

**Item No.2:**

**BEFORE THE NATIONAL GREEN TRIBUNAL  
SOUTHERN ZONE, CHENNAI**

*(Through Video Conference)*

**Appeal No.11 of 2020 (SZ)**

IN THE MATTER OF:

**K. Saravanan**  
S/o. Kasinathan  
Aged about 37 years  
No.30, Urur Kuppam, Besant Nagar,  
Chennai – 600 090.

...Appellant(s)

*With*

**The Tamil Nadu Polymer Industries Park Limited**  
Represented by its Managing Director  
19-A, Rukmani Lakshmipathy Road  
P.O. Box No.7223, Egmore, Chennai and Anr.

...Respondent(s)

**For Appellant(s):** Mr. A. Yogeshwaran.

**For Respondent(s):** Mr. N.R. Elango, Senior Advocate along with  
Mr. Ramesh Venkatachalapathy for R1.  
Mr. G.M. Syed Nurullah Sheriff for R2.

**Date of Judgment: 04<sup>th</sup> May 2022.**

**CORAM:**

**HON'BLE Mr. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER**

**HON'BLE Dr. SATYAGOPAL KORLAPATI, EXPERT MEMBER**

**ORDER**

Judgment pronounced through Video Conference. The Appeal is disposed of vide separate Judgment.

Pending interlocutory application, if any, shall stand disposed of.

Sd/-  
Justice K. Ramakrishnan, JM

Sd/-  
Dr. Satyagopal Korlapati, EM

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*With*

**1) The Tamil Nadu Polymer Industries Park Limited**

Represented by its Managing Director

19-A, Rukmani Lakshmipathy Road

P.O. Box No.7223, Egmore,

Chennai.

**2) The Tamil Nadu State Environmental Impact Assessment  
Authority**

Represented by its Member Secretary

3<sup>rd</sup> Floor, Panagal Maligai,

No.1, Jeenis Maligai, Saidapet

Chennai - 600 015.

...Respondent(s)

**For Appellant(s):** Mr. A. Yogeshwaran.

**For Respondent(s):** Mr. N.R. Elango, Senior Advocate along with  
Mr. Ramesh Venkatachalapathy for R1.  
Mr. G.M. Syed Nurullah Sheriff for R2.

**Judgment Reserved on: 18<sup>th</sup> January 2022.**

**Judgment Pronounced on: 04<sup>th</sup> May 2022.**

CORAM:

HON'BLE Mr. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER

HON'BLE Dr. SATYAGOPAL KORLAPATI, EXPERT MEMBER

Whether the Judgment is allowed to be published on the Internet - Yes/No

Whether the Judgment is to be published in the All India NGT Reporter - Yes/No

**J U D G M E N T**

*Delivered by Justice K. Ramakrishnan, Judicial Member*

1. The above appeal has been filed by the appellant challenging the Environmental Clearance (EC) granted to the 1<sup>st</sup> Respondent/Tamil Nadu Polymer Industries Park Limited for establishing an industrial park by name "Polymer Industries Park" by the 2<sup>nd</sup> Respondent/State Environmental Impact Assessment Authority - Tamil Nadu (*herein after referred to as "SEIAA - Tamil Nadu"*) vide their proceedings Letter No.SEIAA-TN/F.6957/EC/8(b)/683/2019 dated 11.12.2019 in S.F. No.143 & 187 of Puzhathivakkam Village and S.F. No.2053 B Part of Voyalur Village, Ponneri Taluk, Thiruvallur District, Tamil Nadu under Section 16 of the National Green Tribunal Act, 2010.
2. The 1<sup>st</sup> Respondent filed an application for grant of Environmental Clearance (EC) and also filed the Form - I Application on 10.07.2019 and for issuance of Terms of Reference (ToR) to the SEIAA - Tamil Nadu on 22.07.2019. The Terms of Reference was issued by the SEIAA - Tamil Nadu on 31.10.2019. They submitted the Environment Impact Assessment Report (*herein after referred to as "EIA Report"*) to the SEIAA -

Tamil Nadu on 20.11.2019 and this was considered by the State Expert Appraisal Committee - Tamil Nadu (*herein after referred to as "SEAC-Tamil Nadu"*) in their 139<sup>th</sup> Meeting held on 23.11.2019 and they recommended the project. This was considered by the SEIAA - Tamil Nadu in their 362<sup>nd</sup> Meeting held on 27.11.2019 and they sought for certain clarifications and revised EIA Report, which was submitted on 09.12.2019 by the 1<sup>st</sup> Respondent. Thereafter, the SEIAA - Tamil Nadu considered the project in their 363<sup>rd</sup> Meeting held on 11.12.2019 and on the same day, they recommended the project and issued the Environmental Clearance (EC). The said Environmental Clearance (EC) was challenged by the appellant on the following grounds:-

