

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

Appeal No. 18 of 2011 (T)

IN THE MATTER OF:

V. SRINIVASAN... .. Appellant

VERSUS

TAMIL NADU STATE ENVIRONMENT IMPACT ASSESSMENT AUTHORITY

AND OTHERS... .. Respondents

WRITTEN SUBMISSION ON BEHALF OF THE APPELLANT ON THE IMPLICATION OF WRONG INFORMATION AND THE NEED TO MAKE THE EIA CONSULTANT LIABLE

Index

Sl. No.	Particulars	Page No.
1.	Written submission on behalf of the Appellant	1-11
2.	Annexure MA-1 Relevant webpage of website of the ABC Environ Solutions Pvt Ltd. showing accreditation by NABET	12-13
3.	Annexure MA-2 Copy of the certificate issued by NABET dated 23.11.2007	14
4.	Annexure MA-3 Extract of list of provisional accreditation for consultants prepared by NABET	15
5.	Annexure MA-4 Office Memorandum of the Ministry of Environment and Forest dated 28.06.2010	16

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It is most respectfully showeth:

1. That the Appellant had filed the above-mentioned Appeal against the environmental clearance granted by the TN State Environment Impact Assessment Authority , Respondent No. 1 herein, for setting up of 1400 TPD Integrated Municipal Solid Waste Processing Plant of Respondent No. 3. The main contention of the Appellant has been that the Respondent No. 1 wrongly approved the project by considering it as a Category B project under the EIA Notification 2006 whereas the project is actually a Category A project. In addition, the Appellant has highlighted the fact that the setting up of the 1400 TPD Integrated Municipal Solid Waste Processing Plant is in violation of the Municipal Solid Waste Management and Handling Rules, 2000, the Wetland Rules, 2011 and with the orders of the Hon'ble Supreme Court.
2. That the project is a Category A project is because of the fact that it is within a distance of 10 km from the boundary of the Guindy National Park. The EIA

Report submitted by Respondent No. 3 clearly stated that there are no National Parks and Sanctuaries within a distance of 15 Kilometers from the proposed site of the project. However, as contended by the Appellant and now supported by the Report submitted by the Forest Department of Tamil Nadu, the National Park is well within the 10 Km radius (approximately 5 km) of the proposed Plant.

3. That the Appellant respectfully submits that the issue in the present Appeal is not merely one of jurisdiction (i.e. whether the project is to be treated as a Category A or Category B), but rather an issue which raises serious doubts on the manner in which Environment Impact Assessment Reports are prepared, the quality of data and study, the nature of appraisal by the SEIAA and the general lack of seriousness on the part of all the key actors in the Environmental Clearance process to implement the EIA Notification in letter and spirit. In such a situation, a disproportionate burden is put on concerned or affected individuals and citizens groups to ensure that the EIA Notification is followed. Unless deliberate violation, as in the present case, is viewed seriously, and action taken against those who deliberately conceal vital facts which are material to screening, scoping, appraisal and decision making, such instances will be repeated. The poor quality of EIA and the casual manner in which the reports are prepared and approved, seriously influences environmental decision-making and makes a mockery of the EIA process. Such instances should not be seen as mere mistakes or technical omissions, but as instances of serious fraud since the results of faulty decisions, concerning the environment are usually irreversible and paid for by the present as well future generations.
4. That it is submitted that central to the EIA process is the quality of the data and information collected, presented and analyzed in the EIA Report, which are the

essential substratum for the decision makers (SEIAA, EAC, MOEF) to decide whether to grant environmental clearance to the project or not. Equally important is the full disclosure of all aspects of the proposed activity. It is critical for people who are likely to be affected by a proposed project, in order to express their views and concerns during the mandatory public consultation process, to be aware of all aspects of the project. The tests for evaluating adequacy or sufficiency of the information disclosed in an EIA report is to judge it by standards of accuracy, comprehensiveness, clarity, relevancy, completeness, and honesty in disclosing information especially negative information about the proposed activity. In addition, it needs to be analysed carefully whether the EIA report suppresses vital information, provides misleading and false information. Para 8 (vi) of the Environment Impact Assessment Notification, 2006 reads as follows:

“Deliberate concealment and/or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection, and cancellation of prior environmental clearance granted on that basis. Rejection of an application or cancellation of a prior environmental clearance already granted, on such ground, shall be decided by the regulatory authority, after giving a personal hearing to the applicant, and following the principles of natural justice.”

