

**BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE) BENCH, PUNE**

**APPLICATION NO. 66(THC) OF 2015(WZ)
(SPECIAL CIVIL APPLICATION NO.17417 OF 2003)**

CORAM:

HON'BLE SHRI JUSTICE V.R. KINGAONKAR
(Judicial Member)

HON'BLE DR. AJAY A.DESHPANDE
(Expert Member)

In the matter of:

1. ROHIT PRAJAPATI.

For and on behalf of
Paryavaran Suraksha Samiti
101, Shree Krishna Apt. No.2,
Raopura,
Vadodara-390 001.

2. ZIYA PATHAN.

President, (Bharucha)
Peoples Union for Civil Liberties,
Kashbatiwad, Ankleshwar.

.....**APPLICANTS**

VERSUS

1. UNION OF INDIA,

Through the Secretary,

Ministry of Environment & Forest(MoEF),
Paryavaran Bhavan, CGO Complex,
Lodhi Road, New Delhi-110 003.

2. STATE OF GUJARAT,

Ministry of Environment,
Government of Gujarat,
Block No.1, 7th Floor, New Sachivalay,
Gandhinagar-382 010.

3. THE CHAIRPERSON,

Gujarat Pollution Control Board,
“Paryavaran Bhavan” Sector 10-A,
Gandhinagar-382 043.

4. THE COLLECTOR OF BHARUCH,

As Chairperson of Public Hearing Committee
Near Civil Court, Bharuch.

5. THE COLLECTOR OF PANCHMAHAL,

As Chairperson of Public Hearing Committee
Collector Kachari, Godhra.

6. UNITED PHOSPHOROUS LTD,

Unit No.II, Plot No.3405, 3406, GIDC
Ankleshwar, Dist. Bharuch.

7. UNITED CHEMICALS

Plot No.5, Phase IV, GIDC,
Panoli, Dist. Bharuch.

8. DARSHAK PVT.LTD,

Village Panelav,

Tal. Halol,
Dist: Panchmahal.

9. NIRYU PVT. LTD.

Village: Panelav,
Tal. Halol,
Dist. Panchmahal.

.....**RESPONDENTS**

Counsel for Applicant (s):

Mr. Rohit Prajapati (In person)

Counsel for Respondent (s):

**Mr. Aniruddha Tapkire holding for Mr. Amit Karkhanis,
Mr. Sanjeev V. Mahajan a/w Mr. Ashlesh N. Naik for
Respondent No.1**

**Mr. Tushar Mehta ASG a/w Mr. Parth H. Bhatt, for
Respondent No.2.**

Mr. Viral K. Shah for Respondent No.3.

**Mr. Rashesh Sanjanwala, Mr. Abhishek Mehta, Sr.
Advocates, a/w Mr. Vilas Mahajan for Respondent Nos.
6,7,8, & 9.**

DATE : JANUARY 8th , 2016

JUDGMENT

1. Originally, this Application was before the Hon'ble High Court of Gujarat, bearing Special Civil Application No.17417 of 2003. The Hon'ble Division Bench of Gujarat, directed transfer of the said Special Civil Application to this Tribunal by order dated April,

21st, 2015. In compliance thereof the matter came up to this Tribunal and was registered as an Application under Ss.14 (1) and 18(1) of the National Green Tribunal Act, 2010. It is not necessary to set out all details of the averments made by the Applicants. Their grievance is against permissions granted by the Authorities to establish Respondent Nos. 6 to 9, (Industrial Units) without following due procedure and in-total defiance of the Environment Impact Assessment (EIA) Notification, 1994. The Applicants have come out with a case that the Respondent Nos. 6 to 9, failed to give copies of the EIA Notification before commencement of process of scrutiny. Steps required to be taken under the EIA Notification, 1994, were omitted. The public hearing for all these projects was held subsequent commissioning of the industrial plant, well before the grant of Environment Clearances (ECs) dated 25.1.2002. The Application by Respondent No.6 was filed for grant of EC before the Ministry of Environment & Forests (MoEF), on 30.6.2001, by the Respondent No. 7 on 30.6.2001, by the Respondent No.8 on 21.07.2001 and by the Respondent No.9 on 20.07.2001. These Applications were hurriedly scrutinized without considering environmental impact, likely to be caused by each of

