval under the Forest (Conservation) Act, 1980.*" It is submitted that the area 1.63 hectares (4.028 acres) is wrong and misleading and inconsistent. As per the MoEFCC reply filed in EA No. 29/2024 at page 536, 542 and 654, the proposal is for diversion of 8.3581 hectares of reserve forest land (which is 20 acres) and as per the MoEFCC reply in OA No. 883/2024 at page 72, the project requires acquisition of forest land of 9.3681 ha (which is 23.15 acres). Thus, it shows that none of the statements made by the project proponent before EAC regarding involvement of forest lands in the project is consistent and reliable.

(2) ***As per the 1952 Gazette Notification, issued under section 117 of U.P Zamindari Abolition and Land 1950 (U.P Act 1 of 1951), the land to be diverted for the proposed project vests with the Forest Department and Revenue records cannot override the said notification.***

Para 6 (iii) of the State's reply at page 331 states that,

> "*The District Magistrate, Mirzapur, in his report dated 29.02.2024 has clearly stated that in the forest department's Gazette Notification No. 617 dated 11.10.1952 for village Dadri Khurd of District Mirzapur, at page number 1225, serial no 244 and 248, an area of 800 and 843 acres respectively was recorded. However, in the revenue records (Khasra year 1359 fasli i. e 1952), the total area of the said village is 1209.562 acres.*
>
> *Therefore, it is evidently proven from the revenue records that the total area of forest land mentioned in the 1952 notification (1643 acres) is erroneous, as under no circumstances can it exceed the total village area of 1209.562 acres.*"

It is submitted that the finding is misleading and erroneous and is based upon a joint inspection report dated 28.02.2024 of local officials (page 378-383 of the State's reply). The joint inspection report completely relies upon the revenue records to conclude that the total village area cannot exceed 1209.562 acres and that the area mentioned under the 1952 notification was erroneous. It is submitted that even if it is assumed that the land in the village where the project

is located is 1209 acres instead of 1643 acres, the fact remains that the same still vests with the forest department by virtue of Schedule II of the Gazette Notification dated 11.10.1952 and 18.10.1952 (given at page 360 and 361 of the reply).

Moreover, the Hon'ble Supreme Court in various decisions has held that the revenue records are not documents of title and does not confer any right of ownership. In a judgment titled as *"Prahlad Pradhan and Ors. v. Sonu Kumhar and Ors, (2019) 10 SCC 259"* the Hon'ble SC has negated argument of ownership based upon entries in the revenue records and held that the revenue record does not confer title to the property nor do they have any presumptive value on the title. Moreover, it is the gazette notification issued under the statute which would prevail over the revenue records.

(3) ***The land in question is "forest" as per the decisions of the Hon'ble SC in TN Godavarman matter:***

The State of UP has stated the following in its reply,

(i) no land has been identified as "Forest like area" by the district level committee (page 330),

(ii) "……Hence, other parcels of land including land purchased by Welspun are not in the form of deemed forest and are not covered as forest" (page 331),

(iii) "the joint inspection report sent by the District Magistrate, Mirzapur dated 29.02.2024 (Annexure-7)

has confirmed that the land purchased by Welspun does not include any deemed forest."

The findings that the land where the project is being proposed is not "forests" are based on the vague observations of district level committee of local officials which relied upon revenue records to verify status of the land (page 380 and 381 of the reply). The report of the said committee cannot be relied upon for the following two reasons:

(i) The committee treats only that land as "forest" against which proceedings of section 4 and 20 under Indian Forest Act, 1927 were done. Thus, it considers only "Reserve Forests" as forests. The committee further states that only 264.88 acres was handed over to the forest department and remaining land could not be handed over at that time as it was not available and is currently also not possible to be handed over. Therefore, the land purchased by the Welspun are not forest like or forest. (page 331, 332 and 383 of the State's reply). The said observation is against the meaning of "forest" as explained by the Hon'ble Supreme Court in the Godavarman orders. The Hon'ble SC in *TN Godavarman v Union of India W.P. (C) No. 202 of 1995*, reiterated subsequently in *Ashok Kumar Sharma and Others v Union of India W.P. (C) No. 1164 of 2023* [2024 SCC OnLine SC 4993] has specifically stated that the meaning of forest has to be understood in a broader sense irrespective of its ownership or title or whether the same is recorded as forest under any government records which implies

that any land which has features of forest will be treated as "forest" for the purposes of diversion under the Forest Conservation Act, 1980. The SC in the Ashok Kumar matter (supra) has very clearly observed that,

> "*14. The decision in T N Godavarman (supra) needs to be understood from two perspectives. First, the expression 'forest' was read in a broad sense bearing in mind the object and purpose of the Forest Conservation Act 1980. While adopting the dictionary meaning of the expression 'forest', the Court intended to impart a purposive interpretation to the phrase so as to accord with the intent underlying the enactment of the law in 1980. Hence, the Court clarified that this would cover but not be confined only to lands recorded as forest in government records. Moreover, the expression 'forest' would be independent of the nature of ownership or title."* (emphasis added)

It is important to clarify that if the land in question is "forest" as per the observations in the Godavarman matter, the provisions of Van Adhiniyam, 1980 immediately applies to the same irrespective of whether the same has been notified or identified or recorded as "Reserve Forest" under the Indian Forest Act, 1927 and irrespective of whether the same is recorded as forest in any government records including the revenue or land records.

(ii) The committee was not an expert committee constituted for identification of forests as per the

Godavarman order dated 12.12.1996 wherein the Hon'ble Supreme Court directed the State Government to identify areas which are "forests", irrespective of whether they are so notified, recognised or classified under any law, and irrespective of the ownership of the land of such forest and also identify areas which were earlier forests but stand degraded, denuded or cleared. Thus, the observations of the committee are completely against the said observations as it only considers "Reserve forest" as forests.

v. ***Location of the project reveals that the same is proposed on forest land***:

(1) The proposed project is on forest land is evident from the map available on the MoEFCC's Parivesh portal which is based on the location submitted by the project proponent for grant of Environment Clearance. Copy of the Map available and accessed from the MoEFCC website on 14th April 2025 is annexed as **Annexure A-1**.

(2) According to the SOI toposheet submitted by the project proponent to the Ministry of Environment, Forest and Climate Change (MoEFCC) as part of its Environmental Clearance (EC) application under the EIA Notification 2006, the presence of forest is clearly visible.

Copy of the Map cropped from the original SOI toposheet with the power plant site submitted by the Mirzapur Thermal Energy (U.P.) Pvt Ltd to MoEFCC for grant of Environmental Clearance as available on

Parivesh Portal of MOEFCC is annexed as **Annexure A-2.**

(3) The land in question is an important forest type located on hill slope which is marked by rocky outcrops, dominated by dry deciduous forest subtypes of *Butea forests*, *Anogeissus forests*, *Boswellia forests* and *bamboo brakes* which gives a barren appearance due to less tree density but is an important forest type of Vindhyan landscape, highly rich in biodiversity and are ecologically very sensitive. This fact is also evident from the letter of DFO to CCF, Mirzapur dated 15 January 2020 (Annexure A-6 at Page 176 of the EA No. 29/2024).

vi. ***Forest Clearance is a pre-requisite for Environment Clearance as per the mandatory provisions of EIA Notification, 2006***-

(1) Under the EIA Notification, 2006, the project proponent is required to clearly disclose the involvement of forest land in the "project proposal" so that the project can be appraised as a whole. (sl no. 21, 23 to Appendix I of Form 1 given at page 40 of MoEFCC reply in OA 883/2024).

(2) Further, para 8 (v) of the EIA Notification, 2006 (page 28 of the MoEFCC reply in OA 883/2024) states that – "*Clearances from other regulatory bodies or authorities shall not be required prior to receipt of applications for prior environment clearance 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". It is submitted that the grant of EC is purely subject to the grant of FC and no construction whatsoever, can be undertaken till both the clearances have been obtained by the project proponent.

II. **Whether the OM dated 29.03.2022 applies to the project in question**: That the project proponent has contended that the construction of boundary wall, gate and labour camps is a temporary construction covered under OM dated 29.03.2022 issued by the MoEFCC (Page 260-264 of the project proponent's reply in EA No. 29/2024). The applicant submits that the said OM is inapplicable for two reasons:

(i) The OM does not apply to projects which involves forest lands and thus the project proponent cannot take benefit of the same for carrying out illegal construction works at the project site (ii) The OM under the garb of "securing of land" permits construction activities/preparation of land which is against the mandatory provisions of the EIA Notification, 2006.

(1) The applicant submits that any construction activity undertaken by the project proponent under the garb of the OM dated 29.03.2022 is illegal as para 4 of the said OM clearly states that,

(i) The land should be in the legal possession of the project proponent and all statutory approvals in respect of the project site should have been obtained.

(ii) *In case of involvement of any forest land, no activity shall be initiated at the site till the Stage II Forest Clearance is obtained under the relevant provisions of Forest (Conservation) Act, 1980. (Emphasis supplied)*
(Page 171-172 of the project proponent reply in EA No. 29/2024)

It is submitted that the said OM is not applicable to projects which involves forest land and therefore it makes it clear that no activity given in para 3 of the OM i.e fencing of the project site by boundary wall using civil construction, barbed wire or precast/ prefabricated components, construction of temporary sheds using pre-fabricated / modular structure, for site office/guards and storing material and machinery, provision of temporary electricity and water supply for site office/guards only, can be undertaken till Stage II FC is been obtained by the project proponent. The applicant in the foregoing paras has clearly indicated that there is presence of forest both inside and outside the plant boundary which makes this OM inapplicable to the present project.

(2) That the applicant also wishes to point out that the said OM is only an administrative/executive order passed by the MoEFCC and the same cannot override the EIA Notification, 2006 which stipulates for "prior EC" before any construction work is undertaken. The OM permits the project proponent to undertake construction activities which could lead to change in the environmental and ecological conditions of the

area before the EIA studies are conducted and considered by the EAC. For example, the OM allows for fencing of the project site by constructing boundary wall or construction of temporary sheds for storage of material and machinery which would ultimately result into change in land use and existing environmental conditions of the area. The EIA has to take into account the actual status of the land and how the project activities including construction, transportation and storage of material would impact the environment of the area. It is only on the basis of the EIA, that the EAC considers as to whether the particular site is appropriate for the project or what mitigation measures could be suggested to prevent potential environmental impacts. The applicant has constantly argued that the project site is surrounded by reserve forests from all directions (para 41 and 42 of the judgment) and has presence of Schedule I wildlife species including habitats of Sloth Bear which would be deeply disturbed by the said activities (Para 50 of the judgement). The influx of material, machinery and human resource at the site would result into dispersal of the wildlife away from the area. Thus, when an EIA and baseline studies would be conducted for the project site and its surroundings, the EIA would not reflect the actual status of the land and wildlife diversity due to the disturbance caused by the so-called construction activities and human presence covered under the said OM.

(3) It is further important to point out that the said OM is infact ultra vires the EIA Notification, 2006 and Environment (Protection) Act, 1986 as it encourages project proponents to undertake construction activities in total contravention of the purpose and objective of EIA which requires preparation of EIA studies, public consultation and rigorous appraisal process for grant of EC and it is only subsequent to the obtaining of EC, that the project proponent can commence the construction of the project. It is further submitted that the term "securing the land" has been arbitrarily defined by the MoEFCC to include construction activities at the site which is not mentioned anywhere in the EIA Notification, 2006. It is submitted that the OM is not only inconsistent with the EIA Notification, 2006 but it is also not legally tenable as it is not issued under any statute. Thus, the same cannot be relied over for the purpose of the present issue. Furthermore, the Hon'ble High Court of Bombay in while striking down an Office Memorandum of MoEFCC which allowed for a procedure for grant of post-facto CRZ has rightly observed,

> *"36. Thus, in view of the aforesaid proposition of law propounded by Hon'ble Supreme Court, it is more than clear that any executive instruction can only supplement the rules and if such executive instruction tends to supplant the rules, the same cannot be permitted to be sustained in the eyes of law.*

37. In the instant case, the CRZ Notification, 2019 has been issued by the Central Government in exercise of its powers vested in it under section 3(2)(v) of the Act of 1986 read with Rule 5(3)(d) of the Rules of 1986 and hence, they are statutory in nature. It is also to be seen that the impugned Office Memorandum has been issued without following the procedure as prescribed under Rule 5(3) of the Rules of 1986 and hence, the impugned Office Memorandum is not referable to the said rules. Accordingly, the impugned Office Memorandum cannot be said to be statutory in nature; rather it only falls in the category of an instrument which has been issued by the Central Government in exercise of its general administrative/executive powers.