5. That in the instant case, the EIA Consultant has concealed very vital information *viz* the location of the nearest National Park i.e. Guindy National Park to the project site.
6. That the issue of distance needs to be viewed very seriously in view of two factors:

(i) **The application of General Conditions of the Environment Impact Assessment Notification, 2006** wherein it is clearly provided that for projects such as the Common Municipal 1400 TPD Integrated Municipal Solid Waste Processing Plant, the General Conditions will apply. The disclosure of the distance from the nearest National Park or Sanctuary is a mandatory requirement in the EIA Notification, 2006 **[Form 1, Appendix 1]**. The General Conditions in the EIA Notification states Any project or activity specified in Category 'B' will be treated as Category A, if located in whole or in part within 10 km from the boundary of: (i) Protected Areas notified under the Wild Life (Protection) Act, 1972, (ii) Critically Polluted areas as notified by the Central Pollution Control Board from time to time, (iii) Notified Eco-sensitive areas, (iv) inter-State boundaries and international boundaries"

Thus, deliberately by not disclosing the existence of any of the areas mentioned in the General condition, the project proponent can seek approval from the SEIAA.

(ii) **The application of the Order of the Hon'ble Supreme Court in W.P 460 of 2004 dated 04.12.2006 in the matter of Goa Foundation v. Union of India and Ors.** wherein the Hon'ble Supreme Court has directed that all projects which require environmental clearance and are located within the distance of 10 km of National Park and Sanctuaries must be placed before the Standing Committee of the National Board for Wildlife constituted under the Wildlife (Protection) Act, 1972. It is submitted that by not mentioning the exact distance, the Respondents have attempted to circumvent the orders of the Hon'ble Supreme Court.

7. That it is submitted that the issue with respect to distance from the nearest National park or Sanctuary (termed as 'Protected Areas' in the Wildlife

(Protection) Act, 1972) is a very relevant consideration in the decision making process. National Parks and Sanctuaries are ecologically sensitive areas and need to be secured and protected from harmful activities. It is in recognition of this vital fact that the Hon'ble Supreme Court had directed that projects proposed to be located within a distance of 10 km of National Parks and Sanctuaries be placed before the Standing Committee of the National Board for Wildlife.

8. That in the instant case, the wrong decision can be imputed to three actors: the SEIAA, the Project Proponent and the EIA Consultant. The Appellant has highlighted in the previous submission about the wrong and misleading information provided by the Commissioner, Corporation of Chennai and the SEIAA. Through, the present submission, the Appellant intends to highlight the illegalities and irregularities committed by the EIA Consultant.

9. **Poor Quality of the EIA report and Concealment of vital Information:**

That the EIA report for the project has been prepared by ABC Environ Solutions Pvt. Ltd. As per the EIA Manual of the Ministry of Environment and Forests-

“Environmental consultant should be conversant with the existing legal and procedural requirements of obtaining environmental clearance for proposed project. The consultant should guide the proponent through initial screening of the project and establish whether EIA studies are required to be conducted and if so finalise the scope of such study. The consultant should also be fully equipped with required instruments and infrastructure for conducting EIA studies. The environmental consultant is responsible for supplying all the environment-related information required by the SPCB and IAA through the proponent. The consultant is also

required to justify the findings in the EIA and EMP during the meeting with the expert groups at IAA”.

Currently, EIA consultants are required to get themselves accredited from the National Accreditation Board for Education & Training (NABET), which is a constituent board of the Quality Council of India. The brief background of the process as mentioned in the publication of NABET is reproduced for easy reference:

“National Accreditation Board for Education & Training (NABET), a constituent board of the QCI developed a voluntary Accreditation Scheme with inputs from various stakeholders including experts in the field, regulatory agencies, consultants etc., and launched it in August 2007. Some of the leading consultants in the field obtained accreditation under the scheme. The Ministry of Environment and Forests (MOEF) reviewed the scheme in 2009 and desired that the Scheme be updated incorporating the learning since launching of the Scheme. The same was done and the updated version (Rev 6) was posted on the QCI website (www.qcin.org) in January 2010. The Scheme was made mandatory by the MOEF through an Office Memorandum dated December 2, 2009 (http://moef.nic.in/divisions/iass/QCI_on_web.pdf)”

9.1. The Appellant herein has found the following information with respect to the ABC Environ Solutions Pvt Ltd:

- (i) It is the first firm to be accredited by the NABET as an EIA Consultant Organization which is mandatory for conducting EIA studies in 2007.

The relevant pages from the website is hereto annexed and marked as **Annexure MA-1**. Also annexed as **Annexure MA-2** is a copy of the certificate issued by NABET dated 23-11-2007.

- (ii) In the list of provisional accreditation for consultants prepared by NABET, ABC Environ Solutions renamed as ABC Techno Labs Pvt Ltd is listed in serial No. 1. A copy of the list is annexed and marked as **Annexure MA-3**.