- a. There was suppression of fact and misrepresentation regarding the nature of land which was intended for the project
- b. The S.F. No.143 of Puzhathivakkam Village and S.F. No.2053 B Part of Voyalur Village, Ponneri Taluk, Thiruvallur District, Tamil Nadu where the proposed project has to be established as part of Ennore Pulicat Wetland complex is a tidally influenced water body and it was classified as salt pan in the revenue records.
- c. The area is completely filled with the water, especially during high tide and it was falsely represented in the Form - I Application suppressing the real nature of the land, but describing the same as dry land. The SEIAA - Tamil Nadu had erroneously classified the project as "B2 - Category" in violation of the EIA Notification, 2006.
- d. There was no proper details provided in the Form - I Application to enable the SEAC - Tamil Nadu and the regulating authority/SEIAA - Tamil Nadu to consider the project in its right perspective.

- e. They have suppressed the fact that it is a water body whereas, they have represented the same as patta dry land and Government poramboke land and in the Pre-Feasibility Report where the project site was prescribed as plain terrain with no notified forest or water bodies and the land is predominantly barren.
3. The appellant had produced the photographs showing the nature of land and the Google Earth satellite imagery as Annexure - A2 and A3 and the Annexure - A4 will go to show that the classification of land was salt pan which is recognized in Ramsar Convention as man-made wetlands. As per the Coastal Zone Management Plan (herein after referred to as "CZMP") of 1996, these areas were shown as protected areas. But subsequently, in 1997, excluded these portions which were not correct. If the original approved CZMP Map of 1996 was followed, the present site would also be covered under the CRZ Notification. The entire project site is filled with water and is tidally influenced and deserves to be protected as both water body and as CRZ area. Even assuming that it is not included in the present CZMP Map, the fact that the area is water logged and biologically active cannot be denied and the entire proposal proceeds on the basis that the site is dry land that can be levelled for construction of roads and other infrastructure for the industries proposed in the industrial estate. The real nature of the land cannot be ascertained by the SEAC - Tamil Nadu on the basis of the misrepresentations made in the Form - I Application. The EIA Report was prepared within one month from the date of issuance of Terms of Reference. There is no possibility of making collection of proper primary data for considering the impact of the project. Further, the Environmental Clearance (EC) itself was granted

about four months from the date of filing of application. Even the Rapid EIA Report requires primary data of one season (three months) other than monsoon season, the primary data was collected during the period falls in the Southwest monsoon (July-September) and the Northeast monsoon (October- November) season and it cannot be treated as a valid Environmental Impact Assessment made for the purpose of consideration.

4. Further, the agency which was entrusted with the preparation of the EIA Report was not an accredited agency to consider the township project and as such, the report prepared by such agency should not have been accepted and this aspect has not been considered by the SEAC - Tamil Nadu. Further, one of the agency to whom the preparation of the EIA Report was given is a shareholder company of the 1<sup>st</sup> Respondent and as such, it cannot be said to be a report prepared by an independent agency who is not interested in the project and on that ground, the EIA report is vitiated.

5. Further, it will be seen from the document produced that in the Environmental Clearance (EC), it was mentioned that the project was considered by the SEAC - Tamil Nadu in 139<sup>th</sup> Meeting held on 23.11.2019. But in the agenda originally published, the project was not included. It is not known when this was added and when the necessary documents and papers were circulated among the members of the SEAC - Tamil Nadu, so as to enable them to ascertain the impact of project before appraising the same. Further, there was no discussion about the project and the documents produced so as to infer the application of

mind of the authorities. Further, the Environmental Clearance (EC) was also issued without any discussion. The only information found in these minutes is to request to exclude the CRZ area from the project. Further, one of the conditions imposed in the Environmental Clearance (EC) will go to show that if there is any plan to house category A or B projects, then those industries will have to apply for the Environmental Clearance (EC). This shows the lack of application of mind of the SEIAA - Tamil Nadu, as if such units are to be established, then it will change the category from "B2-Category" to "B1-Category", then the nature of study and the procedure to be followed is entirely different. So, according to the appellant, the Environmental Clearance (EC) granted is vitiated and the same is liable to be set aside for the above reasons.

