

**BEFORE THE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**

**Appeal No. 25 of 2017  
(M.A. No. 963 of 2017)**

**IN THE MATTER OF:**

**Verhaen Khanna & Ors. Vs. Union of India & Ors.**

**CORAM :** HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON  
HON'BLE DR. JUSTICE JAWAD RAHIM, JUDICIAL MEMBER  
HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER  
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER

**Present:** Appellant: Mr. Ritwick Dutta and Ms. Meera Gopal, Advs.  
Respondent No. 1: Mr. Atmaram N.S. Nadkarni, ASG, Mr. Salvador Santosh Rebello, Ms. Sneha Tendulkar, Mr. Raghav Sharma and Mr. Mayor Jaisingh, Mr. K.K. Singh and Mr. Divya Prakash Pande, Advs. for MoEF  
Respondent No. 3: Mr. Sanjay Jain, Sr. Adv. Mr. Tushar Gupta, ASG, Mr. Saket Sikri, Ms. Sneha Suman, Ms. Rhea Verma and Mr. Ajay Pal, Advs. For ITPO Mr. Sandeep Mishra, Adv. and Mr. Dinesh Jindal, LO, DPCC

<b>Date and Remarks</b>	<b>Orders of the Tribunal</b>
<b>Item No. 01</b> <b>October 09, 2018</b> <b>AT</b>	<p>1. This appeal filed under Section 16 (h) of the National Green Tribunal Act, 2010, seeks to assail the Environmental Clearance (Environmental Clearance) dated 28<sup>th</sup> July, 2017 (hereinafter referred to as the 'impugned Environmental Clearance') granted by the Ministry of Environment Forest and Climate Change (MoEF&amp;CC) to M/s. India Trade Promotion Organization for the Integrated Exhibition cum Convention Centre (redevelopment of ITPO complex at Pragati Maidan), New Delhi.</p> <p>2. The impugned Environmental Clearance has been assailed <i>inter alia</i> on the following grounds:-</p> <p>1. The project ought to have been considered and appraised as a violation case by the EAC and the MoEF&amp;CC considering the fact that the</p>

	<p><b>Item No. 01</b></p> <p><b>October 09, 2018</b></p> <p><b>AT</b></p>	<p>preparatory works on the project had already been initiated even before the application for Environmental Clearance was submitted by the project proponent to the MoEF&amp;CC.</p> <p>2. Construction of the project had begun without obtaining mandatory consents under the provisions of the Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974. It is stated that the project proponent had commenced with the preparatory works which included demolition of structures on project site in April, 2017 and the construction works in July, 2017 but, the project proponent had applied for Consent to Operate much later on 9<sup>th</sup> October, 2017, which is evident from the letter dated 31<sup>st</sup> October, 2017 of the Delhi Pollution Control Committee, the Respondent No. 4. This, as per the applicant, was in contravention of condition no. (i) of the impugned Environmental Clearance which clearly stipulates that the project proponent shall obtain all necessary clearance/permission before the commencement of work. The Delhi Pollution Control Committee has failed to take action against the project proponent when the violation of the Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974 were glaring.</p> <p>3. The impugned Environmental Clearance had been issued in complete violation of the EIA Notification, 2006 (for short 'Notification of 2006'),</p>
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	<p><b>Item No. 01</b></p> <p><b>October 09, 2018</b></p> <p><b>AT</b></p>	<p>as the appraisal procedure followed in respect of the project did not conform to the provisions of the Notification which were stated to be as follows:</p> <p>(i) While the Terms of Reference (ToR) for the EIA study was communicated to the project proponent <i>vide</i> letter dated 19<sup>th</sup> May, 2017, the baseline studies had been conducted preceding this date between March-May, 2017. As per law, baseline studies for EIA report could have commenced only after 19<sup>th</sup> May, 2017, i.e., after the ToR were conveyed to the project proponent.</p> <p>(ii) The stipulation in the ToR letter that the project proponent should mention the number of rainy days, if any, after 15<sup>th</sup> June in the EIA/EMP report, was not complied with as the EIA report was submitted by the project proponent on 6<sup>th</sup> June.</p> <p>(iii) Impact assessment of cutting of more than 1000 trees within the project which has been considered necessary under the ToR has not at all been addressed in the EIA report as would be evident from chapter 4 of the EIA report.</p> <p>(iv) No traffic impact analysis has been carried out when the ToR No. (xxxii) clearly stipulated that such exercise was to be carried out by engaging services of an</p>
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	<p><b>Item No. 01</b></p> <p><b>October 09, 2018</b></p> <p><b>AT</b></p>	<p>organization specializing in Transport Planning and Traffic Engineering for the purposes of assessing of the proposed redevelopment of the complex in terms of impact on traffic intensities, road capacities, intersection capacities, intersection capacities and related delays on the bounding network of the site.</p> <p>(v) The EIA study does not contain chapter on the compliance of status of ToR as mandated under letter dated 19<sup>th</sup> May, 2017.</p> <p>(vi) The EIA report is completely lacking in the study of the Ambient Air Quality having regard to the fact that air pollution is most critical in the city of New Delhi. It was, therefore, imperative for a Cumulative Impact Assessment Study on Air Quality as well as a study on incremental air pollution levels due to the project to be conducted and presented in the EIA report as mandated by the Tribunal in the case of <i>T. Muruganandam v. MoEF</i> (Appeal No. 17/2011).</p> <p>(vii) The EIA report is bereft of the question regarding the quantity of excavated earth and its management and dewatering of groundwater when the project involves construction of basement with a total area of 3,36,846 sq. mtrs. Even the ToR had required these issues to be addressed</p>