38. We may also note that CRZ Notification, 2019 does not contain any provision which permits post facto clearance, whereas the impugned Office Memorandum prescribes a procedure for obtaining post facto CRZ clearance. Accordingly, the Office Memorandum provides something which is not provided for in the statutory notification and hence, it cannot be said that the impugned Office Memorandum in any manner is supplemental to the CRZ Notification, 2019; rather it supplants the same, which, in view of the afore-discussed proposition of law propounded by Hon'ble Supreme Court in various judgments, is legally impermissible."

Copy of the judgment dated 24.09.2024 by the Hon'ble High Court of Bombay in the matter of Vanashakti & Ors

vs UOI & Ors, PIL No. 7 of 2023 is annexed herewith as **Annexure A-3**.

III. **Whether the project proponent has carried out illegal construction work at the project site in violation of the judgment dated 21.12.2016 and without obtaining EC and FC –** It is submitted that under the pretext of the said OM, the project proponent has undertaken illegal construction work at the site which has led to physical changes to the existing status of the land without obtaining EC and FC.

(1) ***Photos by the applicant showing clearing of forest and vegetation***: The project proponent has cleared vegetation, trees and forest from the project site and its surroundings including the approach road which is evident from the pictures annexed at *196-199 of the EA No. 29 of 2024 and at pages 222-224 of the IA No.110 of 2025.*

(2) ***UPPCB site inspection report confirming illegal levelling of land***- That the project proponent in its reply has alleged that it has not undertaken any levelling of the land (Reply in EA No. 29/2024 at para 36-39 at page 264). However, there is substantial evidence that the project proponent has levelled the land and has attempted to change the landscape and land use of the project site which is not permissible prior to the grant of EC as that would alter the outcomes of the proposed EIA studies. The UP-Pollution Control Board in para 6 of its reply dated 02.12.2024 at page 207 in EA 29/2024 has submitted that,

"During field visit at above concerned site, construction of pre-cast boundary wall and levelling work of ground was found under progress".

The UP Pollution Control Board has also issued a notice to the project proponent for carrying out establishment work without having valid CTE (para 7 at page 208 of the UPPCB reply). It is also important to point out here that in reply to the said show cause notice, the project proponent has stated that the UPPCB has already granted a CTE to the previous project proponent on 13.01.2015 and that the construction of the boundary wall was undertaken during the validity of the said EC and CTE. (Annexure R-1/9 at page 519 in EA No. 29/2024)

The statement made by the project proponent in the said reply is misleading and false as no boundary wall was existing at the site and it was only in June 2024 when the construction of the same started. The representation regarding the same was also sent to the Ministry by the applicant which is at page 192-197 of the EA No. 29/2024. Moreover, the project proponent cannot claim the benefit of the CTE as the same stood expired with the quashing of the previous EC and the project has now enhanced its capacity and area which would require a fresh CTE.

(3) ***Illegal construction activities confirmed by the site inspection report of the MoEFCC, Regional Office, Lucknow dated 25.02.2025***: The fact that the project proponent has undertaken illegal construction activities at the site is also evident from the site inspection report

of the MoEFCC Regional office, Lucknow dated 25.02.2025. The report reveals that the project proponent has undertaken construction/preparation of land leading to physical changes to the site which is also evident from the photos at page 665-669 of the reply. During the inspection the following construction was found at the project site:

(i) Boundary wall has been constructed all around the project using precast boundary pillars/walls and by using MS profile sheets (in undulated patches), 7 to 10 feet in height.
(ii) Main gate installed using MS pipe/rods
(iii) One security room constructed close to the main gate
(iv) One abandoned well found during the inspection
(v) A rainwater storage pond with 30,000 m^3 **(equal to 3 Crore Liters)** capacity has been constructed in the southwest direction of the site
(vi) Several MS portable site cabins fitted with Split Air Conditioners
(vii) One MS portable toilet available on site
(viii) Availability of industrial cables with wooden/plastic drums, and other materials
(ix) Digging work for cable laying observed in some patches
(x) Readymade electricity poles with wires seen in working condition and leading to a nearby village
(xi) High tension wires also passed through project land.

(Page 541 of the MoEFCC reply in EA 29/2024)

It is important to mention that the prefabricated walls used by the project proponent are made up of 'concrete' and the MS rods are made of steel. Although the terms used are prefabricated, the materials used for such prefabricated items are same as used in permanent

structures such as cement, steel, concrete, etc and therefore would amount to permanent structures assembled at site.

(4) ***Illegal diversion and use of forest land for approach road without obtaining FC***- The site inspection report also reveals that while the proposal for the diversion of 8.3581 of reserved forest land for water pipeline and approach road is pending with the Regional Office, MoEFCC which also mentions that there is requirement of felling of 296 trees for the same (Page 654 and page 658 of the MoEFCC reply in EA No. 29/2024), the project proponent has illegally occupied, cleared the trees and diverted the approach road of 1.5 to 2 km passing through the forest in collusion with the local forest department by paying some vague user fees which is a blatant violation of Van Adhiniyam, 1980. The findings of the report in this regard (reiterated at page 542 of the MoEFCC reply in EA No. 29/2024) are mentioned below:

> *"It has also been found that the project land is not connected with the main road, only one connectivity has been found through forest land (around 1.5 to 2 km), which has been used by the PP by paying fee as forest accessed to the local forest department (Madihan Range) of Rs 5000/- on 16.08.2024 and Rs 11650 on 30.12.2024."*

It is submitted that the provisions of Van Adhiniyam, 1980, very specifically provides that the forest land cannot be diverted for non-forest use unless prior approval of the Central Government is obtained. It is clear that the project proponent and the forest department

have flouted the law, for which proceedings under section 3A and 3B of the relevant Act shall be necessitated.

IV. **Whether the project site is part of "Sloth Bear Conservation Reserve and has significant wildlife presence** - The project proponent in its reply at para 53 at page 271 in EA No. 29/2024 has stated that the project land is not part of any "Sloth Bear Conservation Reserve" and none of the construction activities are damaging the forest and wildlife and that the project proponent has not attempted to change the land use of the area. It is submitted that the State of UP in its reply affidavit filed in 883/2024 has made the following significant observations stating that the project area in question lies inside the Marihan Forest Range and has slopy, uneven, rocky terrain and several small streams flows through it during rainy season. The reply of the State also confirms the fact that the forest range was also part of the proposal for "Sloth Bear Conservation Reserve" and considering that the project site is surrounded by reserve forest, the presence of wildlife in the vicinity is natural.

(i) The alleged purchased project land is situated in the village Dadri Khurd of Marihan Range, Tehsil-Sadar, District-Mirzapur bordering Danti Reserve Forest in the south, Sukhnai Reserve Forest in the north and Dadiram Reserve Forest in the east. The land is sloping, uneven and rocky and flows in the form of small streams during the rainy season. (Page 357 of State's reply in OA No. 883/2024)

(ii) In relation to this, the point mentioned in point-4 of the said order dated 23.07.2024 of the Hon'ble Tribunal was examined in which it was found that in the sequence of permission received for camera trap and other surveys in certain areas of Sukrit, Chunar and Madihan ranges of Mirzapur Forest Division, environmentalist Shri Debadityo Sinha, Managing Trustee, Vindhyan Ecology and Natural History Foundation, in July 2018, by surveying certain areas of Sukrit, Chunar and Madihan ranges of Mirzapur Forest Division, a proposal for Sloth Bear Conservation Reserve was made available to the Divisional Forest Officer, Mirzapur, thereafter, the office of Divisional Forest Officer, Mirzapur Forest Division, vide letter no. 266/Mirzapur/23 dated 18.07.2018 (Annexure-15), incorporated the findings of the bear survey study under Madihan, Sukrit and Chunar ranges of Mirzapur Forest Division. It was sent to the Chief Forest Conservator, Mirzapur region for further action. But at present the proposal to declare the village Dadri Khurd and the surrounding forest areas as Sloth Bear Conservation Reserve is not under consideration in the Forest and Wildlife Department (Page 355 of State’s reply in OA No. 883/2024).

(iii) As per the report of the Principal Chief Conservator of Forests (Wildlife), U.P., Lucknow, letter dated 03.02.2025 (Annexure-B) with regard to Hon'ble NGT order dated 23.07.2024, it is stated that the

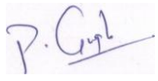
project site at Village Dadari Khurd, Tehsil-Sadar, District-Mirzapur is situated adjoining Danti Reserved Forest (south), Sukhnaai Reserved Forest (north), and Dadhiram Reserved Forest (east). Hence, the presence of wildlife in the vicinity is natural. However, no specific wildlife population data is maintained for the particular location (Page 336 of State's reply in OA No. 883/2024).

V. **Whether any FIR against the applicant has any relevance to the present matter:** The project proponent in its reply at para 47 at page 268 of the EA No. 29/2024 has alleged that a criminal case has been registered against the applicant under IPC. The applicant humbly submits that the pendency of FIR is completely irrelevant to the present matter as the current proceedings are related to violations of the Environment and Forest laws. Moreover, the FIR was actually done at the beck and call of the previous project proponent, M/s Welspun Energy (U.P) Pvt Ltd. on 20.06.2017. The fact is that the project proponent had filed appeal before the Hon'ble Supreme Court against the judgment dated 21.12.2016 and the FIR was filed during this time to create pressure on the applicant. However, when the applicant refused to bend down, the project proponent had to withdrew the SC appeal. This fact could also be corroborated by the order of withdrawal dated 22.09.2017 of the Hon'ble Supreme Court (Annexure A-3 at page 80 of the EA No. 29/2024). It is also important to mention here that, the SHO of Marihan Police Station who conspired with the previous project proponent in

registering the FIR against the applicant was suspended within 2 months of that incident when caught red-handed taking bribes from illegal mining operators in the same Marihan Forest Range, where this project in question is also located. A news report dated 10th August 2017 in this regard is annexed as **Annexure A-4**. Such incidents only reflect the level of corruption among local administration operators involved in illegal activities sidelining any concerns for environment and forests. In fact, the practice of filing fake FIR's and other harassments are a common practice by violators to mute the voices of the whistleblowers particularly environmentalists like the applicant who attempts to highlight grave violations of law.

In view of the submissions made above, the Hon'ble Tribunal may direct for an appropriate action including (1) demolition/removal of the constructed structures which have been raised without obtaining mandatory approvals under the EIA Notification, 2006 and the Van Adhiniyam, 1980 (2) Stringent action and penalty for carrying out construction works in violation of the judgment of this Hon'ble Tribunal (3) Restoration of the area to its original condition and compensation for the loss caused to the forest and biodiversity of this area as prayed in the Execution Application.

Filed by:



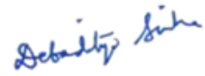
PARUL GUPTA
ADVOCATE FOR THE APPLICANT
A-63, THIRD FLOOR,
DEFENCE COLONY,
NEW DELHI-110024

Email ID: parul.lawyer@gmail.com
Phone:91-9891656928

New Delhi
Dated:11.07.2025

VERIFICATION

I, Debadityo Sinha, S/o Ashit Kumar Sinha, aged about 36 years, R/o Flat No. 406, Tower KO2, Jaypee Klassic Heights, Sector-134, Noida-201304 do verify that the contents of the application are true and that I have not suppressed any material fact.



Applicant

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH AT NEW DELHI
EXECUTION APPLICATION NO. 29 OF 2024
IN
APPEAL NO. 79 OF 2014

IN THE MATTER OF:

Debadityo Sinha & Ors... .... Appellants

Versus

Union of India & Ors.. ... ... Respondents

AND IN THE MATTER OF:

Debadityo Sinha ... . Applicant

Versus

M/s Mirzapur Thermal Energy (UP)
Private Limited & Ors ... ... Respondents

AFFIDAVIT

I, Debadityo Sinha, S/o Ashit Kumar Sinha, aged about 36 years, R/o Flat No. 406, Tower KO2, Jaypee Klassic Heights, Sector-134, Noida-201304 state on solemn affirmation as under:-

1. That I am the Applicant in the aforesaid matter and well conversant with the facts and record of the case, hence, I am competent to swear this affidavit.

2. That I have read and understood the contents of the accompanying Rejoinder and the same is true and correct to the best of my knowledge and belief and is drafted on my instruction.

NOTARY PUBLIC APPOINTED BY GOVT. OF INDIA
G. S. KHARBANDA
Notary Reg. No. 785
ADVOCATE Enl. No. D 2877/81
10 JUL 2025
ATTESTED 9899422266

Debadityo Sinha
DEPONENT

VERIFICATION:-

Verified on this the 10th day of July 2025 that the contents of the above affidavit are true and correct. No part of it is false and nothing material has been concealed therefrom.

