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## REPORTEDLY SEAC MEMBERS CARES TWO HOOTS TO “CIRCULARS RULES ACTS AND COURT ORDERS” “DISMISS THEM AND RECONSTITUTE NEW AUTHORITY”



By: M.S.Yatnatti: Editor and Video Journalist Bengaluru: State Level Expert Appraisal Committee (hereinafter referred to as the SEAC) at the State level shall screen, scope and appraise projects or activities in Category 'B' as per the Environmental Acts Rules and Regulations and circulars and court orders in this respect from various legal forums and supreme court. But reportedly recently on 18<sup>th</sup> April 2023 in its 233 SEIAA meeting proceedings has admitted that it has no expertise to go through various circulars court orders or it cares two hoots various circulars court orders. If the members of SEIAA has no expertise to go through various circulars court orders or it cares two hoots various circulars court orders let the government dismiss the existing members and reconstitute new authority with new competent members to run SEIAA as per the Environmental Acts Rules and Regulations and circulars and court orders.

The EIA process under the 2006 Notification serves as a balance between development and protection of the environment: there is no trade-off between the two. In laying down a detailed procedure for the grant of an EC, the 2006 notification attempts to bridge the perceived gap between the protection of the environment and development. The basic postulate of the 2006 Notification is that the path which is prescribed for disclosures, studies, gathering data, consultation and appraisal is designed in a manner that would secure decision making which is transparent, responsive and inclusive. Requirements of prior Environmental Clearance (EC):- The following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter be referred to as the Central Government in the Ministry of Environment and Forests for matters falling under Category „A“ in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category „B“ in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity:(i) All new projects or activities listed in the Schedule to this notification;(ii) Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization;

It identifies the environmental impact assessment (EIA) process as central to the grant of environmental clearances in India. Grant of environmental clearances is a key step in the statutory framework to balance ecological concerns about the natural environment, concerns of neighbouring communities about the quality of their immediate surroundings, including issues of sustainable access of poor and marginal communities to common property resource for their everyday subsistence, and of providing access of natural resources to the industry in the name of seeking socioeconomic development through facilitating intensive exploitation of nature for industrialization. Need for green clearance way to achieve sustainable development, 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, the bench held.

The Supreme Court held that 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. Section 2 – Definitions under the Environment (Protection) Act, 1986 reads as follows:- 2(a) “environment” includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property; (b) “environmental pollutant” means any solid, liquid or gaseous substance present in such concentration as may be, or tend to be, injurious to environment; (c) “environmental pollution” means the presence in the environment of any environmental pollutant; As per section 3 of the Environment (Protection) Act, 1986, the Central Government has powers to take measures to protect and improve environment. The said section reads as follows:“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 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 :— xx xx xx xx xxxx Clause - 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.”Rule 5 of Environment (Protection) Rules, 1986 provides for prohibitions and restrictions on the location of industries and the carrying on processes and operations in different areas. Clause (d) of sub-rule (3) of rule 5 reads as follows: “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 10 [within one hundred and 11 [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.”In exercise of the powers conferred as above, the Ministry of Environment and Forest in Central Government (Government of India) issued the Environment Impact Assessment Notification S.O.1533 dated 14.9.2006.Central Government directs that on and from the date of EIA Notification, the required construction of new projects or activities or the expansion or modernization of existing projects or activities listed in the schedule to EIA notification, entailing capacity addition with change in process and/or technology, shall be undertaken in any part of India only after the prior environmental clearance from the Central Government or the as case may be , by the State Environment Impact Assessment Authority (SEIAA) duly constituted by the Central Government under sub-section (3) of Section 3 of the Environment (Protection) Act, 1986.The State Environment Assessment Authority (SEIAA) are important arm of the Ministry of Environment and Forest, of EIA Notification at the State Level and they been delegated powers to consider and grant Environmental clearance for all the proposals under category B.The EAC/SEAC is to complete the appraisal of the application within 60 days of receiving the requisite documents. If the EAC/SEAC recommends to issue Environmental clearance, then the proceedings of the meeting should clearly list out the specific environmental safeguards and conditions. The Supreme Court, after hearing the appeal against the decision of the National Green Tribunal Bench for the Western Zone dated Jan 8, 2016, holding May 14, 2002 circular issued by the Union Environment Ministry as contrary to law, has ruled that the ‘concept of an ex-post facto Environmental Clearance is in derogation of the Fundamental Principles of Environmental Jurisprudence, detrimental to the environment and could lead to irreparable degradation’. The need for environmental clearance for a project must be seen as a measures to achieve sustainable development the supreme court has said.

