

**BEFORE THE NATIONAL GREEN TRIBUNAL  
SOUTHERN ZONE, CHENNAI**

**M.A. No. 90 of 2013 (SZ)**  
*in*  
Application No. 12 of 2013 (SZ)

Applicant(s)  
Environment Support Group,  
Bangalore

Vs.

Respondent(s)  
The Union of India  
and other

Legal Practitioners for Applicant(s)  
M/s. T. Mohan, S. Devika and  
A. Yogeswaran

Legal Practitioners for Respondents  
Smt C. Sangamithirai, Advocate  
for R-1  
M/s. M.K. Subramaian, Abdul Saleem  
M.R. Gokul Krishnan, Advocates for R-2, 3, 6,  
8, 9, 10 and R-17  
Shri T.K. Bhaskar, Advocate for R-5  
Shri D. Nagaraj, Advocate for R-7  
Shri C.V. Ramachandra Murthy, Advocate  
For R-11, 12, 13 and 14  
Shri Uttam Joseph, Advocate for R-15  
Shri S.N. Aswatha Narayan, Advocate for R-18

**Application No. 06 of 2013 (SZ)**

Applicant(s)  
Leo. F. Saldhana, Vajrahalli, Bangalore  
Party-in-person

Vs.

Respondent(s)  
The Union of India and others  
Legal Practitioners for Respondents  
Smt. C. Sangamithirai, Advocate  
for R-1 and R-3  
M/s. M.K. Subramaian and M.R. Gokul  
Krishnan, Advocates for R-2, R-3, R-7  
R-9 and R-16  
Shri T.K. Bhaskar, Advocate for R-4  
Shri D. Nagaraj, Advocate for R-6  
Shri V. C. Ramachandramurthy, Advocate  
for R-10, R-11 and R-12  
M/s. S. Siva Sangarane and  
R. Kanchana Advocates for R-14

Note of the Registry	Orders of the Tribunal
Order No. 11	Dated 21 <sup>st</sup> August 2013  The main application has been filed for the purpose of maintaining the Amrit Mahal Kaval free from encroachment apart from other reliefs sought

for. Pending the same, this application has been filed for an order of injunction against the Project Proponents namely respondent Nos. 10 to 15 from carrying on any construction activities or modifying the character of the Amrit Mahal Kaval without obtaining clearance from the appropriate authorities. As per the directions from this Tribunal a fact finding body went to the place concerned and filed a report of July 2013.


In the report, apart from stating many other things about the Amrit Mahal Kaval and confirming that such Amrit Mahal Kaval is in existence, no doubt the expert report says that there has been construction activity of compound wall. But, it states that even though such construction of compound wall would restrict the entry of livestock into the Kaval land, which is a grazing yard, the available Kaval land and the assurances given by the beneficiaries of the land would facilitate the gracing by livestock and availability of fodder. There are few facts which are not in dispute.

The present applications have been filed before the Tribunal for the reliefs states supra. It was on 15.02.2013, thereafter two of the Project Proponents namely the 12<sup>th</sup> and 14<sup>th</sup> respondents have filed applications before the Karnataka State Pollution Control Board ( for short Pollution Control Board) for Consent to Establish on 26.03.2013 and 14.04.2013 respectively which fact is disputed by the learned counsel appearing for the applicant. But, the fact remains that such Consent to Establish has been obtained from the Pollution Control Board by these Project Proponents only after filing applications dated 05.02.2013. It is the case of the Pollution Control Board that the Pollution Control Board has issued notices and subsequently stopped from proceeding further awaiting for any order from this Tribunal. Therefore, it is a clear case of the Pollution Control Board that they were unable to proceed further because of the pendency of these applications before this Tribunal.

In so far as it relates to the Ministry of Environment and Forests,(MoEF) the learned Senior Counsel appearing for the 12<sup>th</sup> respondent/Defence Research and Development Organisation (DRDO)