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	<p><b>Item No. 01</b></p> <p><b>October 09, 2018</b></p> <p><b>AT</b></p>	<p>under clause x.</p> <p>(viii) There is lack of clarity in the EIA study on the source and usage of water for the project during the construction and operation phase as much as while clause (xiii) of the report states that no extraction of ground water is contemplated and, specific condition no. (xxii) for the construction phase prohibits use ground water during construction/operation phase of the project, condition no. (iii) for the operation phase on the other hand, prohibits use of fresh water in excess of 1621 m<sup>3</sup>/day requirement from Delhi Jal Board and registered tube well within ITPO complex.</p> <p>(ix) There is no clarity on the management of construction and demolition waste. Several critical issues regarding demolition have not been mentioned in the ToR, EIA report and the impugned Environmental Clearance. This aspect, as per the applicant, is a major omission having regard to the fact that the construction activities are the largest source of pollution in Delhi and that the existing recycling plant, i.e., the Burari MCD Recycling Plant, has the capacity of only 500 tonnes/day, which would not be able to take in about 5000 tonnes/day of construction waste that will be generated at the project.</p>
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	<p><b>Item No. 01</b></p> <p><b>October 09, 2018</b></p> <p><b>AT</b></p>	<p>(x) The project had been cleared hurriedly by the MoEF&amp;CC at the dictat of the Ministry of Urban Development (MoUD) to grant the impugned Environmental Clearance to the project. The EAC did not apply its independent mind and scrutinize the documents pertaining to the project but simply recommended for grant of Environmental Clearance based only on the statement of the project proponent, which would be evident from the 19<sup>th</sup> meeting of the EAC (Infra II) dated 27<sup>th</sup> July, 2017.</p> <p>(xi) Non-application of mind by the EAC while appraising the project would be manifest from the fact that glaring illegalities in respect of the project had been overlooked, the most obvious of which was that it was a violation case seeking for post-facto clearance and that Form 1A had not been submitted which is mandatory under the rules. Repetition of crucial conditions with respect to traffic management and source and availability of water in EC Letter dated 12<sup>th</sup> June, 2018 would clearly show that the EAC/MoEF&amp;CC had failed to apply its mind to the due compliance of these conditions by the project proponent prior to the grant of Environmental Clearance as was directed by the EAC.</p> <p>(xii) It is stated that the provision of EIA</p>
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	<p><b>Item No. 01</b></p> <p><b>October 09, 2018</b></p> <p><b>AT</b></p>	<p>Notification, particularly para 7(i) read with appendix V, enjoins the regulatory authority to scrutinize the final EIA report as well as other documents strictly with reference to the ToR and, if any inadequacy is detected, it has to be communicated to the Members of the EAC which has not been done which would be obvious from the various infractions set out earlier.</p> <p>3. In addition to the above, there were 17 other infractions detailed by the applicant. For the aforesaid reasons it is stated that there has been serious non-compliance of the ToR conditions which had resulted on account of the fact that the baseline studies were conducted much before the ToR was granted for the EIA study.</p> <p>4. The appellant has thus prayed for an order quashing the impugned Environmental Clearance and to direct penal action and enquiry against the responsible officers of the MoEF&amp;CC and the Members of the EAC (Infra II) for having failed to discharge their statutory duties as prescribed under the Notification of 2006 in granting the impugned Environmental Clearance.</p> <p>5. The MoEF&amp;CC and the EAC, Respondents no. 1 &amp; 6 respectively, in their joint reply have denied the allegations contained in the appeal and asserted that the impugned Environmental Clearance was granted to the project after due compliance of the procedure laid down under the Notification of 2006 and that there was no illegality in the</p>
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	<p><b>Item No. 01</b></p> <p><b>October 09, 2018</b></p> <p><b>AT</b></p>	<p>entire process. It has categorically been stated that the project proponent had applied for the ToR under different number and had submitted the prescribed Form 1 which after due examination had been cleared by the EAC <i>vide</i> letter dated 19<sup>th</sup> May, 2017 directing preparation of EIA/EMP report. It is further stated that the proposal had been discussed and appraised by the EAC (Infrastructure II) in its meeting held during 27<sup>th</sup>–29<sup>th</sup> June, 2017 and recommended the project for Environmental Clearance prescribing adequate environmental safeguards on 28<sup>th</sup> July, 2017.</p> <p>6. The Respondent no. 3, the project proponent, in a detailed reply has adverted to each of the allegations contained in the appeal and averred that due process had been followed as prescribed under the Notification of 2006 and had complied with the prescribed conditions and only thereafter did they commence with the work on the project. Apart from highlighting the importance of the project and its magnitude, the Respondent no. 3 has sought to clarify each of the alleged infractions which are briefly enumerated below:</p> <ol style="list-style-type: none"> <li>i. Application of ToR for Environmental Clearance was initially submitted online to the Delhi Pollution Control Committee on 23<sup>rd</sup> March, 2017 against an acknowledgement but had to be submitted afresh on 6<sup>th</sup> April, 2017 in view of MoEF&amp;CC Notification dated 9<sup>th</sup> December, 2016 which was received by the Respondent no. 1 on 24<sup>th</sup> April, 2017.</li> <li>ii. That the Respondent no. 3 does not fall within</li> </ol>