9.2. **Instances of Concealment of Information:** The EIA study for the Plant was undertaken for a period of 3 months from July to September 2009. Primary data on water, air, land, flora, fauna and socio economic data were collected by team of engineers and scientist. **[Page 51 of the EIA report]**. It is stated that the overall aim of the EIA is to help Corporation of Chennai to ensure that the construction and operation of the project are carried out with minimum impacts for the environments. **[Page 10 of the EIA report]**. Some of the significant statements made in the EIA are:

- It is stated in the EIA report that there are no national parks and wildlife sanctuaries within a distance of 15 Km from the proposed project site. **[Page 6 of the EIA prepared by ABC Enviro Solutions Pvt Ltd]**
- In the land use and land cover map at figure 2.1 of the EIA report which gives the land use within 10 Km radius of the Perungudi dump yard there is no mention of any national park or any wild life sanctuary. Where the Guindy National Park is actually located it is shown as children's park.

9.3. It is submitted that the poor quality of environment impact assessment as done by ABC Enviro Solutions and the fact that it has been accredited by NABET and Quality Council of India raises serious question mark on the

criteria being adopted for registration of EIA consultants. In the document prepared by Quality Council of India and NABET titled "A Scheme for the Accreditation of EIA Consultant Organization", it stated that EIA reports prepared in our country, more often than not, do not measure up to the desired quality'. The following are stated as reasons for introducing the scheme for accreditation of EIA consultants-

- (i) Competence of consultant carrying out EIA
- (ii) Quality of data used by Consultants for EIA
- (iii) Tendency of consultants to follow the 'Cut and Paste' method in preparing EIA
- (iv) EIA Consultants work for and behalf of the project proponent
(Conflict of interest)

The Scheme for accreditation is now a mandatory process as stipulated by the Ministry of Environment and Forests. The relevant order of the Ministry of Environment and Forest dated 28.06.2010 is hereto annexed and marked as **Annexure MA-4.**

10. It is submitted that the NABET has a scheme for Accreditation of EIA Consultants. Based on the human and technical resources, EIA Consultants are categorized as Category A or Category B. Those EIA Consultants who are in Category A are permitted to carry out EIA for projects in category A and B of the EIA Notification, whereas those listed as category B can only do EIA Assessment for Category B project. In the instant case, ABC Environ Solutions has been categorized as Category B by NABET under the voluntary scheme of 2007. Although it was a Vountary guideline, it was improper on the part of the EIA consultant to be part of the scheme and not follow the same. The relevant pages from the NABET Report titled "Scheme for the Accreditation of EIA Consultants" in hereto annexed and marked as **Annexure MA-5**

11. That it is therefore submitted that ABC Environ Solutions, could not have prepared the EIA Report at all as the present project as it was a category A project. However, ABC Environ Solution's by deliberately not disclosing the existence of National Park within a distance of 10 km, excluded the application of the 'General Conditions' and thereby claimed competence in conducting the EIA Studies.
12. That the action on the part of the EIA Consultant amounts to 'fraud' and a deliberate and intentional concealment of information. In **Shrisht Dhawan v. Shaw Brothers (1992) 1 SCC 534**, it was held that

"20. Fraud and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. It is a concept descriptive of human conduct. In Webster's Third New International Dictionary, fraud in equity has been defined as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another. In Black's Legal Dictionary, fraud is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right; a false representation of matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. ... from dictionary meaning or even otherwise fraud arises out of deliberate active role of representator about a fact which he knows to be untrue yet he succeeds in misleading about a fact which he knows to be untrue yet he succeeds in misleading the representee by making him believe it to be true. The representation to be become fraudulent must be of fact with knowledge that it was false. In a

leading English case (**Derry v Peek (1886-1890) All ER 1: (1889) 14 AC 337**) what constitutes fraud was described thus: (**All ER p. 22 B-C**)

“Fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false.”

13. That in **State of AP and another v. T Suryachandra Rao (2005) 6 SCC 149** it is stated that-

“11. The colour of fraud in public law or administrative law, as it is developing, is assuming different shades. It arises from the deception committed by disclosure of incorrect facts knowingly and deliberately to invoke exercise of power or and procure an order from an authority or tribunal. It must result in exercise of jurisdiction which otherwise would have been exercised. (see *Shisht Dhawan v Shaw Bros.* SCC p. 553, para 20) [**At page 154 para 11**]

14. Fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. Although negligence is not fraud but it can be evidence of fraud; as observed in **Ram Preeti Yadav case (2003) 8 SCC 311 [At page 155 para 15]**. In **Lazarus Estates Ltd. v Beasley** Lord Denning observed at QB pp. 712 and 713: (All ER p. 345 C)

“No judgment of a court, no order of a minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything.” [**At page 155 para 16**]

It is hereby prayed that the Hon'ble Tribunal may consider the aforementioned facts and case law while deciding the present Appeal.

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