the industry. The Respondent No.6- (Industry) was permitted to commence industrial activity for production of Phorate (Tech), Terbuphose (Rech) 3600 TPA and Acephate 960 TPA. The Respondent No.7- (Industry) was permitted to commence industrial activity for production of diclofenac Sodium etc. The Respondent No.8- (presently, M/s Alembic Ltd- API-I) was permitted to commence industrial activity for production of bulk drugs namely, Truchloro Carbanilide (TCC), Omeprazole, Fluconazole etc. and the Respondent No.9- (presently, M/s Alembic Ltd.- API-Plant II) was permitted to commence industrial activity for production of bulk drug products.

It is important to note that the Respondent No.6 is a Pesticide Company and Respondent Nos. 7 to 9 are dealing in production of bulk drugs of various kind.

2. According to the Applicants, production of pesticides and bulk-drugs by the above Companies will have adverse impact on environment, which needed prior evaluation by accredited Agency. The Applicants also allege that affected villagers, who could be required to inhale odour generated from stack of such industrial units, which obviously could emit gaseous substances containing exceeding

organics and RSPM etc., were required to be heard and, therefore, a public hearing prior to commissioning of industrial activities and grant of such permissions/consent to commence industrial activity, was essential part of the process, which was mandatory under the EIA Notification, 1994. This might have been realized by the Respondent No.1, MoEF, at subsequent stage and, therefore, in the midst of May, 2013, a public hearing was arranged for grant of '*ex-post facto*' permissions to the Respondent Nos. 6 to 9, for industrial activity. In other words, it was a process of regularizing their activities, which could be pursued as irregular and illegal. The MoEF, issued a Circular dated 14.5.2002 for such '*ex-post facto*' public hearing, allowing issuance of fresh Notices to the defaulting units and even to other units, who had not applied earlier for ECs, to apply for ECs on or before March 31st, 2003, which complete information. This step was taken to circumvent provisions of the Environmental Laws and give leverage to illegalities committed by granting permissions to the Respondent Nos. 6 to 9 and also regularize illegal industrial activities of some other industries, allowed to be operated without ECs. On these premises, the Applicants sought direction to the

Govt. Authorities to revoke and rescind the Circular of MoEF, issued on 14.5.2002, being void and consequent clearances granted to defaulting industries. The Applicants seek direction to cancel ECs granted to the Respondent Nos. 6 to 9, which are end-product of illegal '*ex-post facto*' public hearing in pursuance to the Circular of MoEF dated 14.5.2002. The Applicants also seek direction to restore environmental degradation caused by the Respondent Nos.6 to 9, as well as other industrial units, which were allowed to be operated without ECs and to recover costs from such defaulting industries. The Applicants urge that the Authorities viz. Respondent Nos. 1 to 4, shall not grant any further '*ex-post facto*' EC to any industry under the EIA Regulations.

3. The pleadings were completed in the Hon'ble High Court. In spite of serious attempt by this Tribunal, to call upon the Respondents to appear for hearing, unfortunately, none of the Respondents appeared before the Tribunal, except the Respondent No.1 and 6 to 9. Subsequently, learned Advocates for the Respondent Nos. 1 and 6 to 9, informed the Tribunal that whatever is stated in their reply affidavits, maybe treated as an arguments on their behalf. It appears from the service-report that