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	<p><b>Item No. 01</b></p> <p><b>October 09, 2018</b></p> <p><b>AT</b></p>	<p>the mischief of Notification dated 14<sup>th</sup> March, 2017 dealing with violation cases which otherwise also provides for a window of six months to approach the EAC for post-facto clearance.</p> <p>iii. There was no violation of the Notification of 2006, as preparatory construction activity had commenced at the site and Environmental Clearance had been sought for before that. It is emphasized that, as required, all three requisite documents, i.e., Form 1, 1A and the conceptual plan were submitted online on 6<sup>th</sup> April, 2017 for obtaining the Environmental Clearance. The requisite informations as sought for in Form 1 were also furnished.</p> <p>iv. Considering the vast expanse of the project the Respondent had commenced with the baseline studies at the site from the month of April, 2017 based on the standard ToR and, in light of the additional ToRs, time was sought for till 30<sup>th</sup> June, 2017 as a safe estimate considering the impending monsoon season which was allowed by the EAC. It has been categorically denied that the baseline studies for the EIA report would start only subsequent to 19<sup>th</sup> May, 2017, i.e., the date on which the ToR was granted. All conditions prescribed in the ToR, be it specific or general standards, have been complied with.</p> <p>v. An elaborate Traffic study, taking into account the main issues likely to arise both at the</p>
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	<p><b>Item No. 01</b></p> <p><b>October 09, 2018</b></p> <p><b>AT</b></p>	<p>macro and micro level, Link Volume Capacity Analysis, conceptual designs, different alternative for traffic connectivity etc. have been conducted by experts and report incorporated under section 3.9 titled “Traffic Study” of chapter 3 at pages 99 to 106 of the EIA report as well as under section 4.2.7 titled “Impact of Traffic and Transport” of chapter 4 at pages 139 to 142 of the EIA report.</p> <p>vi. A comprehensive study on the incremental load and also analysis of baseline data had been conducted, report in respect of which forms a part of the EIA report with relevant extracts at pages 62 to 70 under section 3.4 titled “Air Environment” of chapter 3 and also under section 4.2.2 titled “Impact on Ambient Air Quality” of chapter 4 of the EIA report.</p> <p>vii. The Respondent no. 3 is in the process of obtaining approval of the national board for wildlife under the Wildlife (Protection) Act, 1972 as required under the terms of the Environmental Clearance.</p> <p>viii. There is no ambiguity with regard to the total number of trees to be felled as the Respondent no. 3 has obtained permission from the Deputy Conservator of Forest (South) for felling 1713 trees on the condition to grow 17130 trees on the Yamuna flood Plains and the project site. Apart from this, 250 trees are being planted within the project site before beginning with the construction activity and</p>
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	<p><b>Item No. 01</b></p> <p><b>October 09, 2018</b></p> <p><b>AT</b></p>	<p>replanting 36 trees out of 1713 trees.</p> <p>ix. Impact assessment of migratory birds has been provided in Form 1A and chapter 4 of the EIA report.</p> <p>x. Denying the allegations with regard to the utilization of the water, it is stated that specific information has been provided in respect of the quantity required during the construction and operation phases.</p> <p>xi. Permission has been sought for from the Burari MCD plant for disposal of construction and demolition waste and for being processed there. Specific area/site has been allotted for collection of construction and demolition waste from where it will be sent to the Burari MCD plant.</p> <p>7. The Delhi Pollution Control Committee, Respondent no. 4 in its brief response, stated that application for Consent to Establish under the Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974 was received from the project proponent on 9<sup>th</sup> October, 2017 which is under consideration of the Committee.</p> <p>8. In its affidavit, the Department of Forest and Wildlife, Government of NCT of Delhi, Respondent no. 5, sworn by the Deputy Conservator of Forests, South Forest Division, has stated that permissions for felling/pruning of trees was granted based upon a letter dated 6<sup>th</sup> March, 2017 sent by the General Manager (Works), ITPO, i.e., Respondent no. 3, requesting for grant of permission to</p>
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<p><b>Item No.</b> <b>01</b></p> <p><b>October</b> <b>09, 2018</b></p> <p><b>AT</b></p>	<p>fell trees in the Pragati Maidan vicinity for construction of International Exhibition-cum-Conventional Center. While granting the permission, the provisions of the Delhi (Preservation) of Trees Act, 1984 (for short 'DPTA') and the guidelines prescribed thereunder were followed. It is stated that with the letter dated 6<sup>th</sup> March, 2017 of the General Manager (Works), Form 'B' prescribed under Sub-Rule(1) of Rule 4 of the DPTA along with an affidavit in the prescribed form, had also been annexed. In furtherance to the above, information was sought for from the project proponent, Respondent no. 3, on a list enumerating the species of the trees to be cut and mark with proper number paint of all the trees and also the name, place and measurement of land where compensatory plantation was proposed to be carried out along with the map indicating the area with geo-coordinates. It is further stated that after receipt of the details that was sought for, a meeting was held on 21<sup>st</sup> April, 2017 for discussion and it was decided that the ITPO will plant ten times the number of trees to be felled as mandated under the DPTA for which identification of land for the purpose was a pre-requisite. Ultimately, the Delhi Development Authority (DDA) agreed to grant permission to undertake compensatory plantation in the Yamuna Flood Plains in between the Yamuna Bank Metro Station and Railway Line adjacent to CWG village complex in an area measuring 17.13 ha <i>vide</i> letter dated 28<sup>th</sup> July, 2017. This was followed by the Government of NCT of Delhi, issuing a Notification under section 29 of the DPTA exempting an area measuring 413439 sqm (about 41 ha) for developing Pragati Maidan Complex into integrated Exhibition-cum-Convention Centre for ITPO,</p>