DEPONENT

I, IDENTIFIED THE DEPONANT WHO HAS SIGNED IN MY PRESENCE

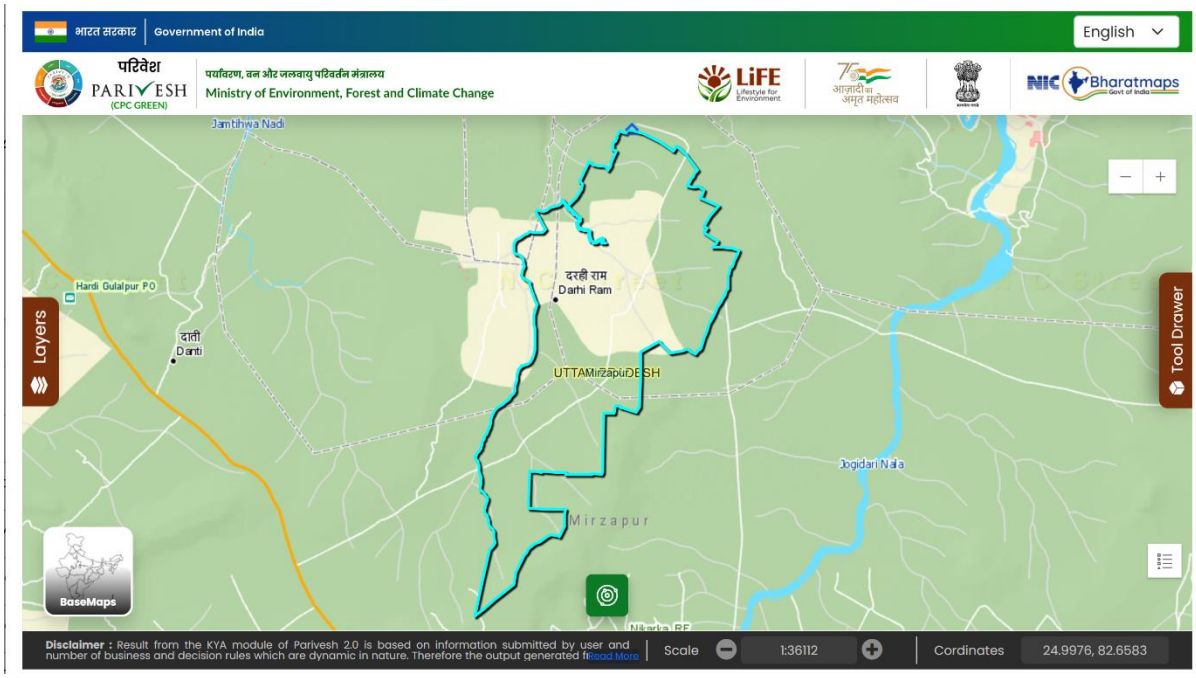
ATTESTED

NOTARY PUBLIC

NOTARY PUBLIC APPOINTED BY GOVT. OF INDIA
G. S. KHARBANDA
Notary Reg. No. 785
10 JUL 2025
ADVOCATE Enl. No. D 287/81
ATTESTED 9899422266

Annexure A-1

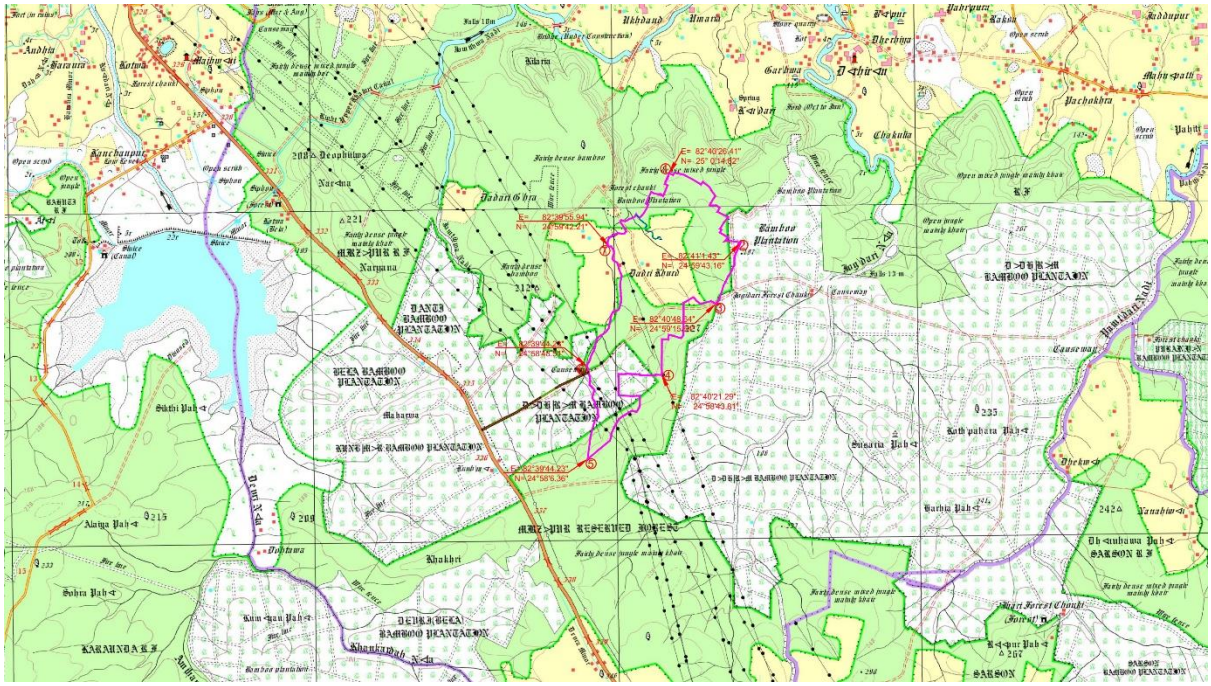
Screenshot of the project location on Land Use Land Cover Map on MoEFCC's Parivesh Portal, accessed 14th April 2025

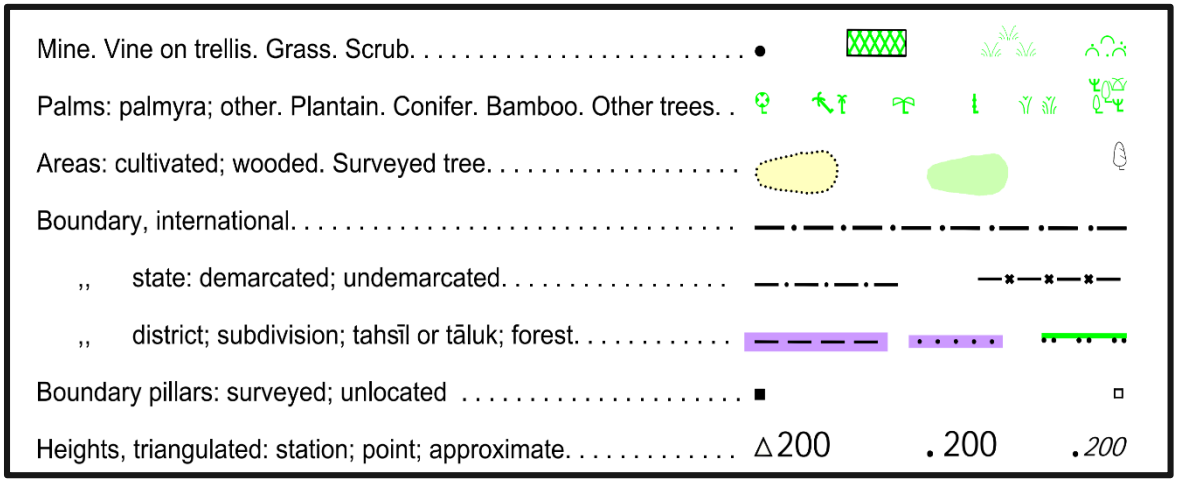


Annexure A-2

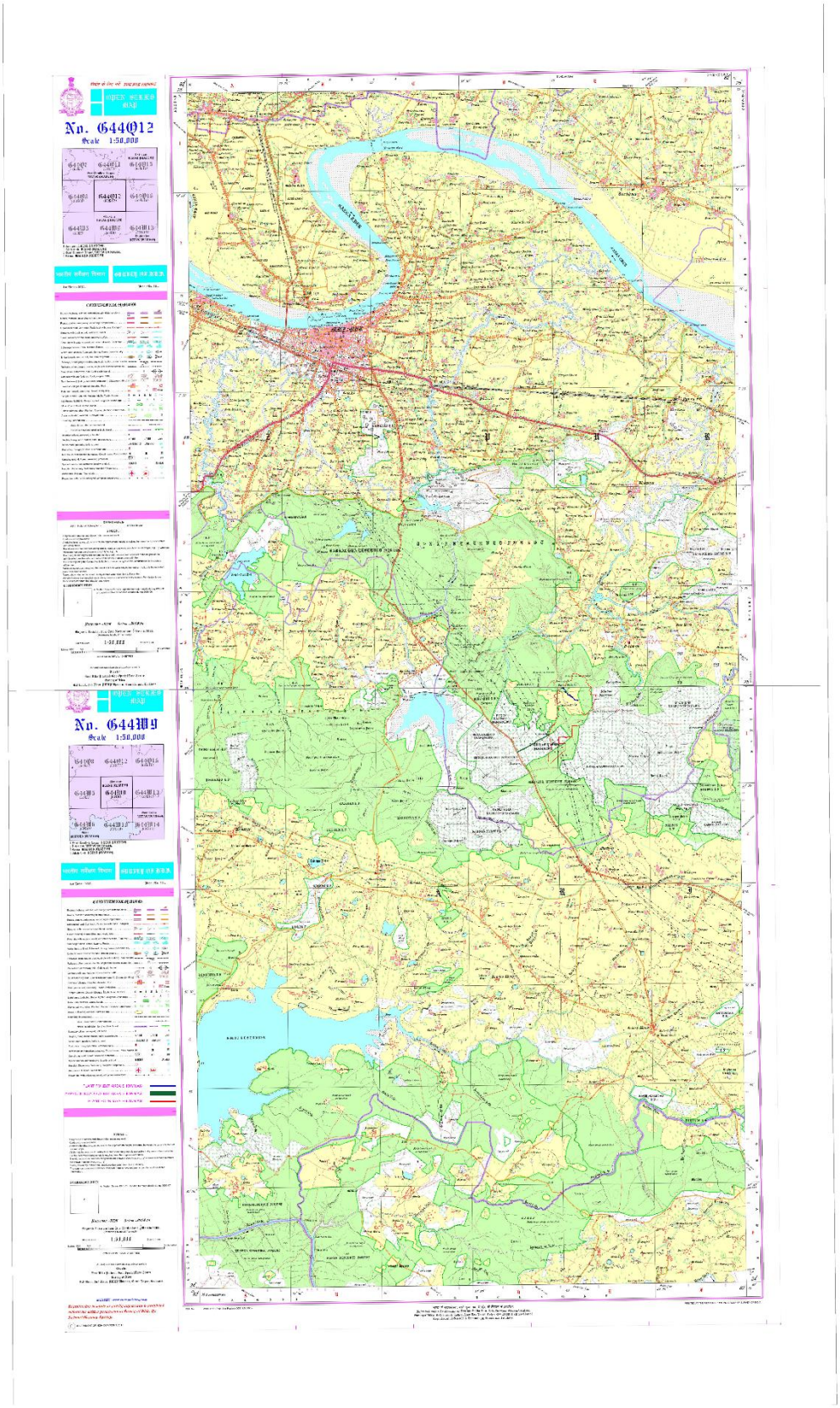
Location of the power plant (in pink) on SOI Toposheet.

[Map cropped from the original SOI toposheetwith the power plant site submitted by the Mirzapur Thermal Energy (U.P.) Pvt Ltd to MOEFCC for grant of Environmental Clearance as available on Parivesh Portal of MOEFCC]





Original SOI toposheet submitted by the Mirzapur Thermal Energy (U.P.) Pvt Ltd to MoEFCC for grant of Environmental Clearance as available on Parivesh Portal of MOEFCC.



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

PUBLIC INTEREST LITIGATION NO.7 OF 2023

Vanashakti & Anr. ....Petitioners

V/S

Union Of India & Ors. ....Respondents

BASAVRAJ GURAPPA PATIL
Digitally signed by BASAVRAJ GURAPPA PATIL
Date: 2024.09.25 12:05:10 +0530

WITH
INTERIM APPLICATION NO. 1320 OF 2021
IN
PUBLIC INTEREST LITIGATION 7 OF 2023

National Real Estate
Development Council (NAREDCO) ….Applicant

In the matter between:

Vanashakti & Anr. ....Petitioners

V/S

Union of India & Ors. ....Respondents

WITH
INTERIM APPLICATION (L) NO. 35241 OF 2023
IN
PUBLIC INTEREST LITIGATION 7 OF 2023

Government of Nagaland
Through Chief Engineer ....Applicant

In the matter between:

Vanashakti & Anr. ....Petitioners

V/S

Union of India & Ors. ....Respondents

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WITH
INTERIM APPLICATION (L) NO. 4411 OF 2023
IN
PUBLIC INTEREST LITIGATION 7 OF 2023

Patel and Associates
Through Its Partner Manji Karashi Patel ....Applicant

V/S

In the matter between:

Vanashakti & Anr. ....Petitioners

V/S

Union of India & Ors. ....Respondents

WITH
INTERIM APPLICATION (L) NO. 35236 OF 2023
IN
PUBLIC INTEREST LITIGATION 7 OF 2023

Government of Nagaland
Through The Chief Engineer ....Applicant

In the matter between:

Vanashakti & Anr. ....Petitioners

V/S

Union of India & Ors. ....Respondents

WITH
INTERIM APPLICATION (L) NO. 4408 OF 2023
IN
PUBLIC INTEREST LITIGATION 7 OF 2023

Patel and Associates ....Applicant

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In the matter between:

Vanashakti & Anr. ....Petitioners

V/S

Union of India & Ors. ....Respondents

Shri Akash Rebello a/w Shri Zaman Ali a/w Ms. Karishma Rao and Shri Yogesh Pandey for the Petitioners.