Procedure prescribed for appraisal as per the EIA Notification of 2006:Para 2 of Appendix V of EIA notification 2006, issued by the Ministry of Environment and Forest, Government of India under the heading “Procedure prescribed for Appraisal” indicates as follows: “.2. The Final EIA Report and the other relevant documents submitted by the applicant shall be scrutinized in office within 30 days from the date of its receipt by the concerned Regulatory authority strictly with reference to the TOR and the inadequacies noted shall be communicated electronically or otherwise in a single set to the members of the SEAC ..”As per the EIA Notification 2006, the office of the SEIAA should scrutinize the application and EIAs submitted by the Project proponents. The office has to ensure that the EIA reports were prepared according to the Terms of Reference issued to the proponent for preparation of the said report. For scrutiny of the EIA report, the Karnataka SEIAA office personnel should have to be qualified, trained and experienced in the field of preparation and scrutiny of EIAs. Unless the Karnataka SEIAA has experts with qualification of M.Tech. or M.Sc. in Environmental Science with specialization in Impact Assessment and at least 10 -15 years of experience in the field of Impact Assessment, the purpose of provision made in the EIA Notification utterly fails. One can say that if this is not followed, prima fascia it is a clear violation of the provisions of para 2 of Appendix V of EIA notification of 2006. Straight away one can say these amounts to clear violation of EIA Notification. Non scrutiny of EIAs can be said to be one of the routes for encouraging malpractices by the Project proponent. The NGT Principal Bench in its order in Appeal No. 3 of 2011, between the Sarpanch and others Vs Ministry of Environment and Forests, in para 20 has observed as follows: “the matter assumes greater significance in view of the fact that as per the procedure laid down in EIA Notification 2006, Appendix V, Para 2, it is the duty of the office of State Environment Impact Assessment Authority to scrutinize the documents strictly with reference to the terms of reference [TOR] and take a note of the inadequacies in the Final EIA report and communicate to the State Expert Appraisal Committee [SEAC]. The conditions [TOR] which are mandatory cannot be ignored at the time of Appraisal of EIA by State Expert Appraisal Committee [SEAC] and when such conditions are not complied with, it must be deemed that the whole decision making process is vitiated”. The supreme court of India in its order on 1<sup>st</sup> March in Appeal No. 3 of 2011, between the Bengaluru Development Authority Vs Mr Sudhakar Hegde has observed as follows: 73. The SEAC is under an obligation to record the specific reasons upon which it recommends the grant of an EC. The requirement that the SEAC must record reasons, besides being mandatory under the 2006 Notification, is of significance for two reasons: (i) The SEAC makes a recommendation to the SEIAA in terms of the 2006 Notification. The regulatory authority has to consider the recommendation and convey its decision to the project proponent. The regulatory authority, as para 8(ii) of the 2006 Notification provides18, shall normally accept the recommendations of the EAC. Thus, the role of the SEAC in the grant of the EC for a proposed project is crucial; and (ii) The grant of an EC is subject to an appeal before the NGT under Section 16 of the NGT Act 2010. The reasons furnished by the SEAC constitute the link upon which the SEIAA either grants or rejects the EC. The reasons form the material which will be considered by the NGT when it considers a challenge to the grant of an EC.74. In Shreeranganathan K P v Union of India19, the grant of an EC to the KGS Aranmula International Airport Project was challenged. The NGT found fault with the process leading upto the grant of the EC since sector specific issues had not been dealt with. The NGT extensively reviewed the information submitted with regard to the construction of the airport and held thus:





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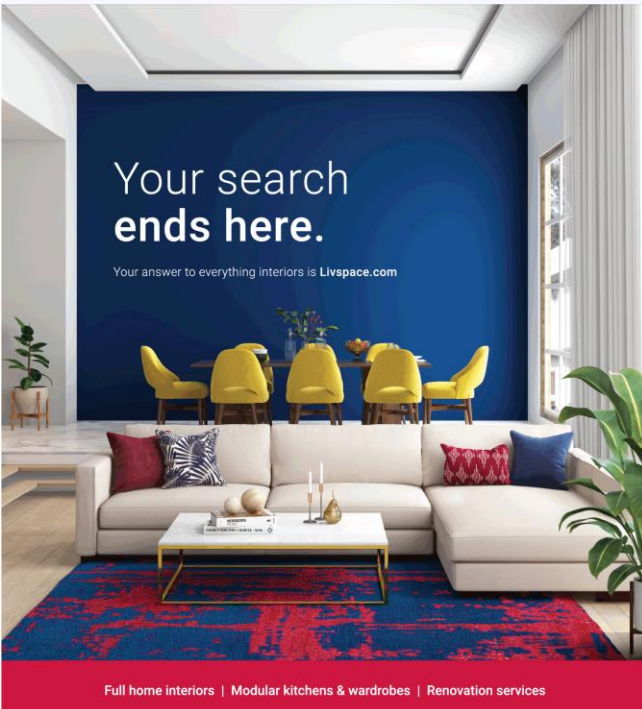

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"182. ... a duty is cast upon the EAC or SEAC as the case may be to apply the cardinal principle of Sustainable Development and Principle of Precaution while screening, scoping, and appraisal of the projects or activities. While so, it is evident in the instant case that the EAC has miserably failed in the performance of its duty not only as mandated by the EIA Notification, 2006, but has also disappointed the legal "(ii) The regulatory authority shall normally accept the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned..." 2014 ALL (I) NGT Reporter (1) (SZ) 1 PART H expectations from the same. For a huge project as the one in the instant case, the consideration for approval has been done in such a cursory and arbitrary manner without taking note of the implication and importance of environmental issues. ...Thus, the EAC has not conducted itself as mandated by the EIA Notification, 2006 since it has not made proper appraisal by considering the available materials and objections in order to make proper evaluation of the project before making a recommendation for grant of EC." The Court held that the EAC had not conducted a proper appraisal given its failure to consider the available material and objections before it. The EAC had thus failed to conduct a proper evaluation of the project prior to forwarding to the regulatory authority its recommendation.

SEIAA Authority does not have qualified personnel; SEIAA member secretary, told Deccan herald (Oct 24, 2016, DHNS) that The endorsement was given because the steel flyover is not in their purview. The BDA applied to SEIAA and they scrutinized the SEIAA rules. The list of infrastructure projects does not mention steel flyovers. Since SEIAA have nothing to do with it, the clearance was given. Steel flyover project qualifies as an area development project according to the Environment Impact Assessment Notification, 2006, under the Environment Protection Act, 1986.

Reportedly RTI Activist Mr Raviraj Acharya of Mangaluru had filled a RTI application before Public Relation Officer in the office of the Member Secretary, State Level Environment Impact Assessment Authority, Department of Ecology and Environment, Government of Karnataka and sought the following details: "Copies of the scrutinized information of all the projects/activities of final EIA report strictly with reference to the TOR and the inadequacies noted by the office of SEIAA Karnataka (As per para 2 of the Appendix V under the heading 'procedure prescribed for appraisal')". In spite of filing an appeal also by Mr Raviraj Acharya, the SEIAA is said to be not bothered to furnish the information sought. It shows that the Office of the SEIAA is not having qualified and experienced persons to scrutinize the applications and EIAs submitted by the Project proponents. In the matter of original application No. 572/2022 Anil Kumar Sastry Vs State of Karnataka, the National Green Tribunal has also pulled up the Karnataka State Environment Impact Assessment Authority (SEIAA) and said that Karnataka SEIAA is mute a spectator even though the Environmental Clearance was not taken. It clearly shows that the Office of the State Environment Impact Assessment Authority Karnataka is not equipped with qualified experts to observe the environmental impact of the development projects in the State.

Conclusion: In view of the above, According to technical experts observing inefficiency and lacking trained and experienced EIA scrutiny experts, there is a need for Karnataka Government for separate Authority or Board for Karnataka SEIAA office or Karnataka State, The Authority or Board can be called as Sustainable development Authority or sustainable development Board to act as secretariat for Karnataka State Level Impact Assessment Authority and Karnataka State Level Expert Appraisal Committee. Further this authority or board can give technical, legal support for Environmental clearance matters and observe the environmental impact of the development projects in Karnataka State. The government need to frame new rules in this regard and provide transparent administration of Central and state environment Acts.




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