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<p><b>Item No. 01</b></p> <p><b>October 09, 2018</b></p> <p><b>AT</b></p>	<p>New Delhi, from the provision of sub-section (3) of Section 9 of the DPTA subject to fulfilment of certain conditions set out in the notification. On receipt of the cost towards compensatory plantation of 17,130 saplings and its future maintenance for 7 years till establishment of the centre, permission was granted to fell that number of trees for the purpose of project subject to terms and conditions enumerated in letter dated 16<sup>th</sup> June, 2017 issued by the Tree Officer and Dy. Conservator of Forests (South) Forest Division. A Committee has also been constituted to take a pragmatic view on the possibility of translocation/transplantation even though it was not considered as viable alternative in the same area. All allegations contrary to these facts have been denied by Respondent no. 5.</p> <p>9. On 10<sup>th</sup> August, 2018, an additional affidavit was filed on behalf of Respondent no. 1, MoEF&amp;CC placing on record the following facts:-</p> <p>(i) Uploading of the documents pertaining to application for grant of ToR or prior Environmental Clearance is the responsibility of the project proponent and the MoEF&amp;CC has no role to play.</p> <p>(ii) Documents are physically submitted by the project proponent before the Expert Appraisal Committee (EAC) which are then appraised during the meetings by the EAC in accordance with the laws in vogue.</p> <p>(iii) During the meetings and appraisal of the projects, the EAC may require the project</p>
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	<p><b>Item No. 01</b></p> <p><b>October 09, 2018</b></p> <p><b>AT</b></p>	<p>proponent to provide additional information with respect to the project which may be submitted to the EAC on the same day or during the meeting scheduled. Further, the project proponent may also be required to give presentation on certain aspects of the projects and its probable impact on the environment for comprehensive appraisal by the EAC.</p> <p>(iv) The EIA Report relied upon by the appellant in the case was the one uploaded by the project proponent on 13<sup>th</sup> February, 2017 on the official website of the MoEF&amp;CC. However, the EIA Report was physically submitted to the MoEF&amp;CC on 26<sup>th</sup> June, 2017 which was placed before the EAC for its appraisal.</p> <p>(v) The EIA Report uploaded on 13<sup>th</sup> May, 2017 contained the baseline data for the months of March, April and May, 2017 when the ToR required the baseline data for the months of April, May and June, 2017. Accordingly, a second EIA Report was submitted by the project proponent to the MoEF&amp;CC on 26<sup>th</sup> June, 2017 containing the baseline data for the months of April, May and June, 2017 which was then appraised by the EAC and found it to be to its satisfaction as being prepared in compliance with their ToR issued to the project proponent.</p> <p>(vi) The EIA Report dated 26<sup>th</sup> June 2017 contains detailed report on the carrying capacity and traffic around Pragati Maidan and also contains the details relating to the parking management.</p>
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<p><b>Item No. 01</b></p> <p><b>October 09, 2018</b></p> <p><b>AT</b></p>	<p>(vii) The project proponent has undertaken to use the existing bore wells and municipal connection for water supply.</p> <p>10. As already noted the appellant has raised a large number of questions to assail the Environmental Clearance which we have enumerated earlier but during the course of the hearing Mr. Ritwick Dutta, learned counsel for the appellant confined his argument only to some of them and seriously emphasised on the following:-</p> <ul style="list-style-type: none"> <li>(i) The Cumulative Impact Assessment Study on the Ambient Air Quality having not been undertaken;</li> <li>(ii) Failure to undertake Traffic Impact Assessment Study and;</li> <li>(iii) Incremental Air Pollution Study having not been done.</li> </ul> <p>11. There were other ancillary questions that were raised on the project proponent not having obtained the Consent to Establish under the Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974, irregularities in the grant of the ToR and conducting baseline studies, unwarranted haste in clearing the project and non-application of mind by the EAC while appraising the project.</p> <p>12. Mr. Ritwick Dutta, learned counsel for the appellant, taking up the question relating to the want of study on incremental air pollution levels and Cumulative Impact Assessment Study on Air Quality, i.e., the questions (i) and (iii), above submitted that the issue of air quality ought to have been detailed out in the EIA Report</p>
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<p><b>Item No.</b> <b>01</b></p> <p><b>October</b> <b>09, 2018</b></p> <p><b>AT</b></p>	<p>considering the criticality of air pollution in the city of New Delhi but the EIA Report has only dealt with PM<sub>2.5</sub> and PM<sub>10</sub> levels as exceeding the levels in the study area. It was thus, contended that a Cumulative Impact Assessment Study on Air Quality as well as a study on incremental air pollution levels due to the project should be conducted and presented in the EIA Report.</p> <p>13. On question no. (ii), i.e., failure to undertake Traffic Impact Assessment Study, it was contended that although the ToR required the project proponent to conduct a detailed Traffic Impact Analysis, the Chapter on Traffic Management Plan in the EIA Report is bereft of such analysis and has overlooked the issues flagged by the MoEF&amp;CC or EAC in the ToR. Apart from the fact that the proposed development has provided for an integrated parking facilities for 5,025 ECS (Equivalent Car Space) covering surface and basement parking, no other traffic related issues have been discussed. It is contended that impact study on traffic required to take into consideration not only the visitor's and employee's car park requirement but also the vehicular movement during the construction and operation phase when raw materials are carried to the site and also, that there are vehicular movement on the existing roads surrounding the Pragati Maidan. It also ought to have taken into consideration the fact that there is heavy traffic on the Mathura Road and Bhairon Road flanking the Pragati Maidan on the west and south sides respectively. As traffic congestion leads to the high level of vehicular pollution, all detailed survey on the existing traffic density and potential increment in the vehicular</p>