Shri Saurabh Butala a/w Ms. Nikita Mandaniyan i/b Shri Harshad Bhadbhade for the Applicant (NAREDCO).

Shri Saket Mone a/w Ms. Anchita Nair and Shri Abhishek Salian i/b Vidhi Partners for Interveners in IA/4408/2023 and IA/4411/2023, IA/35241/2023 and IA/35236/2023.

Shri Y.R.Mishra with Shri Dashrath A Dube and Shri Upendra Lokegoankar for Respondent No.1/ Union of India.
Smt. Jyoti Chavan, Additional Government Pleader for State of Maharashtra.

Ms. Jaya Bagwe for Respondent No.3 (MCZMA)

CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. &
AMIT BORKAR, J.

RESERVED ON : JULY 10, 2024
PRONOUNCED ON : SEPTEMBER 24, 2024

JUDGMENT (PER : CHIEF JUSTICE)

1. Heard Shri Akash Rebello, learned Counsel representing the petitioner – organization, Shri Y. R. Mishra, learned Counsel representing respondent No.1- Union of India, Shri Saket Mone, learned Counsel representing the Interveners – State of

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Nagaland and Patel and Associates and Shri Saurabh Butala representing the intervenor - National Real Estate Development Council (NAREDCO). We have perused the records available before us on this PIL petition.

(A) Challenge:

2. This PIL petition invokes our jurisdiction under Article 226 of the Constitution of India, to assail the validity of Office Memorandum dated 19th February 2021, issued by the Government of India in the Ministry of Environment, Forest and Climate Change which prescribes a procedure for dealing with violations arising on account of not obtaining a prior Costal Regulation Zone (hereinafter referred to as the **CRZ**) clearance for permissible activities. The impugned Notification permits a project proponent operating in CRZ areas to seek *post facto* clearance as required under the CRZ Notification(s).

(B) Relevant statutory prescriptions:

- The Environment (Protection) Act, 1986

Section 3. Power of Central Government to take measures to protect and improve environment.—

(1) Subject to the provisions of this Act, the Central Government shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality

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of the environment and preventing, controlling and abating environmental pollution.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), such measures may include measures with respect to all or any of the following matters, namely:—

(i) co-ordination of actions by the State Governments, officers and other authorities—

(a) under this Act, or the rules made thereunder; or

(b) under any other law for the time being in force which is relatable to the objects of this Act;

(ii) planning and execution of a nation-wide programme for the prevention, control and abatement of environmental pollution;

(iii) laying down standards for the quality of environment in its various aspects;

(iv) laying down standards for emission or discharge of environmental pollutants from various sources whatsoever:

Provided that different standards for emission or discharge may be laid down under this clause from different sources having regard to the quality or composition of the emission or discharge of environmental pollutants from such sources;

(v) restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards;

(vi) laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents;

(vii) laying down procedures and safeguards for the handling of hazardous substances;

(viii) examination of such manufacturing processes, materials and substances as are likely to cause environmental pollution;

(ix) carrying out and sponsoring investigations and research relating to problems of environmental pollution;

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(x) inspection of any premises, plant, equipment, machinery, manufacturing or other processes, materials or substances and giving, by order, of such directions to such authorities, officers or persons as it may consider necessary to take steps for the prevention, control and abatement of environmental pollution;

(xi) establishment or recognition of environmental laboratories and institutes to carry out the functions entrusted to such environmental laboratories and institutes under this Act;

(xii) collection and dissemination of information in respect of matters relating to environmental pollution;

(xiii) preparation of manuals, codes or guides relating to the prevention, control and abatement of environmental pollution;

(xiv) such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act.

(3) The Central Government may, if it considers it necessary or expedient so to do for the purposes of this Act, by order, published in the Official Gazette, constitute an authority or authorities by such name or names as may be specified in the order for the purpose of exercising and performing such of the powers and functions (including the power to issue directions under section 5) of the Central Government under this Act and for taking measures with respect to such of the matters referred to in sub-section (2) as may be mentioned in the order and subject to the supervision and control of the Central Government and the provisions of such order, such authority or authorities may exercise the powers or perform the functions or take the measures so mentioned in the order as if such authority or authorities had been empowered by this Act to exercise those powers or perform those functions or take such measures.

***Section 5. Power to give directions**.—*

Notwithstanding anything contained in any other law but subject to the provisions of this Act, the Central Government may, in the exercise of its powers and performance of its functions under this 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.

Explanation.—For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct—

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(a) the closure, prohibition or regulation of any industry, operation or process; or

(b) stoppage or regulation of the supply of electricity or water or any other service.

Section 6. Rules to regulate environmental pollution —

(1) The Central Government may, by notification in the Official Gazette, make rules in respect of all or any of the matters referred to in section 3.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the standards of quality of air, water or soil for various areas and purposes;

(b) the maximum allowable limits of concentration of various environmental pollutants (including noise) for different areas;

(c) the procedures and safeguards for the handling of hazardous substances;

(d) the prohibition and restrictions on the handling of hazardous substances in different areas;

(e) the prohibition and restrictions on the location of industries and the carrying on of processes and operations in different areas;

(f) the procedures and safeguards for the prevention of accidents which may cause environmental pollution and for providing for remedial measures for such accidents.

***Section 25. Power to make rules**.—*

(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the standards in excess of which environmental pollutants shall not be discharged or emitted under section 7;

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(b) the procedure in accordance with and the safeguards in compliance with which hazardous substances shall be handled or cause to be handled under section 8;

(c) the authorities or agencies to which intimation of the fact of occurrence or apprehension of occurrence of the discharge of any environmental pollutant in excess of the prescribed standards shall be given and to whom all assistance shall be bound to be rendered under sub-section (1) of section 9;

(d) the manner in which samples of air, water, soil or other substance for the purpose of analysis shall be taken under sub-section (1) of section 11;

(e) the form in which notice of intention to have a sample analysed shall be served under clause (a) of sub-section (3) of section 11;

(f) the functions of the environmental laboratories, the procedure for the submission to such laboratories of samples of air, water, soil and other substances for analysis or test; the form of laboratory report; the fees payable for such report and other matters to enable such laboratories to carry out their functions under sub-section (2) of section 12;

(g) the qualifications of Government Analyst appointed or recognised for the purpose of analysis of samples of air, water, soil or other substances under section 13;

(ga) the manner of holding inquiry and imposing penalty by the adjudicating officer under sub-section (1) and other factors for determining quantum of penalty under clause (f) of sub-section (4) of section 15C;

(gb) the other amount under clause (c) of sub-section (2) of section 16;

(gc) the other purposes under clause (c) of sub-section (3) of section 16;

(gd) the manner of administration of Fund under sub-section (4) of section 16;

(ge) form for maintenance of accounts of the Fund and for preparation of annual statement of accounts under sub-section (1) of section 16A;

(gf) form for preparing annual report of the Fund under section 16B;

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(h) the manner in which notice of the offence and of the intention to make a complaint to the Central Government shall be given under clause (b) of section 19;

(i) the authority or officer to whom any reports, returns, statistics accounts and other information shall be furnished under section 20;

(j) any other matter which is required to be, or may be, prescribed.

- The Environment (Protection) Rules, 1986

Rule 5. Prohibition and restriction on the location of industries and the carrying on processes and operations in different areas-

(1) The Central Government may take into consideration the following factors while prohibiting or restricting the location of industries and carrying on of processes and operations in different areas:-

(i) Standards for quality of environment in its various aspects laid down for an area.

(ii) The maximum allowable limits of concentration of various environmental pollutants (including noise) for an area.

(iii) The likely emission or discharge of environmental pollutants from an industry, process or operation proposed to be prohibited or restricted.

(iv) The topographic and climatic features of an area.

(v) The biological diversity of the area which, in the opinion of the Central Government needs to be preserved.

(vi) Environmentally compatible land use.

(vii) Net adverse environmental impact likely to be caused by an industry, process or operation proposed to be prohibited or restricted.

(viii) Proximity to a protected area under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 or a sanctuary, National Park, game reserve or closed area notified as such under the Wild Life (Protection) Act, 1972 or places protected under any treaty, agreement or convention with any other country or countries or in pursuance of any

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decision made in any international conference, association or other body.

(ix) Proximity to human settlements.

(x) Any other factor as may be considered by the Central Government to be relevant to the protection of the environment in an area.

(2) While prohibiting or restricting the location of industries and carrying on of processes and operations in an area, the Central Government shall follow the procedure hereinafter laid down.

(3) (a) Whenever it appears to the Central Government that it is expedient to impose prohibition or restrictions on the locations of an industry or the carrying on of processes and operations in an area, it may by notification in the Official Gazette and in such other manner as the Central Government may deem necessary from time to time, give notice of its intention to do so.

(b) Every notification under clause (a) shall give a brief description of the area, the industries, operations, processes in that area about which such notification pertains and also specify the reasons for the imposition of prohibition or restrictions on the locations of the industries and carrying on of processes or operations in that area.

(c) Any person interested in filing an objection against the imposition of prohibition or restrictions on carrying on of processes or operations as notified under clause (a) may do so in writing to the Central Government within sixty days from the date of publication of the notification in the Official Gazette.

(d) The Central Government shall within a period of one hundred and twenty days from the date of publication of the notification in the Official Gazette, consider all the objections received against such notification and may within seven hundred and twenty five days and in respect of the States of Assam, Meghalaya, Arunachal Pradesh, Mizoram, Manipur, Nagaland, Tripura, Sikkim and Jammu and Kashmir in exceptional circumstance and for sufficient reasons within a further period of one hundred and eighty days from such day of publication impose prohibition or restrictions on location of such industries and the carrying on of any process or operation in an area.

Provided that on account of COVID-19 pandemic, for the purpose of this clause, the period of validity of the notification expiring in the financial year 2020-2021 and 2021-22 shall be extended up to 30th June 2022 or six months from the end of

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the month when the relevant notification would have expired without any extension, whichever is later.

(4) Notwithstanding anything contained in sub-rule (3), whenever it appears to the Central Government that it is in public interest to do so, it may dispense with the requirement of notice under clause (a) of sub-rule (3).

Coastal Regulation Zone Notifications:

- Notification dated 6th January 2011

4. *Regulation of permissible activities in CRZ area.-*

The following activities shall be regulated except those prohibited in para 3 above,-

(i) (a) clearance shall be given for any activity within the CRZ only if it requires waterfront and foreshore facilities;

(b) for those projects which are listed under this notification and also attract EIA notification, 2006 (S.O.1533 (E), dated the 14th September, 2006), for such projects clearance under EIA notification only shall be required subject to being recommended by the concerned State or Union territory Coastal Zone Management Authority (hereinafter referred to as the CZMA).

(c) Housing schemes in CRZ as specified in paragraph 8 of this notification;

(d) Construction involving more than 20,000 sq mts built-up area in CRZ-II shall be considered in accordance with EIA notification, 2006 and in case of projects less than 20,000 sq mts built-up area shall be approved by the concerned State or Union territory Planning authorities in accordance with this notification after obtaining recommendations from the concerned CZMA and prior recommendations of the concern CZMA shall be essential for considering the grant of environmental clearance under EIA notification, 2006 or grant of approval by the relevant planning authority.

(e) MoEF may under a specific or general order specify projects which require prior public hearing of project affected people.

(f) construction and operation for ports and harbours, jetties, wharves, quays, slipways, ship construction yards, breakwaters, groynes, erosion control measures;

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(ii) the following activities shall require clearance from MoEF, namely:-

(a) those activities not listed in the EIA notification, 2006.