6. The appeal was filed with delay of 57 days in filing the appeal along with I.A. No.40 of 2020 (SZ) and this Tribunal, after hearing both sides, allowed the delay condonation application [I.A. No.40 of 2020 (SZ)] by order dated 14.08.2020 and the delay was condoned and the appeal was admitted.
7. The 1<sup>st</sup> Respondent filed counter affidavit contending that the appeal is not maintainable and the grounds alleged are not sufficient to set aside the Environmental Clearance (EC) granted. Further, the appeal is not maintainable, as the appellant was not an aggrieved person who is not residing in that area. An expert body, National Accreditation Board for Education and Training (NABET) has accredited certain agencies to conduct the Environmental Impact Assessment study and they have studied the proposed project and submitted a report, based on which the

Environmental Clearance (EC) was issued. The appellant who is not an expert in the field and the allegations made by them against the decision of the experts is without any basis. The appellant is a resident of Besant Nagar, Chennai and he was not affected by the project. The abstract from the A-Register states that the lands in Survey No. 143, 187, 2053(B)(Part) at Voyalur and Puzhithivakkam Village, Ponneri Taluk measuring 265.66 Acres forming part of the larger extent of land measuring 1513.65 Acres are classified as "Government poramboke land" and "salt pan". The Deputy Salt Commissioner in his proceedings has clearly stated that the lands could not be maintained as a salt pan due to the operation of the Thermal Power Plant and other industries which are emitting fly-ashes, due to which the land became un-usable for production of salt. The Salt Commissioner has further stated that due to availability of free iodised salt in the market, it is not commercially viable to manufacture salt from the salt pan. From the above, it was clear that the proposed land can be used for industrial site only and cannot be classified as a water body. In the year 2012, the Government of Tamil Nadu issued G.O. No. 199 dated 21.11.2012 for proposal of setting up of Polymer Industries Park within the State of Tamil Nadu. In the year 2014, the Government of India approved Rs.40 Crores as a grant for setting up of Polymer industries park, since it is an ancillary industry for automobile components and other sectors. The State Government, in order to promote the Polymer Industries Park, incorporated the Tamil Nadu Polymer Industries Park Limited on 01.04.2015, the 1st Respondent herein, a Special Purpose Vehicle consisting of Tamil Nadu Industrial Development Corporation Limited (TIDCO) and State Industries Promotion Corporation of Tamil Nadu Limited (SIPCOT) as

Joint Venture Partners. The Park will create a world class infrastructure and Common Technology Centre with a total investment of Rs.3,000 Crores and generate a total employment around 7,000 people. In the year 2016, lands were identified for the said project. These lands were originally owned by the Salt Commissioner, Govt. of India. The Salt Department handed over 1513.65 Acres of land to TIDCO for the promotion of industrial activities since the land could no longer be used for salt manufacture. It is pertinent to state in this regard that the Union of India, Ministry of Environment, Forest and Climate Change issued a Notification to be filed in typed-set dated 26.09.2017 in GSR No. 1203 (E), wherein, the Union of India has clearly stated that the lands which are classified as "salt pan" were removed from the purview of water body. The State Level Environment Impact Assessment Authority (2nd Respondent herein) conducted a detailed discussion on the EIA report and recommended the project and the SEIAA has issued Environmental Clearance to an extent of land measuring 239.82 Acres, excluding 25.84 Acres which falls under the Coastal Regulatory Zone. The EIA report was prepared by National Accreditation Board for Education and Training (NABET) accredited environmental consultant appointed by the 1st Respondent consisting of i) The Centre for Environment, Health & Safety (CEHS), Annamalai University, ii) HUBERT Enviro Care Systems Private Limited. The survey team has conducted a detailed study on the project from July to September 2019 along with functional area experts as per TOR and submitted the report to the SEIAA - Tamil Nadu for clearance. During the period, the survey team had periodical communication regarding the survey conducted and periodically sought clarification from the 2<sup>nd</sup> Respondent. The reference to the same can be inferred from

the minutes of the 133<sup>rd</sup> SEAC-TN dated 22.07.2019 and the same is also referred in communication dated 08.11.2019 from the 1<sup>st</sup> Respondent to the 2<sup>nd</sup> Respondent. The agency nominated by the State Government for CRZ mapping viz., The Institute of Remote Sensing, Anna University, has done the study for demarcating HTL/LTL line for Ministry of Environment, Forest and Climate Change. A super imposing study on the proposed Polymer Industrial Park as per CZMP & CRZ Notification of 2011 was conducted and a detailed report has been circulated to the 2<sup>nd</sup> Respondent. The clause 4(iv), (v) & (vi) of the conclusion are as follows