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	<p><b>Item No.</b> <b>01</b></p> <p><b>October</b> <b>09, 2018</b></p> <p><b>AT</b></p>	<p>number was a pre-requisite before formulating any mitigation measures to avoid further traffic congestion in the area.</p> <p>14. It was contended that the project proponent had applied for Consent to Establish only on 9<sup>th</sup> October, 2017, as per the reply of the DPCC. Therefore, the fact that the preparatory works including demolition had commenced in April, 2017 establishes that the project construction has commenced in violation of the Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974, but the DPCC had failed to take action for such non-compliance.</p> <p>15. Apart from the above arguments, Mr. Ritwick Dutta also contended that the baseline studies for the EIA was conducted for the period between March, 2017 to May, 2017 when the ToR had specifically mentioned that the project proponent was to mention the number of rainy days, if any, after 15<sup>th</sup> June in the EIA/EMP Report. Thus, according to him no studies were conducted in the month of June, as the EIA Report had been submitted on 6<sup>th</sup> June by the project proponent.</p> <p>16. Other aspect that was referred to by the learned counsel was the want of impact assessment on cutting of more than a thousand trees within the project area and the breeding pattern of migratory birds arriving at and leaving the Delhi Zoo.</p> <p>17. Citing several judgments Mr. Ritwick Dutta argued that the project proponent had failed to comply with the very first condition of the Environmental Clearance which</p>
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	<p><b>Item No.</b> <b>01</b></p> <p><b>October</b> <b>09, 2018</b></p> <p><b>AT</b></p>	<p>required the project proponent to obtain all necessary clearances/permissions from all relevant agencies including concerned planning authority before commencement of the work.</p> <p>18. On the basis of the aforesaid primary contentions, it was submitted that the impugned Environmental Clearance deserved to be quashed and appropriate penal action and inquiry be instituted against responsible officers.</p> <p>19. The case was strongly contested by the MoEF&amp;CC, Respondent no. 1, represented by Mr. Atmaram N.S. Nadkarni, Additional Solicitor General of India who argued that the impugned Environmental Clearance was issued after due consideration of the EIA Report dated 26<sup>th</sup> June, 2018 by the EAC apprising of various experts. All material factors required for consideration had been duly taken note of by the EAC by scrutinizing the EIA Report submitted by the project proponent along with standard and additional ToRs. On the question relating to Cumulative Impact Assessment Study on Air Quality and Incremental Air Pollution Studies, reference was made to clause 3.1 under chapter 3 relating to description of baseline environment, more particularly clause 3.4, relating to air environment. It was sated that the Air Quality Monitoring Programme was conducted for the existing project site for the period between March-June, 2017 during which period data was collected for SPM, RSPM, SO<sub>2</sub>, NO<sub>x</sub>, CO at five locations. The factors taken into consideration were that during the construction phase the major pollutant was constituted by PM<sub>2.5</sub> and</p>
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<p><b>Item No. 01</b></p> <p><b>October 09, 2018</b></p> <p><b>AT</b></p>	<p>PM<sub>10</sub> and also construction and demolition activities which contribute to the emissions of the particulate matters. Measures to control construction dust had been proposed. EAC took note of the fact that during the operational phase of the project, air pollution could also be caused by vehicular emissions from increase in traffic volume and emission from power backup/DG sets. The EAC observed that the DG sets could, therefore, be only used as a backup source with the main power supplied by BSES. The EAC had taken note of the EIA Report with regard to the mitigation measures proposed for reducing air pollution during the construction and operation phase.</p> <p>20. Studies for assessing the flora and fauna within a radius of 10 kms from the site with the use of primary and secondary data based on the material published literature and various government agencies, were undertaken. Requirement of felling 1713 trees to be felled within the total 2200-2500 trees existing at the site was also taking into consideration by the EAC alongwith the fact that there was undertaking on the part of the project proponent to plant 5800 trees/saplings by the time the construction of the project was completed. Cost towards compensatory plantation of 17,130 trees on the Yamuna Flood Plains had also been deposited with the Dy. Conservator of Forests (South) which, however, was shifted to Garhi Mandu Near Signature Bridge, Delhi. Mitigation measures for minimal impacts on the ecology during the construction phase were also suggested in the report.</p> <p>21. The aspect of impact on the migratory birds and</p>
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	<p><b>Item No. 01</b></p> <p><b>October 09, 2018</b></p> <p><b>AT</b></p>	<p>their breeding patterns was also given due attention by undertaking studies by the project proponent as per which presence of small wetlands inside the Delhi Zoo and absence of such wetlands and marshes within the project site, in Pragati Maidan is unfavorable as a breeding ground for the migratory birds. Thus, it is submitted that the EAC had perused the entire EIA Report and arrived at a considered decision to recommend grant of Environmental Clearance for the project.</p> <p>22. The arguments of Mr. Nadkarni also covered the stand taken by the Respondent no. 3, M/s. India Trade Promotion Organization (ITPO). Considering this and the fact that the stand of Respondent no. 3 has also been set out in detail in the earlier part of this order, we need not delay ourselves on this further.</p> <p>23. We have heard the learned counsel for the parties and have perused the affidavits and the documents on record.</p> <p>24. Taking up the issue regarding Incremental Air Pollution Levels and Cumulative Impact Assessment Study on Air Quality, we have examined the EIA Report for the project and we find that under Chapter 3 thereof relating to description of baseline environment, a detailed study undertaken on Air Environment under Clause 3.4 under clause 3.4.1, the Site Area Specific Ambient Air Quality has been dealt with whereunder the sources of pollution during the construction and operational phases of the project identified as will appear below:-</p>