(b) construction activities relating to projects of Department of Atomic Energy or Defence requirements for which foreshore facilities are essential such as, slipways, jetties, wharves, quays; except for classified operational component of defence projects. Residential buildings, office buildings, hospital complexes, workshops of strategic and defence projects in terms of EIA notification, 2006.;

(c) construction, operation of lighthouses;

(d) laying of pipelines, conveying systems, transmission line;

(e) exploration and extraction of oil and natural gas and all associated activities and facilities thereto;

(f) Foreshore requiring facilities for transport of raw materials, facilities for intake of cooling water and outfall for discharge of treated wastewater or cooling water from thermal power plants. MoEF may specify for category of projects such as at (f), (g) and (h) of para 4;

(g) Mining of rare minerals as listed by the Department of Atomic Energy;

(h) Facilities for generating power by non-conventional energy resources, desalination plants and weather radars;

(i) Demolition and reconstruction of (a) buildings of archaeological and historical importance, (ii) heritage buildings; and buildings under public use which means buildings such as for the purposes of worship, education, medical care and cultural activities;

4.2 *Procedure for clearance of permissible activities.- All projects attracting this notification shall be considered for CRZ clearance as per the following procedure, namely:-*

(i) The project proponents shall apply with the following documents seeking prior clearance under CRZ notification to the concerned State or the Union territory Coastal Zone Management Authority,-

(a) Form-1 (Annexure-IV of the notification);

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(b) Rapid EIA Report including marine and terrestrial component except for construction projects listed under 4(c) and (d)

(c) Comprehensive EIA with cumulative studies for projects in the stretches classified as low and medium eroding by MoEF based on scientific studies and in consultation with the State Governments and Union territory Administration;

(d) Disaster Management Report, Risk Assessment Report and Management Plan;

(e) CRZ map indicating HTL and LTL demarcated by one of the authorized agency (as indicated in para 2) in 1:4000 scale;

(f) Project layout superimposed on the above map indicated at (e) above;

(g) The CRZ map normally covering 7km radius around the project site.

(h) The CRZ map indicating the CRZ-I, II, III and IV areas including other notified ecologically sensitive areas;

(i) No Objection Certificate from the concerned State Pollution Control Boards or Union territory Pollution Control Committees for the projects involving discharge of effluents, solid wastes, sewage and the like.;

(ii) The concerned CZMA shall examine the above documents in accordance with the approved CZMP and in compliance with CRZ notification and make recommendations within a period of sixty days from date of receipt of complete application,-

(a) MoEF or State Environmental Impact Assessment Authority (hereinafter referred to as the SEIAA) as the case may be for the project attracting EIA notification, 2006;

(b) MoEF for the projects not covered in the EIA notification, 2006 but attracting para 4(ii) of the CRZ notification;

(iii) MoEF or SEIAA shall consider such projects for clearance based on the recommendations of the concerned CZMA within a period of sixty days.

(vi) The clearance accorded to the projects under the CRZ notification shall be valid for the period of five years from the date of issue of the clearance for commencement of construction and operation.

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(v) For Post clearance monitoring – (a) it shall be mandatory for the project proponent to submit half-yearly compliance reports in respect of the stipulated terms and conditions of the environmental clearance in hard and soft copies to the regulatory authority(s) concerned, on 1st June and 31st December of each calendar year and all such compliance reports submitted by the project proponent shall be published in public domain and its copies shall be given to any person on application to the concerned CZMA. (b) the compliance report shall also be displayed on the website of the concerned regulatory authority.

(vi) To maintain transparency in the working of the CZMAs it shall be the responsibility of the CZMA to create a dedicated website and post the agenda, minutes, decisions taken, clearance letters, violations, action taken on the violations and court matters including the Orders of the Hon'ble Court as also the approved CZMPs of the respective State Government or Union territory.

- Notification dated 6th March 2018

2. after sub-paragraph 4.2, the following sub-para shall be inserted, namely: -

*"**4.3 Post facto clearance for permissible activities.-***

(i) *all activities, which are otherwise permissible under the provisions of this notification, but have commenced construction without prior clearance, would be considered for regularisation only in such cases wherein the project applied for regularization in the specified time and the projects which are in violation of CRZ norms would not be regularised;*

(ii) *the concerned Coastal Zone Management Authority shall give specific recommendations regarding regularisation of such proposals and shall certify that there have been no violations of the CRZ regulations, while making such recommendations;*

(iii) *such cases where the construction have been commenced before the date of this notification without the requisite CRZ clearance, shall be considered only by Ministry of Environment, Forest and Climate Change, provided that the request for such regularisation is received in the said Ministry by 30th June, 2018.*

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- Notification dated 18th January 2019

8. Procedure for CRZ clearance for permissible and regulated activities:

(i) The project proponents shall apply with the following documents to the concerned State or the Union territory Coastal Zone Management Authority for seeking prior clearance under this notification:-

(a) Project summary details as per Annexure-V to this notification.

(b) Rapid Environment Impact Assessment (EIA) Report including marine and terrestrial component, as applicable, except for building construction projects or housing schemes.

(c) Comprehensive EIA with cumulative studies for projects, (except for building construction projects or housing schemes with built-up area less than the threshold limit stipulated for attracting the provisions of the EIA Notification, 2006 number S.O 1533(E), dated 14th September, 2006) if located in low and medium eroding stretches, as per the CZMP to this notification.

(d) Risk Assessment Report and Disaster Management Plan, except for building construction projects or housing schemes with built-up area less than the threshold limit stipulated for attracting the provisions of the EIA Notification, 2006 number S.O. 1533(E), dated 14th September, 2006).

(e) CRZ map in 1:4000 scale, drawn up by any of the agencies identified by the Ministry of Environment, Forest and Climate Change vide its Office Order number J-17011/8/92-IAIII, dated the 14th March, 2014 using the demarcation of the HTL or LTL, as carried out by NCSCM.

(f) Project layout superimposed on the CRZ map duly indicating the project boundaries and the CRZ category of the project location as per the approved Coastal Zone Management Plan under this notification.

(g) The CRZ map normally covering 7 kilometre radius around the project site also indicating the CRZ-I, II, III and IV areas including other notified ecologically sensitive areas.

(h) "Consent to establish" or No Objection Certificate from the concerned State Pollution Control Board or Union territory Pollution Control Committee for the projects involving treated discharge of industrial effluents and sewage, and in case prior consent of Pollution Control Board or Pollution Control

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Committee is not obtained, the same shall be ensured by the proponent before the start of the construction activity of the project, following the clearance under this notification.

(ii) The concerned Coastal Zone Management Authority shall examine the documents in clause (i) above, in accordance with the approved Coastal Zone Management Plan and in compliance with this notification and make recommendations within a period of sixty days from date of receipt of complete application as under:-

(a) For the projects or activities also attracting the EIA Notification, 2006 number S.O. 1533(E), dated 14th September, 2006, the Coastal Zone Management Authority shall forward its recommendations to Ministry of Environment, Forest and Climate Change or SEIAA for category 'A' and category 'B' projects respectively, to enable a composite clearance under the EIA Notification, 2006 number S.O. 1533(E), dated 14th September, 2006, however, even for such Category 'B' projects located in CRZ-I or CRZ-IV areas, final recommendation for CRZ clearance shall be made only by the Ministry of Environment, Forest and Climate Change to the concerned SEIAA to enable it to accord a composite Environmental Clearance and CRZ clearance to the proposal.

(b) Coastal Zone Management Authority shall forward its recommendations to the Ministry of Environment, Forest and Climate Change for the projects or activities not covered in the EIA notification, 2006, but attracting this notification and located in CRZ-I or CRZ-IV areas.

(c) Projects or activities not covered in the aforesaid EIA Notification, 2006, but attracting this notification and located in CRZ-II or CRZ-III areas shall be considered for clearance by the concerned Coastal Zone Management Authority within sixty days of the receipt of the complete proposal from the proponent.

(d) In case of construction projects attracting this notification but with built-up area less than the threshold limit stipulated for attracting the provisions of the aforesaid EIA Notification 2006, Coastal Zone Management Authority shall forward their recommendations to the concerned State or Union territory planning authorities, to facilitate granting approval by such authorities.

(iii) The Ministry of Environment, Forest and Climate Change shall consider complete project proposals for clearance under this notification, based on the recommendations of the Coastal Zone Management Authority, within a period of sixty days.

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(iv) In case the Coastal Zone Management Authorities are not in operation due to their reconstitution or any other reasons, then it shall be responsibility of the Department of Environment in the State Government or Union territory Administration, who are the custodian of the CZMP of respective States or Union territories, to provide comments and recommend the proposals in terms of the provisions of the said notification.

(v) The clearance accorded to the projects under this notification shall be valid for a period of seven years, provided that the construction activities are completed and the operations commence within seven years from the date of issue of such clearance. The validity may be further extended for a maximum period of three years, provided an application is made to the concerned authority by the applicant within the validity period, along with recommendation for extension of validity of the clearance by the concerned State or Union territory Coastal Zone Management Authority.

(vi) Post clearance monitoring:

(a) It shall be mandatory for the project proponent to submit half-yearly compliance reports in respect of the stipulated terms and conditions of the environmental clearance in hard and soft copies to the regulatory authority(s) concerned, on the 1st June and 31st December of each calendar year and all such compliance reports submitted by the project proponent shall be published in public domain and its copies shall be given to any person on application to the concerned Coastal Zone Management Authority.

(b) The compliance report shall also be displayed on the website of the concerned regulatory authority.

(vii) To maintain transparency in the working of the Coastal Zone Management Authority, it shall be the responsibility of the Coastal Zone Management Authority to create a dedicated website and post the agenda, minutes, decisions taken, clearance letters, violations, action taken on the violations and court matters including the Orders of the Hon'ble Court as also the approved CZMP of the respective State Government or Union territory.

(C) Submissions on behalf of the petitioners :

3. Impeaching the impugned Office Memorandum, it has been argued by Shri Akash Rebello, learned Counsel representing the petitioner – organization that the Office Memorandum is an

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administrative circular whereby a frame-work for granting *post facto* approval has been set up for the projects that have come up without grant of prior CRZ clearance as required under the relevant CRZ Notification which cannot over-ride the CRZ Notifications having been framed in exercise of powers vested with the Central Government under Section 3(1) and Section 3(2)(v) of the Environment (Protection) Act, 1986 (hereinafter referred to as the **Act of 1986**) read with Rule 5(3)(d) of the Environment (Protection) Rules, 1986 (hereinafter referred to as the **Rules of 1986**) which has statutory force and, thus, is binding. His submission is that the Office Memorandum takes departure from the relevant CRZ Notification which could not have been done by the Central Government without amending the relevant CRZ Notification by taking recourse to the provisions contained in Section 3(1) and 3(2)(v) of the Act of 1986 read with Rule 5(3)(d) of the Rules of 1986.

4. Further argument made by Shri Rebello is that the relevant CRZ Regulation clearly requires that prior CRZ clearance is mandatory, whereas the impugned Office Memorandum permits seeking *post facto* CRZ clearance, hence, it is contrary to the statutory CRZ Notification.

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5. In this regard his further submission is that an administrative circular, like the impugned Office Memorandum, cannot provide for something which, otherwise, is not provided for in the statutory CRZ Notification and accordingly, the impugned Office Memorandum is *ultra vires* the provisions of the CRZ Notification dated 18th January 2019 (hereinafter referred to as the **CRZ Notification, 2019**) for the reason that the CRZ Notification, 2019 does not permit any *post facto* clearance; rather it requires prior clearance for all projects within the CRZ area.

6. It has also been contended on behalf of the petitioner – organization that CRZ Notification dated 6th January, 2011 (**hereinafter referred to as "CRZ Notification, 2011"**) also required clearance prior to commencement of the project and by Notification dated 6th March 2018 an amendment was introduced in CRZ Notification 2011 permitting grant of *post facto* clearance to regularize the otherwise permissible activities, however, the provisions permitting *post facto* clearance vide Notification dated 6th March 2018 was a one-time measure with a cut-of-date. It has been submitted that by Notification dated 6th March 2018, the CRZ Notification, 2011 was amended and clause 4.3 was

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added which provided the procedure for *post facto* clearance for permissible activities, however, a perusal of the provisions contained in Clause 4.3 added vide Notification dated 6th March 2018 clearly reveals that such *post facto* clearance was permissible only in case where the construction had commenced before the date of the said Notification i.e. 6th March 2018 without the requisite CRZ clearance with a further caveat that only those requests in this regard shall be considered for grant of *post facto* clearance which were received in the Ministry of Environment, Forest and Climate Change by 30th June 2018. Thus, his submission is that the very language in which clause 4.3 added vide Notification dated 6th March 2018 in the CRZ Notification 2011 is couched manifestly reveals that it was provided for only as a one-time measure.

7. Our attention has also been drawn to the CRZ Notification, 2019 which clearly provides that the said CRZ Notification was issued in supersession of CRZ Notification, 2011. Accordingly, his submission is that even the one-time measure which was available under CRZ Notification, 2011 by way of insertion of clause 4.3 vide Notification dated 6th March 2018, which provided the procedure for seeking *post facto* CRZ clearance, will have no

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application on issuance of CRZ Notification, 2019 w.e.f. 18th January 2019 for the simple reason that CRZ Notification, 2019 was issued by the Ministry concerned of the Central Government in supersession of earlier CRZ Notification viz. CRZ Notification, 2011.