	<p>would bring to the notice of this Tribunal that a communication from MoEF dated 26.04.2011 that is in the form of clarification issued by the Ministry regarding the applicability of Environment Impact Assessment Notification 2006 (EIA Notification 2006) . In that the contents of the said clarification is as follows:</p> <p><i>“This has reference to the issue of NOC/Environmental Clearance for Air Strip Projects.</i></p> <p><i>This Ministry has been receiving many proposals for the issue of NOC for air strip. It is to be clarified that Ministry issues only Environmental Clearance to the Airports and the Airstrips for commercial use (Except the airstrips which do not involve bunkering/refuelling facility and/or Air Traffic Control) under the Environment Impact Assessment Notification, 2006 as amended in 2009.</i></p> <p><i>It is, therefore, requested that the Ministry of Civil Aviation and Directorate General of Civil Aviation may not insist on a NOC for this Ministry in respect of such Airstrips which are not meant for commercial use and which do not involve bunkering/refuelling facility and /or Air Traffic Control.</i></p> <p>It shows that the projects which do not involve bunkering, refuelling facilities, and Air Traffic Control are not within the purview of the EIA Notification 2006. The learned Senior Counsel has also brought to our notice about the amendment effected by the Government of India to the EIA Notification dated 01.11.2009.</p> <p>The learned counsel for the 14<sup>th</sup> respondent, which relates to the Solar Photo Voltaic Power Project also brings to our notice that as per the Office Memorandum of the MoEF dated 13.05.2011 of the Government of India, the said project does not require any clearance under EIA Notification and stated to have been issued with the approval of the competent authority. The contents of the said Office Memorandum are as follows:</p> <p><i>“A reference has been received in this Ministry seeking clarification regarding applicability of EIA Notification, 2006 in respect of Solar Photo Voltaic (PV) Power Projects. The matter has been</i></p>
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	<p><i>examined.</i></p> <p><i>It is clarified that the Solar PV Power Project are not covered under the ambit of EIA Notification,2006 and no environment clearance is required for such projects under the provisions thereof.”</i></p> <p>However, the learned counsel appearing for the applicant as well as the party-in-person, would stoutly oppose the validity of such Office Memorandum cannot supersede a statutory notification in accordance with Section 3 of the Environmental Protection Act. This issue will be decided during the hearing for final disposal.</p> <p>It is not in dispute that the Project Proponents are expected to obtain clearance from the Pollution Control Board. In fact, the Project Proponents have applied to the Pollution Control Board for clearance. But the problem is that before the clearance is issued by the Pollution Control Board, the Project Proponents have proceeded with the implementation of the scheme, which in our opinion, is not proper. Be that as it may, now that the applications are pending before the Pollution Control Board, and the Board has taken a stand that because of the pendency of the cases before this Tribunal they have kept the matter pending with taking and decision, we are of the view that deeming provision especially under section 25(7) of the Water Act does not apply. In fact, that is the stand of the Pollution Control Board also as seen from paragraph 7 of the reply affidavit filed by the Board, which is as follows:</p> <p><i>“7. With respect to the applications received from the 12<sup>th</sup> respondent dated 14.02.2013 and the 14<sup>th</sup> respondent dated 16.03.2013 for Consent for Establishment, this respondent is considering the Applications. However, the said applications have been submitted on 18.03.2013 and on 02.04.2013 by the 14<sup>th</sup> and 12<sup>th</sup> respondents respectively, after the present proceedings were initiated and the matter is sub judice before this Hon’ble Tribunal and further this Hon’ble Tribunal has appointed an Advocate-Commissioner vide its order dated 21.03.2013 to inspect the land involved, which are</i></p>
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*subject matter of the present application and file his report. It is further submitted that as per Section 25(7) of the Water Act, 1974, if this respondent does not either give or refuse consent within a period of 4 months from the date of application, then the application is deemed consent. In this factual matrix, this respondent will process the applications of the 12<sup>th</sup> and 14<sup>th</sup> respondents and would either give or refuse consent subject to the outcome of these proceedings.*

In such view of the matter, the learned Senior Counsel appearing for the 12<sup>th</sup> respondent would vehemently contend that if any interim order is passed at this stage, it would cause serious damage to the Government organisations. He would further submit that huge labourers have been employed, machinery, equipments and other materials like cement are placed in the place of the scheme involving cost factor. According to the Senior Counsel, in his view, even approval from the Pollution Control Board is not required. At any rate, when DRDA has applied on 26.03.2013 by an application under section 25(7) of the Water Act with expiry of 4 months deemed approval has already come into operation and granting any interim stay will be detrimental not only to the public but the same would be against Section 25(7) of the Water Act.

We have carefully considered the submissions made by all the counsel appearing for the parties as well as the party-in-person. We are of the view that when once the Project Proponents have approached the Pollution Control Board and they have submitted themselves to the jurisdiction of the Board it is certainly not open to them now, at this stage, that they need not go the Pollution Control Board at all. Further, when the Pollution Control Board has taken a specific stand that they are unable to take any decision and pass orders after conducting enquiry because of the pendency of these applications in this Tribunal, there is no question of operation of deeming provision under Section 25(7) of the Water Act and also when the Pollution Control Board has taken a stand that study by the Expert Committee constituted by this Tribunal is in progress. Moreover, under the Air Act, there is no deeming provision, which is an

	<p>admitted fact.</p> <p>In so far as it relates to the contentions of the Senior Counsel that huge labour force have been employed and machinery and equipments were erected, it is exactly the said situation, which requires proper treatment and solution by the Pollution Control Board for the purpose of manning many number of workers. When that has not been done, in our view, nothing wrong will be done to any Project Proponent, if they are directed to wait till the Pollution Control Board passes appropriate orders. In such view of the matter, we are of the view that the balance of convenience is certainly in favour of the application and on larger interest of public and environment to make the Project Proponent to wait till the Board passes order in the manner known to law and accordingly, we direct the Karnataka State Pollution Control Board to process the applications made by the Project Proponents and pass appropriate order as per the provisions governing the Pollution Control Board within 2 weeks time from today.</p> <p>The learned counsel appearing for Karnataka State Pollution Control Board undertakes to communicate the same to the Board without awaiting for copy of this order. It is only after passing of such order by the Board the Project Proponent shall proceed further. We make it clear that the <i>status quo</i> which is in existence as on date shall be maintained by the Project Proponent.</p> <p>With the above said directions the Miscellaneous Applications are ordered accordingly.</p> <p>The MoEF shall file reply before the next date of hearing by giving advance copy to all concerned. Post the appeals for hearing on 17.09.2013</p> <p><b>Stand over to 17.09.2013</b></p> <div> <div>Prof. Dr. R. Nagendran Expert Member</div> <div>Justice P. Jyothimani Judicial Member</div> </div>
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