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	<p><b>Item No.</b> <b>01</b></p> <p><b>October</b> <b>09, 2018</b></p> <p><b>AT</b></p>	<p><b>“Sources of Pollution during Construction Phase:</b></p> <ul style="list-style-type: none"> <li>The construction phase includes site clearance and site preparation, infrastructure development, building construction and demolition, and other related activities, movement of construction vehicles and diesel based machine equipment. All construction sites generate high levels of dust (typically from concrete, cement, wood, stone, silica). During the construction phase of the project, the pollutants anticipated to be emitted are – particulate matter (SPM), carbon monoxide (CO), and Sulphur dioxide (SO<sub>2</sub>) from all construction activities.</li> </ul> <p><b>Sources of Pollution during Operational phase:</b></p> <ul style="list-style-type: none"> <li>The operational phase includes emissions from vehicular movement and negligible emission from sewage and solid waste handling and disposal. During the operational phase of the project, the pollutants anticipated to be emitted are – nitrogen oxides (NO<sub>x</sub>), SPM, Sulphur dioxide (SO<sub>2</sub>) and CO from vehicle exhaust within the project site.</li> </ul> <p><b>3.4.1 Site Area Specific Ambient Air Quality Sources of Air Emissions Surrounding the Site</b></p> <ul style="list-style-type: none"> <li>The vicinity of the project site is characterized by urban setup with presence of industrial, residential, commercial and offices areas. Local activities in these areas within 5 kms of study area contribute to air pollution. Site surroundings have multiple sources such as vehicles, industries both large and small scale, and diverse area sources, such as DG sets, domestic burning, biomass- refuse burning etc. They all contribute towards air pollution in the study area.”</li> </ul> <p>The study was undertaken based on the Project Site Area Assessment and Reconnaissance Survey for an area of 5 km radius around the site boundary and a site-specific background air quality monitoring programme</p>
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<p><b>Item No.</b> <b>01</b></p> <p><b>October</b> <b>09, 2018</b></p> <p><b>AT</b></p>	<p>was conducted for the pre-monsoon season, March-June, 2017. Background data had been collected for SPM, RSPM, SO<sub>2</sub>, NO<sub>x</sub>, CO at five locations selected on the basis of predominant wind direction, which is North-West directions. The details of the Air Quality (AQ) Monitoring locations have been found to be set out under table 26 provided in the report. The basic considerations taken for air quality examination programme were topography, representative location with regard to upwind and downwind directions, representative location with regard to regional background in relation to urban, semi-urban, rural area, ecologically sensitive locations within 10 kms, availability of source of power and accessibility. Meticulous procedure having been followed for Ambient Air Quality (AAQ) monitoring is quite evident from the fact that equipments for AAQ monitoring were placed at different sensitive locations under specific parameters to be monitored, frequency and number of samples taken at each station and, the protocol and analysis procedures to examine the collected samples as per IS-5182 (Indian Standards for Ambient Air Quality Parameters). Thereafter, a detailed analysis had been carried out based on all the monitoring in relation to PM<sub>2.5</sub>, PM<sub>10</sub>, Sulphur Dioxide (SO<sub>2</sub>), Nitrogen of Oxygen (NO<sub>x</sub>) and Carbon Monoxide (CO). The summary of the results of analysis having shown all the monitored values to exceed the limits prescribed by the CPCB for PM<sub>2.5</sub> and PM<sub>10</sub>, respectively, mitigation measures have been prescribed in respect of PM<sub>2.5</sub> in chapter 4 of the Report. Concentration of PM<sub>10</sub> which was also on the higher side was attributed to the dust on the road due to vehicular movement, construction</p>
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<p><b>Item No.</b> <b>01</b></p> <p><b>October</b> <b>09, 2018</b></p> <p><b>AT</b></p>	<p>and demolition activities within and in the city.</p> <p>25. Apart from the above, studies had also been undertaken on the Impact on Noise Environment and water availability in the region bringing within its ambit groundwater characteristics and groundwater level. Studies also had been undertaken with regard to the project area specific water sampling which took into consideration groundwater and surface water samplings at different locations at varying distances from river Yamuna, Purana Quila/Old Fort, Indraprastha and the project site. All such monitoring and analyses appear to have been undertaken scientifically in detail.</p> <p>26. On the question relating to Traffic Impact Assessment Study, point no. (ii), raised by the Appellant, we find that a detailed study had been undertaken under chapter 3 at clause 3.9 under the head “Traffic Study” for preparing an Integrated Transit Corridor Development (ITCD) and Street Network/ Connectivity Plan for network defined as:-</p> <ul style="list-style-type: none"> <li>• “From ‘W’ point of Mathura Road Bhairon Marg Intersection.</li> <li>• Bhairon Marg</li> <li>• From Bhairon Marg Ring Road intersection to ITO Flyover.</li> <li>• New Link from Ring Road to Pustha Road through a bridge across Yamuna</li> <li>• Connectivity of Mathura Road to Ring Road through underground tunnel below ITPO area.</li> </ul> <p>The influence area is taken further beyond Study Area which comprises of:</p> <ul style="list-style-type: none"> <li>• Mathura road from W Point to DPS Mathura Road intersection</li> <li>• Bhairon Marg between Ring Road and Mathura Road</li> <li>• Bhagwan Das Road, Purana Quila Road, Shershah Road, Subramaniyam Bharti Marg and</li> </ul>