initially, by Email the Respondent Nos. 2,3 and 4, sought accommodation for hearing. Subsequently, they also declined to appear in this proceedings. Learned Advocate appearing for the Respondent No.1- (MoEF), submitted that he would make an attempt to locate the Circular dated 14.5.2002, since that was unavailable. Considering the pleadings, common-defence of the Respondent Nos. 6 and 9, is that NOC was granted to them much before 1994 and the Notification of 1995, was not required to be followed, because their industries were in operation much before 1994. The E.I.A. Notification came into force later on. They submit that in spite of all compliances, they had again followed directions given in the Circular dated 14.5.2002 and, therefore, EC was granted to them, which cannot be challenged after such a long time. They denied all allegations and stated that their permissions are legal, valid and proper. They attribute certain ill-motive to the Applicants. They contended further that even after 'ex-post facto' hearing, if any major issue that could have been raised to show adverse impact on environment, the Respondent No.1, could have insisted upon them to first comply with such deficiency before grant of EC, but everything was

well, in order and, as such, impugned ECs were issued in their favour. Hence, they sought dismissal of the Application.

4. We need not reiterate that hearing of the Respondent Nos. 2 to 5, was a stumbling block created by themselves, because none of them appeared, though knowledge of transfer-order of matter to the National Green Tribunal (WZ), Bench Pune, was well within their knowledge. Neither of them made any attempt to locate status of the matter from the Website of NGT, nor they responded to the Notices issued through Registry of this Tribunal or through the Registrar of Hon'ble High Court of Gujarat. The EIA Notification, 1994, mandates certain steps to be taken by the Competent Authority before grant of 'consent to operate'. The main thrust of the EIA Notification, 1994, is to provide an opportunity to the public at large of participation in the process of decision making, when the Application for EC is under consideration. The grant of EC cannot be treated as mere formality. The nature of industrial activity, probable pollution potential of such industrial activity and other aspects ought to be known to the public members and for such purpose, at least, rapid EIA, should be provided to them. No

such steps, admittedly, taken by the Respondent Nos. 1 to 5, is an undisputed fact. The public hearing was held in a Hotel, in one case and in Gram-Vikas Kendra in another case. The very fact that the Circular dated 14.5.2002, is internal communication between the MoEF and other authorities, would make it clear that such Circular cannot override provisions of [the Environment \(Protection\) Act, 1986](#). The Circular dated 14.5.2002, issued by the MoEF, extends time limit for obtaining 'ex-post facto' ECs, so that defaulting units could avail such last and final opportunity. The Circular does not show by which provisions, the power is provided in [the Environment \(Protection\) Act, 1986](#), to allow 'ex-post facto' EC. This Circular itself is void, *ab-initio* and ought to be struck down. Therefore, we have no hesitation in holding that 'ex-post facto' process of obtaining ECs by the Respondent Nos. 6 to 9, was just a farce, stage managed, wrong and impermissible under the Law and suffered from illegality, which is incurable in any manner. In case of ***Cintoion for Social Justice (Jan-Vikas) vs Union of India***, (Special Civil Application No.8829 of 1999), the Hon'ble Division Bench of Gujarat High Court held that "process of public hearing shall be followed as per the norms provided

in relevant Notification”. The Judgment of Hon’ble Division Bench on many aspects of the matter is relevant to the issues involved in the present case.

5. Indeed, decision in the present case could be curtailed in view of interim order (Coram: Hon’ble the Chief Justice Mr. D.S. Sinha and Hon’ble Mr. Justice B.C.Patel) passed on 18.4.2002 in the instant Civil Application No. 3443 of 2002. The text of said order, in our opinion, would foreclose most of the issues. The Hon’ble Division Bench observed: “*** *the Court is of the opinion that for agitation and redressal of the grievances raised herein, the proper forum and remedy is as contemplated by the Act, especially the provisions of Section 5 of the Environment (Protection) Act, 1986*”.

