

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Original Application No. 1017/2018

Shashikant Vithal Kamble

Applicant (s)

Versus

Union of India & Ors.

Respondent(s)

Date of hearing: 03.12.2018

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

For Applicant(s): Mr. Brajesh Kumar, Advocate

ORDER

1. Grievance in this application is against notification dated 14.11.2018, issued by the Ministry of Environment, Forest and Climate Change (MoEF&CC) under Section 23 of the Environment (Protection) Act, 1986, delegating power for grant of Environmental Clearance (EC) for construction projects with built up area more than 20,000 sq. meters to 50, 000 sq. meters and industrial sheds, educational institutions, hospitals and hostels for educational institutions more than 20,000 sq. meters upto 1,50,000 sq. meters, along with building permission, to Local bodies such as Municipalities, Development Authorities, District Panchayats. Prior to the said notification, Environment Impact Assessment was being done by a credible mechanism by MoEF&CC itself. The same was sought to be delegated earlier which was disapproved by this Tribunal. Present notification is, thus, in the face of earlier NGT order approving such exercise.

2. Learned counsel for the applicant submits that delegation of powers in the impugned notification renders EIA Notification dated

14.09.2006 having safeguards for protection of environment to be futile.

It is submitted that conducting or non-conducting EIA by a credible mechanism is not a matter of discretion but a power coupled with duty to uphold the concept of sustainable development as well as 'Precautionary Principle'. The said concepts are a part of Article 21 of the Constitution and are required to be upheld by this Tribunal under Section 20 of the National Green Tribunal Act, 2010.

3. This Tribunal dealt with the issue vide judgment dated 08.12.2017 in Society for Protection of Environment and Biodiversity Vs. Union of India & Ors. – 2018 NGTR (1) B 1, and struck down the dilution of norms for Environment Impact Assessment which were found to be deviating from the 'Precautionary Principle' by delegating such power to the local authorities which was held to be a retrograde step. It is failure of the local bodies to apply law which has led to large scale violation of town and country planning laws and the resultant environmental degradation. If such constructions are exempted from the purview of the Expert Appraisal Committee, it will amount to failure to protect the environment, which is the duty of the MoEF&CC under the Environment (Protection) Act, 1986, which was enacted to give effect to the international commitment under RIO Convention, 1992. Reliance was placed by the Tribunal in the judgment of the Hon'ble Supreme Court in the case of N.D. Jayal v. Union of India, (2004) 9 SCC 362, laying down that adherence to Sustainable Development Principle is mandate of Article 21 of the Constitution. De-centralisation of mechanism regulation may be desirable but the same has to be by a credible mechanism.

4. In view of settled law on the point, we are *prima facie* of the view that mechanism in the impugned notification to substitute the existing mechanism will fall short of the requirement of the principle

of 'Sustainable Development' and 'Precautionary Principle' which are part of Article 21 of the Constitution as laid down by the Hon'ble Supreme Court in the case of N.D. Jayal v. Union of India (*supra*).

Accordingly, while issuing notice, we stay operation of the impugned notification and direct that existing mechanism, prior to this notification will continue till further orders.

List for further consideration on 22.01.2018.

Counter affidavit, if any, be filed before the next date.

Adarsh Kumar Goel, CP

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

December 03, 2018

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