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<p><b>Item No.</b> <b>01</b></p> <p><b>October</b> <b>09, 2018</b></p> <p><b>AT</b></p>	<p style="text-align: center;">Ring Road</p> <ul style="list-style-type: none"> <li>• C- Hexagon of India Gate in Central Vista”</li> </ul> <p>27. While undertaking the study on the above, the relevant facts taken into consideration were the Characteristic of Influence Area and problems/issues at the macro level and micro level. The study sets out meticulous examination of the present condition and, after due deliberations at several levels, three design options were finally evolved for a new transit corridor connecting Mathura Road and Ring Road through an underground tunnel in the project area for connecting the roads. We may not to go into each study of the proposals and will sufficient to note that every environmental aspect appears to have been duly considered. The mitigation measures for all the impacts including the traffic have been provided under chapter 4 on Impact Analysis and Mitigation Measures. Under clause 4.2.7 “Impact on Traffic and Transport” during the construction phase has been dealt with for which mitigation measures have been provided under clause 4.3.6 whereby an elaborate proposals has been set out which we may reproduce below:</p> <p style="text-align: center;"><b>“4.3.6. Impact on Traffic &amp; Transport Environment</b></p> <p><i>A well planned transport infrastructure with adequate public transport infrastructure already exists near the area, the details for the same have been provided in chapter two of the report. The potential impacts on traffic and transport for proposed project include the following:</i></p> <ul style="list-style-type: none"> <li>• <i>Increase in traffic volume due to proposed developments and likelihood of congestion on the existing and proposed road network;</i></li> <li>• <i>Random parking of vehicles and unplanned loading/unloading areas can</i></li> </ul>
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	<p><b>Item No.</b> 01</p> <p><b>October</b> <b>09, 2018</b></p> <p><b>AT</b></p>	<p><i>lead to confusion.</i></p> <p><b>Mitigation Measures</b></p> <p><b>Traffic Analysis:</b></p> <p><i>This includes various transport improvement strategies and proposed alternatives keeping in mind the vehicular density of the area surrounding project site, alternatives are proposed in order to reduce the traffic congestion due to goods and passenger movement on the roads connecting to the project site. In order to accommodate the increased traffic, following measures have been suggested:</i></p> <ul style="list-style-type: none"> <li>• <i>Traffic diversion shall be encouraged by proposing alternate routes.</i></li> <li>• <i>Hierarchy in roads should be adopted to segregate the traffic according to the size, frequency and density of traffic.</i></li> <li>• <i>Comprehensive traffic and travel surveys shall be conducted every 5 years to monitor traffic characteristics and travel behaviour to develop strategies for effective transportation.</i></li> </ul> <p><b>Planning of pedestrian facilities:</b></p> <p><i>Pedestrian facilities shall be planned for movement of pedestrians on all major corridors and junctions in the study area. The pedestrians facilities which shall be provided for the safe movement of pedestrians are:</i></p> <ul style="list-style-type: none"> <li>• <i>Footpaths along the road.</i></li> <li>• <i>Zebra markings.</i></li> <li>• <i>Grade-separated pedestrian facilities viz. subways and pedestrian over-bridge for across movement of pedestrian.</i></li> <li>• <i>Pedestrian Guard Rails, Road safety signage and overhead sings shall be placed on a structurally sound gantry or cantilever structure made of circular pipes or steel sections.</i></li> </ul> <p><b>Parking demand management:</b></p> <p><i>The parking facilities shall be developed as per the guidelines and provisions of DMP 20210.</i></p> <p><b>Significance of Impact</b></p> <p><i>The overall impact on the Traffic in the area will be moderate as the future traffic</i></p>
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<p><b>Item No.</b> <b>01</b></p> <p><b>October</b> <b>09, 2018</b></p> <p><b>AT</b></p>	<p><i>projections are considered in planning roads and RRT; timely implementation of suggested roads infrastructure and management measures can maintain the impact as moderate.”</i></p> <p>28. Having dealt with the principle contentions urged on behalf of the appellant, we may now deal with the two other ancillary questions urged at the hearing relating to the impact assessment on cutting of trees within the project area and the breeding pattern of migratory birds.</p> <p>29. Examination of the EIA Report reveals that both these aspects have been elaborately addressed under chapter 3 of the Report. Clause 3.10.3 has been entirely dedicated to this aspect where the total number of trees to be felled has been indicated as 1713 and under clause 3.10.4, the detailed study carried out in respect of fauna has been set out also bringing within its ambit migratory avifauna. The report is upfront in recording that:</p> <p><i>“the study area is part of the massive avian migratory channel called the Central Asian Flyway (CAF), which spans the entire Indian subcontinent. Thus, the study area lies in the path of various winter migratory birds entering the Indian subcontinent from the north and headed farther south. With its diversity of habitats, the study area is very likely to be providing seasonal habitats or staging-points too many of these visitors. The water-bodies in and around the study area are well-known to be the winter-habitats of a number of visiting water-birds. The study area is also known to be a destination for a few summer visitors, as also, part of the passage traversed by migratory birds headed elsewhere. While a majority of these birds arrive by September, as per the zoo officials. However, on the basis of secondary information Migratory bird species known to be associated with the study area are listed in Table 59 of the Environment Impact Assessment Report.”</i></p> <p>30. Mitigation measures in respect of both the aspects have been proposed under clause 4.25.</p>