6. It was for such a reason that Special Civil Application was summarily dismissed. Perusal of the above order shows that the Hon’ble High Court, did not consider merits of the matter, but expressed opinion that if there are serious defaults committed by the Respondent Nos. 6 to 9, then they are liable for legal actions. An attempt is made by the contesting Respondents that actions could be only under Ss.15 and 16 of [the Environment \(Protection\) Act, 1986](#), and, therefore, the present Application

could not be entertained. We do not find any merit in the said arguments. It is well settled that what Sections are quoted in the order, is not material as such, but intention of the Court to pass any order and directions given should be comprehended. Sections require to be used, may be quoted as per situation, which is available at the time of filing of the proceedings. In this context, one cannot be oblivious of the fact that originally Special Civil Application No.17417 of 2003 was filed by the Applicants in the Hon'ble High Court of Gujarat. No order was passed by the Hon'ble High Court, holding that Special Civil Application, named above, was barred by limitation. As stated above, by order dated 21.4.2015, the Hon'ble High Court (**Coram: the Honourable the Chief Justice Mr. Vijay Manohar Sahai and Hon'ble Mr. Justice R.P. Dholaria**) directed to transfer this matter to the National Green Tribunal (Western Zone) Bench, Pune. It is observed that as *per dictum* in "**Salaya Macchimar Boat Association vs Union of India & Ors** " (Civil Application No.12567 of 2014) connected matter decided on 12.2.2015 and even Writ Petitions pending before the Hon'ble High Court, prior to enforcement of the NGT Act, 2010, would also stand

transferred to the National Green Tribunal (Western Zone) Bench, Pune. It is but natural to infer that 'cause of action' would continue as it was in Special Civil Application No.17417 of 2003. The Application cannot be dismissed on this ground. In "**Bhopal Gas Peedith Mahila Udyog Sangathan v/s Union of India**" (2012) 8 SCC 326, the Apex Court has specifically held that 'cause of action' in such matter, would continue from the date of transfer and will remain in suspension for one (1) month after order of the Hon'ble High Court.

7. In the result, we are of the opinion that the Application must succeed on all counts. We, therefore, direct as follows:

- i) The Circular dated 14.5.2002, is illegal, void and inoperative and the MoEF, shall immediately clarify legal position to the concern Authorities, within one month hereafter and shall not take any further action on basis of aforementioned Circular.
- ii) The Respondent Nos. 1 to 5, shall not grant any consent/permission to run any industrial activity, covered under [the Environment \(Protection\) Act, 1986](#), which requires permission as per the

EIA Notification dated 14th September, 2006, without going through the required steps like, screening, scoping, public hearing and decision.

iii) The Respondent Nos. 1 to 5, shall revoke ECs dated- 17.7.2003, dated 23.12.2002 and dated 14.5.2003, respectively issued to the Respondent Nos. 6 to 9, within period of one month hereafter.

iv) The Respondent Nos. 6 to 9 shall close-down industrial activities, which are being operated without valid EC and consent to operate immediately, four (4) weeks, inasmuch as they are being operated without any legal permission/consent and concept of '*ex-post facto*' sanction or '*ex-post facto*' hearing.

v) The Respondent Nos. 6 to 9 shall pay Rs. 10Lakhs each for causing environmental degradation, which amount shall be deposited, as provided in Rule 37 of the NGT (Practices & Procedure) Rules, 2011.

vi) The Respondent Nos. 6 to 9 shall pay Rs.10,000/- each to the Applicants as litigation costs.

vii) The amount deposited by the Respondent Nos. 6 to 9, shall be utilized for restoration of environment and if any remainder available for plantation purpose in and around the Ankaleshwar Industrial area.

viii) In case, the Respondent Nos. 6 to 9, will not deposit amount, as stated above, the concern Collector of the District, shall take steps to confiscate the industries and goods, stock and barrel and may sale the same for recovery of amount, as if it is dues under the Gujarat Land Revenue Code.

8. The Application is allowed and disposed of, in above terms.

....., **JM**
(Justice V. R. Kingaonkar)

....., **EM**
(Dr. Ajay A. Deshpande)

PUNE.
DATE: JANUARY 8th, 2016.

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