8. Next submission of Shri Rebello, learned Counsel representing the petitioner–organization is that CRZ Notification, 2011 and CRZ Notification, 2019 were issued by following the procedure prescribed under Rule 5(3) of the Rules, 1986 which requires that before issuing any such final Notification, the Central Government needs to give notice of its intention to impose prohibition or restriction on the location of an industry and the carrying on processes and operations in an area which shall contain brief description of the area or industries, operations, processes and shall also specify the reason of intended imposition of prohibition/restriction. He has also stated that Rule 5 (3)(c) of the Rules, 1986 further provides that any person interested in filing an objection against the imposition of such intended prohibition/restriction on carrying on processes or operations, may do so in writing to the Central Government which has to be considered by the Central Government and

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accordingly, it is only thereafter that a final Notification regarding prohibition/restriction etc. can be issued. Shri Rebello has stated that, however, contrary to the provision contained in Rule 5(3) of the Rules 1986, no such procedure as prescribed was followed while issuing the impugned Office Memorandum and thus, the Office Memorandum is not referable to any provision either in the Act of 1986 or in the Rules of 1986. Basis this, it has been contended that the impugned Office Memorandum cannot be permitted to provide for any measure or processes or procedure for grant of *post facto* CRZ clearance in absence of any such provision in the relevant statutory Notification viz. CRZ Notification, 2019.

9. Shri Rebello has further stated that the impugned Office Memorandum is arbitrary as it is purportedly issued in furtherance of CRZ Notification, 2011 which stood superseded by CRZ Notification, 2019 on 18th January 2019 itself and hence, reference of CRZ Notification, 2011 in the impugned Office Memorandum manifests complete lack of application of mind.

10. Additionally, it has also been contended on behalf of the petitioner – organization that the impugned Office Memorandum

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is contrary to the settled law laid down by the Hon'ble Supreme Court including in its decision in the case of ***Alembic Pharmaceuticals Ltd. Vs. Rohit Prajapati & Ors.[1].*** He has argued that for justifying issuance of the impugned Office Memorandum reference of ***Alembic Pharmaceuticals Ltd. (supra)*** has been given in the Office Memorandum however, reliance on the said judgment by the Central Government is highly misplaced inasmuch that if we closely read the said judgment it is clear that certain directions given in the said judgments are referable to Article 142 of the Constitution of India which are, thus, to be confined to the facts of the said case and said directions cannot be applied in general. It is his further submission that reference of the judgment of the Jharkhand High Court in the case of ***Hindustan Copper Vs. Union of India[2]*** is also misplaced and is irrelevant for the reason that the said judgment dealt with CRZ clearance regime prior to the issuance of CRZ Notification, 2019.

(D) <u>Submissions on behalf Union of India</u>:

11. The PIL petition has been opposed by the Union of India by filing an affidavit in reply. Shri Y. R. Mishra, learned Counsel

[1] **2020 SCC OnLine SC 347**

[2] **2014 SCC OnLine Jhar 2157**

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appearing for the Union of India has argued that the concept of *post facto* clearance for permissible activities was introduced vide CRZ Notification dated 6th March 2018 whereby CRZ Notification, 2011 was amended and a provision for *post facto* clearance was inserted therein. He has also stated that the amendment brought in CRZ Notification, 2011 permitted *post facto* CRZ clearance only in case request of such *post facto* clearance was received in the Ministry concerned by 30th June 2018 and since after expiry of the aforesaid cut-of-date the Ministry of Environment, Forest and Climate Change received serval requests from various State Governments for considering the *post facto* CRZ clearance in respect of the permissible activities that had commenced without prior CRZ clearance on account of inadequate knowledge/information of the regulatory regime and other factors and accordingly, the Government of India issued the impugned Office Memorandum prescribing a procedure for dealing with such violations arising on account of not obtaining prior CRZ clearance for permissible activities. It is his further submission that the impugned Office Memorandum has been issued to make such projects and activities compliant with environmental laws at the earliest point of time which was

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essential, rather than leaving them unregulated and unchecked which would have caused more damage to the environment.

12. Shri Mishra has further argued that the impugned Office Memorandum has been issued considering the order dated 12th November 2014 passed by the Jharkhand High Court in the case of ***Hindustan Copper Ltd. (supra)*** where it was held, *inter alia;* that action for violation would be an independent and separate procedure and therefore, consideration of proposal for environmental clearance could not await initiation of action against the project proponent. According to Shri Mishra, Jharkhand High Court further held in the said case that the proposal for environmental clearance must be examined on its merits, independent of proposed action for alleged violation of the environmental laws.

13. On behalf of Union of India, it has also been argued that the impugned Office Memorandum has been issued keeping in view certain observations made and directions given by the Hon'ble Supreme Court in ***Alembic Pharmaceuticals Ltd. (supra),*** wherein it has been observed that the closure of industries is not warranted. By the said judgment, payment of compensation as a facet of preserving the environment in

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accordance with precautionary principle has been recognized. Shri Mishra stated further that in ***Alembic Pharmaceuticals Ltd. (supra)*** Hon'ble Supreme Court had directed that the proposal for environment clearance must be examined on its merits independent of any proposed action for alleged violation of any environmental laws. He has relied upon certain judgments viz. (i) ***Lafarge Umiam Mining Pvt. Ltd. Vs. Union of India[3],*** (ii) ***Electrotherm Vs. Patel Vipulkumar Ramjibhai[4],*** (iii) ***Gajubha Jadeja Jesar Vs. Union of India & Ors.[5],*** (iv) ***D. Swamy Vs. Karnataka State Pollution Control Board and Ors.[6],*** (v) ***Pahwa Plastics Pvt. Ltd. & Anr. Vs. Dastak NGO & Ors.[7],*** (vi) ***K.T.V. Health Food Pvt. Ltd. Vs. Union of India[8] and*** (vii) ***Electrosteel Steels Ltd. Vs. Union of India[9]*** and has stated that in the said judgments grant of *post facto* environmental clearance has been recognized by the Supreme Court which is in a strict compliance of the rules and regulations and therefore, *post facto* clearance is permissible under law.

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3 ***(2011) 7 SCC 38***

4 ***(2016) 9 SCC 300***

5 ***2022 SCC OnLine SC 993***

6 ***2022 SCC OnLine SC 1278***

7 ***2022 SCC OnLine SC 362***

8 ***(2023) 5 SCC 440***

9 ***(2023) 6 SCC 615***

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14. On the aforesaid counts, it has been urged by Shri Mishra that the impugned Office Memorandum does not suffer from any illegality and hence, no interference in the said Office Memorandum is called for in the instant PIL petition.

(E) <u>Submissions on behalf of Interveners:</u>

15. On behalf of the Intervener viz. Government of Nagaland, Shri Saket Mone, the learned Counsel has argued that the Government of Nagaland has constructed Nagaland State Guest House cum Emporium at Plot No.2B, Sector-30A, at Vashi, Navi Mumbai and that post completion of the construction of the said project at the time of applying for Occupation Certificate (OC), the Navi Mumbai Municipal Corporation has imposed a condition to obtain CRZ clearance and thereafter the Government of Nagaland has, on various occasions, applied for grant of *post facto* CRZ clearance but the same has not been processed by the Maharashtra Coastal Zone Management Authority (MCZMA) on account of the interim order passed by this Court on 7th May 2021. It has been stated that the land where construction of State Guest House cum Emporium has been made lies in a non-CRZ area and therefore, construction activity is permitted in the said land and hence, there is no requirement of obtaining CRZ

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clearance. He has also argued that as per the CRZ Notification, 2011 construction of the project is a permissible activity. It is his further submission that the MCZMA, in its meeting dated 11-12th April 2022 observed that application for *post facto* CRZ clearance cannot be processed in the light of the ad-interim order passed by this Court in this PIL petition and since the project lies in non-CRZ area, the interim order, so far as intervenor is concerned, may be vacated. It has, thus, been prayed, in the alternative, that the interim order passed by this Court on 7th May 2021 may be clarified and it be provided that it shall not come in the way of decision on the applicant's application for grant of *post facto* CRZ clearance as per applicable law. Another prayer made by Shri Saket Mone is that the MCZMA be directed to process the application for grant of *post facto* CRZ clearance as per law.

16. On behalf of another intervenor viz. Patel and Associates, Shri Saket Mone has stated that the applicant is a project proponent of a project known as Trishul Goldfield for construction of a residential cum commercial building on land bearing Plot No.34 in Sector No.11 at CBD Belapur and that the Navi Mumbai Municipal Corporation, at the time of applying for

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Occupation Certification (OC), has imposed a condition that the applicant needs to obtain CRZ clearance. He has further stated that in furtherance of said condition, the applicant, at various occasions applied for grant of *post facto* clearance however, the MCZMA has not processed the same on account of the interim orders passed by this Court. The prayers in this application of Patel and Associates are similar to the prayers made by Shri Mone, appearing on behalf of State of Nagaland.

17. Intervention in this PIL petition has also been sought by National Real Estate Development Council, which describes itself as an autonomous self-regulatory body formed under the aegis of Ministry of Housing and Urban Affairs, Government of India. On its behalf, it has been stated in the interim application that the impugned notification dated 19th February 2021 has been issued by the Government of India in exercise of its powers available to it under section 3(2)(v) of the Act of 1986 read with Rule 5(3) of the Rules of 1986. It is further stated on its behalf that the Government of India has permitted regularization of activities which are strictly in compliance with CRZ Notification, 2011 and under the impugned Office Memorandum, it is only on specific recommendation and certification of the Coastal Zone

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Management Authority that there is no illegality or contravention of any CRZ norms, that such projects shall be considered for regularization on fulfillment of conditions set out in the impugned Office Memorandum. It is, thus, the submission on behalf of this applicant that the impugned Office Memorandum does not violate any provisions, either of the Act of 1986 or the Rules made thereunder and therefore, the same cannot be termed to be illegal.

(F) Issues:

18. On the basis of submissions made by the learned Counsel for the respective parties and the pleadings available on record, the issues which emerge for our consideration and decision are;

(a) as to whether the impugned Office Memorandum dated 19th February 2021 issued by respondent No.1 is in contravention of the provisions of the CRZ Notification, 2019?

(b) as to whether the impugned Office Memorandum supplements or supplants the CRZ Notification, 2019 ?

(c) as to whether reliance on the judgment of the Hon'ble Supreme Court in ***Alembic Pharmaceuticals Ltd. (supra)*** and that of the order dated 12th November 2014 passed by the Jharkhand High Court in the case of ***Hindustan Copper Ltd. (supra)*** is misplaced or such reference can be taken aid of by the Union of India to justify the impugned Office Memorandum?

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(G) Discussion:

19. The impugned Office Memorandum is an administrative circular, which has been issued by the Government of India without reference to any provisions, either of the Act of 1986 or the Rules of 1986. As a matter of fact, the CRZ Notifications, 2011, the one issued on 6th March 2018 amending the CRZ Notification, 2011 and the CRZ Notification, 2019 were all issued by the Central Government by following the procedure prescribed under Rule 5(3) of the Rules of 1986 and only after prior publication inviting objections from general public and thereafter finalizing it. However, while issuing the impugned Office Memorandum dated 19th February 2021, no such procedure has been followed; neither is there any averment in the affidavit filed by the Government of India to the said effect. Accordingly, the impugned Office Memorandum is not referable to either the Act of 1986 or the Rules of 1986 and hence, we conclude that the same is merely an executive instruction having no statutory force.

20. Thus, there is no doubt while we observe that the impugned Office Memorandum dated 19th February 2021 is not statutory in nature as are the other CRZ Notifications such as

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CRZ Notification, 2011, the notification dated 6th March 2018 and CRZ Notification, 2019.

21. Having concluded as above, we now need to examine, for appropriate decision on the issue (a) as culled out above, as to whether the impugned Office Memorandum is in contravention with CRZ Notification, 2019.