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	<p><b>Item No. 01</b></p> <p><b>October 09, 2018</b></p> <p><b>AT</b></p>	<p>31. The facts and circumstances detailed above would show that all the concerns expressed by the applicant in the appeal appear to have been adequately taken care of. A close examination of the EIA Report reveals that all relevant factors relating to environment have been duly considered. While granting the impugned Environmental Clearance, the recommendations of the Expert Appraisal Committee (EAC) which was based on the EIA Report, appear to have been taken due care of and specific conditions imposed for ensuring compliance of the recommendations of the EAC. We find that the details of the project and the documents submitted by the project proponent have also been set out in the impugned Environmental Clearance. There are as many as 26 Specific Conditions laid down to be followed during the construction phase and 13 during the operational phase under part A of the Environmental Clearance and under part B, there are 12 general conditions prescribed.</p> <p>It may also be pertinent to note that the present project is not a completely new one being undertaken on a new unbroken site but is apparently one to replace pre-existing infrastructure on the same site with almost the same extent and magnitude.</p> <p>32. On a careful examination of the pleadings, the documents and the submissions of the learned counsels for the parties, <i>prima facie</i> we do notice certain infractions in the grant of the Environmental Clearance. The first of such infractions appears to be that the preparatory works on project site had been taken up before the grant of the</p>
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	<p><b>Item No.</b> <b>01</b></p> <p><b>October</b> <b>09, 2018</b></p> <p><b>AT</b></p>	<p>Consent to Establish under the Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974. This is undisputed and stands substantiated by the affidavit filed on behalf of the DPCC. The other is having commenced with the baseline studies at the site from the month of March, 2017, based on the standard ToR. Even this infraction is not disputed but the stand taken by the MoEF&amp;CC and the project proponent is that a second EIA Report was submitted by the project proponent to the MoEF&amp;CC on 26<sup>th</sup> June, 2017 that contained the baseline data for the months of April, May and June, 2017. This was considered and accepted by the EAC.</p> <p>33. The question that would then arise is as to whether such infractions would vitiate the Environmental Clearance which is the subject matter of the present appeal. In our considered opinion, violations of the provisions of the Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974, are governed by the provisions contained in the statutes that stipulates the consequences therefor and it is for the regulatory authority to take appropriate actions. Appeal lies against the orders before the Appellate Authority and this Tribunal against the orders passed by the regulatory authority. We may also observe that compliance of these laws is a condition prescribed in clause (vii) of the General Conditions in Part B of the Environmental Clearance. In so far as the infraction regarding the stipulations on the baseline studies is concerned, nothing survives further in view of the fact that</p>
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	<p><b>Item No.</b> <b>01</b></p> <p><b>October</b> <b>09, 2018</b></p> <p><b>AT</b></p>	<p>the EAC had considered the fresh/second EIA Report based on the additional ToR submitted on 26<sup>th</sup> June, 2017.</p> <p>34. The Appellant has raised pertinent concerns with respect to the project and has questioned the Environmental Clearance granted to the project essentially on the ground that it has been granted mechanically and without application of mind on the inadequacies in the EIA Report. The Tribunal as the appellate authority against the grant of Environmental Clearance has examined not only the EIA Report but also the entire stages in the EIA process. <b>The examination and scrutiny of the process does not reveal any substantial deficiency so as to vitiate the Environmental Clearance.</b> The object of undertaking an Environmental Impact Assessment (EIA) is founded on the principal of Sustainable Development and the Precautionary Principle. As already discussed, the principle concerns raised by the Appellant in respect of Environmental Clearance do not appear to be justified.</p> <p>35. Doubts have been expressed by the Appellant on the reliability of the studies undertaken and the credibility of the EIA Report but those are not supported by better materials and, therefore, only deserves to be rejected.</p> <p>36. For all the reasons sated above, we do not find any merit in the appeal.</p> <p>37. In the result, the appeal stands dismissed with no order as to costs.</p> <p>38. In the parting, we may observe that the project</p>
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<p><b>Item No.</b> <b>01</b></p> <p><b>October</b> <b>09, 2018</b></p> <p><b>AT</b></p>	<p>being of a huge magnitude, it is imperative for the MoEF&amp;CC and the other regulatory authorities to ensure that each of the conditions of the Environmental Clearance are meticulously complied with by monitoring the project closely and not leave it upon the project proponent alone to submit its compliance report as contemplated in the Environmental Clearance provided under clause 11 &amp; 12 of part B of the general conditions.</p> <p>39. We accordingly direct so. Physical inspections of the project site shall be held periodically to ensure that the conditions of the Environmental Clearance are complied with both during the construction and the operational phases.</p> <p>....., CP (Adarsh Kumar Goel)</p> <p>....., JM (Dr. Jawad Rahim)</p> <p>....., JM (S.P. Wangdi)</p> <p>....., EM (Dr. Nagin Nanda)</p> <p style="text-align: right;"><b>23.10.2018</b></p>
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