22. We have already noted above that at the time of issuance of the impugned Office Memorandum dated 19th February 2021, it is the CRZ Notification, 2019 which was in vogue for the reason that the CRZ Notification, 2019 clearly states that it has been issued in supersession of the earlier CRZ Notification, namely, CRZ Notification, 2011. It is also undisputable that CRZ Notification, 2019 does not contain any provision for any kind of *post facto* CRZ clearance. To the contrary, paragraph (8) of CRZ Notification, 2019 clearly provides that "***the project proponents shall apply with certain documents to the concerned State or Union Territory Coastal Zone Management Authority for seeking prior clearance under this notification***". Accordingly, the CRZ Notification, 2019 does not prescribe any provision permitting *post facto* clearance,

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whereas by the impugned Office Memorandum, a procedure has been prescribed permitting project proponents to obtain *post facto* CRZ clearance in respect of the projects which were started without seeking prior CRZ clearance. One of the reasons indicated in the Office Memorandum dated 19th February 2021 for making a provision for obtaining *post facto* clearance is that the Government of India received several requests from the State Governments for considering the CRZ clearance of the projects in respect of permissible activities which have commenced work without prior CRZ clearance due to inadequate knowledge of the regulatory regime and other factors. The Government of India, in the Office Memorandum, thus, observes that to bring such projects and activities in compliance with the environmental laws at the earliest point of time it is essential, rather than leaving them unregulated and unchecked, which will be more damaging to the environment. The Government of India, while issuing the impugned Office Memorandum, has also noted the order dated 28th November 2014 of the Hob'ble High Court of Jharkhand in the matter of ***Hindustan Copper (supra)***. It has also noted the judgment of Hon'ble Supreme Court in the case of ***Alembic Pharmaceuticals Ltd. (supra)***,

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however, in absence of any provision for *post facto* CRZ clearance under the CRZ Notification, 2019, in our considered opinion, the provision prescribing procedure for obtaining *post facto* clearance is not permissible on the basis of the observations made by Hon'ble High Court of Jharkhand in ***Hindustan Copper (supra)*** and those made by Hon'ble Supreme Court in ***Alembic Pharmaceuticals Ltd. (supra)***.

23. So far as reliance placed by the Government of India while issuing the impugned Office Memorandum on ***Alembic Pharmaceuticals Ltd. (supra)*** is concerned, we may note that in paragraph 27 of the said judgment, the Hon'ble Supreme Court has clearly observed that the concept of *ex-post facto* environment clearance is in derogation of the fundamental principles of environmental jurisprudence and is an anathema to the EIA notification dated 27th January 1994. The Hon'ble Supreme Court in the said judgment has further observed that in absence of EC, there would be no condition that would safeguard the environment and further that if the EC was to be ultimately refused, irreparable harm would have been caused to the environment. The Hon'ble Supreme Court also stated in the said judgment that in either view of the matter, environment law

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cannot countenance the notion of an *ex post facto* clearance and that it would be contrary to both the precautionary principle as well as the need for sustainable development. Para 27 of the ***Alembic Pharmaceuticals Ltd. (supra)*** is extracted hereinbelow: -

> *"**27.** The concept of an ex post facto EC is in derogation of the fundamental principles of environmental jurisprudence and is an anathema to the EIA notification dated 27 January 1994. It is, as the judgment is **Common Cause** holds, detrimental to the environment and could lead to irreparable degradation. The reason why a retrospective EC or an ex post facto clearance is alien to environmental jurisprudence is that before the issuance of an EC, the statutory notification warrants a careful application of mind, besides a study into the likely consequences of a proposed activity on the environment. An EC can be issued only after various stages of the decision-making process have been completed. Requirements such as conducting a public hearing, screening, scoping and appraisal are components of the decision-making process which ensure that the likely impacts of the industrial activity or the expansion of an existing industrial activity are considered in the decision-making calculus. Allowing for an ex post facto clearance would essentially condone the operation of industrial activities without the grant of an EC. In the absence of an EC, there would be no conditions that would safeguard the environment. Moreover, if the EC was to be ultimately refused, irreparable harm would have been caused to the environment. In either view of the matter, environment law cannot countenance the notion of an ex post facto clearance. This would be contrary to both the precautionary principle as well as the need for sustainable development."*

24. It is only in para 49 of ***Alembic Pharmaceuticals Ltd. (supra)*** that we find that certain observations have been made and directions have been issued to the project proponents for deposit of the amount of compensation with the Pollution Control

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Board of the State concerned, where revocation of environment clearance and closure of industries was provided, however, it is to be noticed that the Hon'ble Supreme Court in para 49 itself goes on to observes that, "***these directions are issued under Article 142 of the Constitution***". Para 49 of ***Alembic Pharmaceuticals Ltd. (supra)*** is quoted hereinbelow:

> *"**49.** In this backdrop, 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. At the same time, the Court cannot be oblivious to the environmental degradation caused by all three industries units that operated without valid ECs. The three industries have evaded the legally binding regime of obtaining ECs. They cannot escape the liability incurred on account of such noncompliance. Penalties must be imposed for the disobedience with a binding legal regime. The breach by the industries cannot be left unattended by legal consequences. The amount should be used for the purpose of restitution and restoration of the environment. Instead and in place of the directions issued by the NGT, we are of the view that it would be in the interests of justice to direct the three industries to deposit compensation quantified at ^10 crores each. The amount shall be deposited with GPCB and it shall be duly utilized for restoration and remedial measures to improve the quality of the environment in the industrial area in which the industries operate. Though we have come to the conclusion, for the reasons indicated, that the direction for the revocation of the ECs and the closure of the industries was not warranted, we have issued the order for payment of compensation as a facet of preserving the environment in accordance with the precautionary principle. These directions are issued under Article 142 of the Constitution. Alembic Pharmaceuticals Limited, United Phosphorous Limited and Unique Chemicals Limited shall deposit the amount of compensation with GPCB within a period of four months from the date of receipt of the certified copy of this judgment. This deposit shall be in addition to the amount directed by the NGT. Subject to the deposit of*

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the aforesaid amount and for the reasons indicated, we allow the appeals and set aside the impugned judgment of the NGT dated 8 January 2016 in so far as it directed the revocation of the ECs and closure of the industries as well as the order in review dated 17 May 2016."

25. In view of the aforesaid, it is abundantly clear that the observations made and directions issued by the Hon'ble Supreme Court in ***Alembic Pharmaceuticals Ltd. (supra)*** are to be read in terms of Article 142 of the Constitution of India and therefore, such observations and directions of Hon'ble Supreme Court are to be confined to the facts of the said case which cannot have general application. Accordingly, we are of the considered opinion that reference to the observations made and directions issued by Hon'ble Supreme Court in ***Alembic Pharmaceuticals Ltd. (supra)*** in the impugned Office Memorandum is highly misplaced and the same cannot be relied upon for justifying issuance of the impugned Office Memorandum in contravention of the provisions contained in CRC Notification, 2019, which, as concluded above, is statutory in nature having been issued by the Government of India under section 3(2)(v) of the Act of 1986 read with Rule 5(3)(d) of the Rules of 1986. Similarly, reference made in the impugned Office Memorandum to the order dated 28th November 2014 of Hon'ble High Court of

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Jharkhand in the case of ***Hindustan Copper Limited (supra)*** also does not justify the said Office Memorandum. The order in ***Hindustan Copper Limited (supra)*** pertained to a matter not in relation to CRZ areas. It was a case relating to mining lease which was issued prior to Environment Impact Assessment (EIA) Notification and the question in the said case was as to whether the EIA Notification would be applicable to renewal of mining lease and it is in this context that the Hon'ble Jharkhand High Court observed that application seeking environmental clearance must be examined on merits independent of the proposed action of the alleged violation of CRZ laws. Accordingly, the reference of this order of Hon'ble Jharkhand High Court in the impugned Office Memorandum does not in any manner help the respondent no. 1 for justifying the same as it is clearly in derogation and violation of the CRZ Notification, 2019.

26. It is also to be noticed that the impugned Office Memorandum mentions that the Government of India had received several requests under CRZ Notification, 2011 for considering CRZ clearances in respect of permissible activities which had commenced work without prior CRZ clearance due to inadequate knowledge of the regulatory regime and other

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factors. Reference to CRZ Notification, 2011 in the impugned order and that of the requests made by project proponents for *post facto* CRZ clearance are also misplaced for the reason that CRZ Notification, 2019 was issued in supersession of CRZ Notification, 2011 and accordingly, clause 4.3 in CRZ Notification, 2011, which permitted *post facto* clearance, which was inserted by notification dated 6th March 2018, cannot be said to be in operation on the date of issuance of the impugned Office Memorandum. The regulatory CRZ regime which was in operation is the one notified by CRZ Notification, 2019 which does not contain any provision for grant of *post facto* CRZ clearance.

27. It is well settled law that whenever a law is repealed, it must be construed as if it never existed. Such proposition can be found propounded by Hon'ble Supreme Court in the case of ***State of Uttar Pradesh and Ors. vs. Hirendra Pal Singh and Ors.***[10]. Para 22 of the said report is relevant to be quoted here, which runs as under: -

> *"**22.** It is a settled legal proposition that whenever an Act is repealed, it must be considered as if it had never existed. The object of repeal is to obliterate the Act from the statutory books, except for certain purposes as provided under section 6*

[10] **(2011) 5 SCC 305**

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of the General Clauses Act, 1897. Repeal sis not a matter of mere form but is of substance. Therefore, on repeal, the earlier provisions stand obliterated/abrogated/wiped out wholly i.e. pro tanto repeal."

28. Thus, as a result of supersession of CRZ Notification, 2011 by promulgating and notifying CRZ Notification, 2019, it may be noted that at the time of issuance of the Office Memorandum dated 19th February 2021, the CRZ Notification, 2011 did not exist and accordingly, any reference to CRZ Notification, 2011 in the impugned Office Memorandum does not justify the issuance of it.

29. In the light of the aforesaid discussion, we are of the unambiguous view that the impugned Office Memorandum dated 19th February 2021 issued by the Government of India is in contravention and derogation of the provisions of CRZ Notification, 2019.

30. Coming to the next issue, namely, issue (b), we may first examine the law as declared by Hon'ble Supreme Court in relation to operation of executive circular/orders/decision in the wake of a statutory notification or any other statutory provision.

31. Jurisprudence in our country recognizes hierarchy of laws

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according to which on the topmost pedestal of such hierarchy stand the provisions of the Constitution of India, where after stand the provisions of any legislation made by the Parliament or the State legislatures. Thereafter comes statutory provisions/rules/ instruments made by the competent authority in exercise of its powers vested in it under some legislation and it is only thereafter that in the said hierarchy, the executive instructions/orders/ decisions of the Government stand.

32. We may refer to a judgment of Hon'ble Supreme Court in the case of ***Union of India and Ors. vs. Somasundaram Viswanath and Ors.***[11] where the subject matter related to a service dispute in respect of promotion and seniority of certain Government servants. In the said context, it has been held by Hon'ble Supreme Court that "***if there is a conflict between the executive instructions and the rules made under the proviso to Article 309 of the Constitution of India, the rules made under proviso to Article 309 of the Constitution of India prevail, and if there is a conflict between the rules made under the proviso to Article 309 of the Constitution of India and the law made by the***

[11] **(1989) 1 SCC 175**

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appropriate legislature the law made by the appropriate legislature prevails".

33. In the case of ***Rajasthan State Industrial Development and Investment Corporation vs. Subhash Sindhi Cooperative Housing Society, Jaipur and Ors.***[12] the Hon'ble Supreme Court has again emphasized that executive instructions cannot override the law and therefore, any notice/circular/ guidelines, etc., which are contrary to statutory provisions, cannot be enforced. Para 27 of the said report is extracted below: -

> *"**27.** Executive instructions which have no statutory force, cannot override the law. Therefore, any notice, circular, guidelines, etc. which run contrary to statutory laws cannot be enforced."*

34. The Hon'ble Supreme Court in yet another judgment in the case of ***Union of India and Anr. Vs. Ashok Kumar Aggarwal***[13] has reiterated the aforesaid proposition of law that an authority cannot issue orders/office memorandums/executive instructions in contravention of the statutory rules. The Hon'ble Supreme Court has further observed, in no uncertain terms, that such executive instructions can be issued only to supplement the

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12 **(2013) 5 SCC 427**

13 **(2013) 16 SCC 147**

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statutory rules but not to supplant and that the executive instructions should be subservient to the statutory provisions. Para 59 in the judgment of ***Ashok Kumar Aggarwal (supra)*** is quoted hereinbelow: -

> *"**59.** The law laid down above has consistently been followed and it is a settled proposition of law that an authority cannot issue orders/office memorandum/ executive instructions in contravention of the statutory rules. However, instructions can be issued only to supplement the statutory rules but not to supplant it. Such instructions should be subservient to the statutory provisions."*

35. Reiterating the principle an administrative instruction can only supplement the statutory rules in the manner that it does not lead to any inconsistency, Hon'ble Supreme Court in the case of ***SK Naushad Rahman and Ors. vs. Union of India and Ors.***[14] has held that executive instructions may fill up the gaps in the rules, but supplementing the exercise of the rule-making power with the aid of administrative or executive instructions is distinct from taking the aid of administrative instructions contrary to the express provision or the necessary intendment of the rules. Paragraph 33 of this judgment is extracted hereinbelow: -

> *"**33.** There is a fundamental fallacy in the submission which has been urged on behalf of the appellants. Administrative instructions, it is well-settled, can supplement Rules which are framed under the proviso to Article 309 of the Constitution in a*

[14] **(2022) 12 SCC 1**

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manner which does not lead to any inconsistencies. Executive instructions may fill up the gaps in the rules. But supplementing the exercise of the rule-making power with the aid of administrative or executive instructions is distinct from taking the aid of administrative instructions contrary to the express provision or the necessary intendment of the Rules which have been framed under Article 309. The 2016 RR have been framed under the proviso to Article 309. Rule 5 of the 2016 RR contains a specific prescription that each CCA shall have its own separate cadre. The absence of a provision for filling up a post in the Commissionerate by absorption of persons belonging to the cadre of another Commissionerate clearly indicates that the cadre is treated as a posting unit and there is no occasion to absorb a person from outside the cadre who holds a similar or comparable post".

36. Thus, in view of the aforesaid proposition of law propounded by Hon'ble Supreme Court, it is more than clear that any executive instruction can only supplement the rules and if such executive instruction tends to supplant the rules, the same cannot be permitted to be sustained in the eyes of law.

37. In the instant case, the CRZ Notification, 2019 has been issued by the Central Government in exercise of its powers vested in it under section 3(2)(v) of the Act of 1986 read with Rule 5(3)(d) of the Rules of 1986 and hence, they are statutory in nature. It is also to be seen that the impugned Office Memorandum has been issued without following the procedure as prescribed under Rule 5(3) of the Rules of 1986 and hence, the impugned Office Memorandum is not referable to the said

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rules. Accordingly, the impugned Office Memorandum cannot be said to be statutory in nature; rather it only falls in the category of an instrument which has been issued by the Central Government in exercise of its general administrative/executive powers.

38. We may also note that CRZ Notification, 2019 does not contain any provision which permits *post facto* clearance, whereas the impugned Office Memorandum prescribes a procedure for obtaining *post facto* CRZ clearance. Accordingly, the Office Memorandum provides something which is not provided for in the statutory notification and hence, it cannot be said that the impugned Office Memorandum in any manner is supplemental to the CRZ Notification, 2019; rather it supplants the same, which, in view of the afore-discussed proposition of law propounded by Hon'ble Supreme Court in various judgments, is legally impermissible.

39. Considering the issue (c) framed above, we may note that in our discussion in preceding paragraphs we have already held that reference of the judgment of Hon'ble Supreme Court in ***Alembic Pharmaceuticals Ltd. (supra)*** and the order dated

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28th November 2014 of Hon'ble Jharkhand High Court in the matter of ***Hindustan Copper Ltd. (supra)*** is misplaced and hence, it is not open for the respondent no. 1 to take aid of the said judgments to justify the impugned Office Memorandum.

40. It may also be emphasized that the provisions contained in Rule 5 of the Rules of 1986 are mandatory in nature as held by the Full Bench of our Court in ***Ajay Marathe vs. Union of India & Ors.***[15]. In this judgment, it has been held that provisions of Rule 5(3)(a)(b) and (c) or the Rules of 1986 are mandatory, inasmuch as, whenever it is intended to impose prohibition or restrictions as contemplated by Rule 5, the Central Government is under a mandate to notify its intention to do so in *Official Gazette* and in such manner as it may deem fit. The Full Bench has further held that it is only when the Central Government is satisfied that it is in public interest to do so, it may dispense with the requirement of prior publication of notice under Rule 5(3)(a) of the Rules of 1986, however, no such argument has been raised on behalf of the Union of India-respondent no. 1 that the impugned Office Memorandum was issued dispensing with the requirement of prior publication of its

[15] **2018(4) Mh. L.J. 770**

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intention as required by Rule 5(3)(a) of the Rules of 1986. Even otherwise, what we find is that the impugned Office Memorandum does not refer to any statutory provision, either of the Act of 1986 or the Rules of 1986. Accordingly, the Impugned Office Memorandum cannot be justified for this reason as well.

41. A Division Bench of this Court in its judgment dated 27th August 2001 in the case of ***Mr. Kashhinath Jairam Shetye and Ors. vs. Union of India and Anr.***[16] has observed that requirement of issuance of public notice under Rule 5(3)(a) of the Rules of 1986 is a statutory embodiment of the rule of *audi alteram partem* and in absence of any public interest involved in the dispensation of such public notice, the Central Government could not have, in casual manner, dispensed with such requirement and deprived the public of an opportunity to object to the activities proposed in the eco-sensitive zone. Though the argument based on dispensing with such requirement in public interest has not been made by the learned Counsel representing the respondent no. 1, however, we may observe that in case any provision, as contained in the impugned Office Memorandum, was intended by the Central Government to be made, CRZ

[16] **PIL Writ Petition No. 43 of 2019**

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Notification, 2019 was required to be amended by following the statutory requirements contained in Rule 5 of the Rules of 1986. Since before issuance of the impugned Office Memorandum such statutory prescriptions have not been followed, that itself makes the impugned Office Memorandum vulnerable and susceptible due to which it cannot withstand judicial scrutiny.

42. Reliance placed by learned Counsel on behalf of respondent no. 1 on various judgments is of no avail to justify the impugned Office Memorandum. In this regard, we may note that heavy reliance has been placed by learned Counsel for respondent no. 1 on the judgment in the case of ***Pahwa Plastics Pvt. Ltd. (supra)***, however, it was a case where the Hon'ble Supreme Court held that *ex post facto* approval can be granted in certain rare circumstances, but, as is apparent from a perusal of the judgment, what we find is that it was a case where the relevant notification was issued by following the procedure under Rule 5(3) of the Rules of 1986, whereas in the instant case, the impugned Office Memorandum is not referable to any of the statutory prescriptions as discussed above.

43. Learned counsel for respondent no. 1 has also relied upon

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the judgment in the case of ***D. Swamy (supra)***, ***Lafarge Umiam Mining Pvt. Ltd. (supra)***, ***Electrotherm (supra)*** and ***Electrosteel Steels Ltd. (supra)*** where the question was as to whether *ex post facto* environmental clearance maybe granted.

44. In the case of ***D. Swamy (supra)***, the Notification dated 14th March 2017 provided for grant of *ex post facto* environmental clearance for the project proponent who had commenced, continued or completed project without obtaining environmental clearance, which was issued by the Central Government in exercise of its power under section 3(1) and section 3(2)(v) of the Act of 1986 read with Rule 5(3)(d) of the Rules of 1986. Thus, the notification, which provided grant of *ex post facto* environmental clearance in ***D. Swamy (supra)***, was statutory in nature, whereas in the instant case, the impugned Office Memorandum is not referable to any of the provisions of the Act of 1986 or the Rules framed thereunder. Thus, in our opinion, the judgment in ***D. Swamy (supra)*** and other judgments will have no application to the facts of the present case.

45. So far as ***Electrosteel Steels Ltd. (supra)*** is concerned,

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it was a case where environmental clearance was granted to the project proponent for a particular site on the basis of which consent to establish under the Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and control of Pollution) Act, 1974 was accorded on the basis of environmental clearance issued by the Central Government, however, the consent to operate was rejected on the ground that the project proponent had shifted the site of its plant and had encroached upon some forest land in contravention of the Forest (Conservation) Act, 1980. It is in these circumstances, specially that the project proponent had shifted the site for establishing its plant which was at some distance away from the site for which environmental clearance was granted and the project proponent was seeking issuance of revised environmental clearance, that the Hon'ble Supreme Court directed the Union of India to take decision on the application of the project proponent for revised environmental clearance. In this judgment, Hon'ble Supreme Court has noticed ***Alembic Pharmaceuticals Ltd. (supra)*** wherein the Hon'ble Supreme Court has deprecated *ex post facto* clearances. The Hon'ble Supreme Court further noticed in ***Electrosteel Steels Ltd. (supra)*** that in ***Alembic***

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Pharmaceuticals Ltd. (supra) the notification dated 14th March 2017 was not an issue and that the Court was examining the propriety and legality of the 2002 circular which was inconsistent with the EIA Notification dated 27th January 1994 which was a statutory one. The Hon'ble Supreme Court in ***Electrosteel Steels Ltd. (supra)*** has, thus, referred to the notification dated 14th March 2017 which is a statutory notification unlike the Office Memorandum dated 19th February 2021 which is under challenge in this PIL petition which is merely an executive circular/decision. Accordingly, the judgment in ***Electrosteel Steels Ltd. (supra)*** does not help the respondent no. 1 in any manner for justifying the impugned Office Memorandum.

46. As far as the judgment in the case of ***K.T.V. Health Food Pvt. Ltd. (supra)*** is concerned, it was a case where *post facto* clearance was held to be permissible based on para 4.3 of CRZ Notification, 2011 which was inserted vide notification dated 6th March 2018. The notification dated 6th March 2018, as already observed, was statutorily issued by the Government of India exercising its powers conferred under section 3(2)(v) of the Act of 1986 read with Rule 5(3)(d) of the Rules of 1986. Hence, the

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judgment in ***K.T.V. Health Food Pvt. Ltd. (supra)*** does not help the respondent no. 1.

47. On these counts, the other judgments referred to by learned Counsel representing the Union of India also do not persuade us to uphold the validity of the impugned Office Memorandum dated 19th February 2021.

(H) Conclusion:

48. In the light of the discussion made and reasons given above, this Court is of a considered opinion that after issuance of CRZ Notification, 2019, in absence of any amendment in this notification or issuance of any other statutory notification permitting *post facto* CRZ clearance, by issuing the impugned Office Memorandum dated 19th February 2021, which is clearly non-statutory in nature, *post facto* CRZ clearance is legally not permissible. We also conclude that the impugned Office Memorandum dated 19th February 2021 being merely in the nature of an executive circular/order issued by the Union of India runs contrary to and in derogation of the statutory provisions embodied in CRZ Notification, 2019 and hence, is liable to be struck down.

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Order:

(a) PIL petition is, thus, allowed and the impugned Office Memorandum dated 19th February 2021 issued by the Government of India in the Ministry of Forest and Climate Change as contained in Exhibit 'A' appended to the PIL petition is hereby quashed.

(b) The applications seeking CRZ clearance made by interveners, namely, the State of Nagaland and M/s. Patel and Associates shall be considered by the competent authority on their own merits and appropriate decision thereon shall be taken in accordance with law, with expedition.

(c) All other interim application(s), if any, stand disposed of.

(d) Costs made easy.

(AMIT BORKAR, J.) **(CHIEF JUSTICE)**

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Annexure A-4

https://www.exchange4media.com/industry-briefing-news/three-officers-suspended-by-up-authorities-after-news18-india's-expose-on-illegal-mining-70078.html

Three officers suspended by UP authorities after News18 India's expose on illegal mining

Shrikant Sharma, Energy Minister in the UP government, said that that they have taken cognizance of the issue and that in view of the sting operation conducted by the channel, the government will take appropriate action against the culprits
by exchange4media Staff

Published: Aug 11, 2017 12:39 PM | 2 MIN READ

News18 India's has done an expose on the unauthorized mining activities that are still being carried out in Uttar Pradesh.

The channel's undercover team of reporters contacted the mining mafia involved in illegal mining activities in the Mirzapur district of Uttar Pradesh who revealed how they are hand in gloves with many state officials as well as the police and how these corrupt officials help them in facilitating these unlawful mining operations.

News18 India's team went to the SDM office and police station and caught officials red-handed on their spy camera asking for money in lieu of granting permission for mining. The officials disclosed that there is a rate card for undertaking such operations. If the mining is legal, the officials ask for anywhere between Rs. 8000 to 10000 and if the activities are illegal, then the bribery amount increases up to Rs. 15,000.

Following the telecast of the story, authorities in Mirzapur suspended Hari Prasad, Stenographer, SDM; Narendra Singh, Station In-charge; Bhuvneshwar Pandey, SHO and ordered necessary action against KP Singh, CO who were seen in the sting operation admitting their involvement of illegal activities in mining.

Shrikant Sharma, Energy Minister in the UP government, said that that they have taken cognizance of the issue and that in view of the sting operation conducted by the channel, the government will take appropriate action against the culprits.

On the other hand, UP Congress Chief Raj Babbar has said that while the mining mafia are active in the state like before only the faces have changed. He complimented News18 India for exposing the ground reality.

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Service of Rejoinder in EA No. 29 of 2024 in Appeal No. 79 of 2014 titled as Debadityo Sinha vs Mirzapur Energy, UP, Pvt Ltd & Ors, pending before NGT, PB

1 message

parul gupta <parul.lawyer@gmail.com> Fri, Jul 11, 2025 at 5:34 PM
To: ravinder gupta <ravinder_adv@yahoo.com>, pradeepmisra@yahoo.com, Sumeer Sodhi <sumeer@vsalegal.in>, bhanwar jadon <Bhanwar09jadon@gmail.com>

To,

1. Adv. Sumeer Sodhi for Respondent No.1
2. Adv. Bhanwar Pal Singh Jadon for Respondent No.2
3. Adv. Ravinder Kumar Gupta for Respondent No.3
4. Adv. Pradeep Misra for Respondent No. 4

Please find attached Consolidated Rejoinder to the replies filed by the Respondents in the above-mentioned matter.

This email may kindly be treated as service of the above-mentioned Application.

Regards,

Parul Gupta
Advocate

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