“(iv) The Coastal Regulation Zone classification such as CRZ (IA), CRZ (IB), CRZ (II), CRZ (III) and CRZ (IVB) were drawn on the map. (v) The ecologically sensitive areas like the sand dunes, turtle nesting grounds are not in the vicinity of the proposed site however mangrove areas have been de-lined and are away from the proposed site, (vi) The proposed Polymer Industries Park at Voyalur [2053 B (part)] and Puzhuvivakkam village in survey No. 143 and 187 in Ponneri Taluk, Tiruvallur District is away from the CRZ. The report has been prepared by a NABET accredited agency after conducting detailed study through remote sensing mapping and field survey conducted by experts appointed by the Central Government. Based on all the above data, Environmental Clearance for the above project was granted on 11.12.2019 (*wrongly shown as 19.12.2019 in the counter*). The only grievance of the appellant in Para 2 & 3 of the appeal memorandum is that the project site is a water body, the subject land is in Ennore Pulicat wetland which is a tidally influenced land and the Environmental Clearance has been obtained by the 1<sup>st</sup> Respondent suppressing the facts. The averments of the appellant are not true. As per the revenue records, the lands are classified as Government

poromboke and salt pan which cannot be classified as wetland or water body. There was no suppression of material fact and the allegation that only four members were present at the time when the Environmental Clearance (EC) was considered and as such, it was not properly considered cannot be accepted. The survey team has conducted the survey from July to September 2019 and a reference of the project has already been mentioned in minutes of 132<sup>nd</sup> and 133<sup>rd</sup> meetings of the 2<sup>nd</sup> Respondent. A detailed presentation on the proposal was submitted on 14.07.2019 and a reference to 08.11.2019 communication from the 1<sup>st</sup> Respondent to the 2<sup>nd</sup> Respondent and in that communication, it was mentioned as follows "*Considering the urgency of the project and the fact that baseline monitoring was done during July-September through NABL accredited laboratory as per OM No. J-11013/41/2006-IA-II (L)(part) dated 29.08.2017-the baseline data used for preparation of EIA-EMP reports may be collected at any stage irrespective of the request for TOR or the issue thereof. So, we request you to consider the existing baseline data for preparation of EIA report.*" and this aspect was accepted by the SEAC - Tamil Nadu and the project was considered. In fact, CRZ affected area has been excluded after getting further EIA Report and that will go to show the minute application of mind by the authorities while considering the project while recommending and approving. The Pulicat Lake Bird Sanctuary is situated 13.2 kms and the Pulicat lake is situated 12.1 kms away from the proposed project site. All necessary details were provided and it was thereafter, discussed by the SEAC - Tamil Nadu and also by the SEIAA - Tamil Nadu and only thereafter, it was issued and as such, there was no ground made out for setting aside the Environmental Clearance (EC) granted. So, they prayed for dismissal of the appeal.

8. The 2<sup>nd</sup> Respondent filed counter contending that the project proponent, M/s. Tamil Nadu Polymer Industries Park Limited submitted application for Terms of Reference on 22.07.2019, along with Form-I, Pre- Feasibility report for the proposed polymer industries park at S.No.143, 187, 2053 B (part), Voyalur & Puzhdivakkam Village, Ponneri Taluk, Thiruvallur District. The project proposal was placed in the 133<sup>rd</sup> SEAC - Tamil Nadu meeting held on 24.08.2019 after detail deliberations, the SEAC - Tamil Nadu recommended the proposal for grant of Terms of References to SEIAA - Tamil Nadu subject to specific conditions in addition to the normal conditions as part of ToR. The above said proposal seeking Terms of Reference was placed before 358<sup>th</sup> State Level Environment Impact Assessment Authority Meeting held on 31.10.2019. The authority has issued Terms of Reference to a maximum period of three years from the date of issue, for submission of the EIA/EMP report as per O.M.No.J11013/41/2006-IA-II(I)(part), dated 29<sup>th</sup> August, 2017 vide their office Lr. No. SEIAA-TN/F.No.6957/SEAC/TOR- 654/2019 Dated: 31.10.2019. The project proponent, M/s. Tamil Nadu Polymer Industries Park Limited has submitted Environment Impact Assessment (EIA) Report to SEIAA-TN on 20.11.2019 for seeking Environmental Clearance for the proposed project at S.No.143, 187, 2053 B(P), Voyalur Puzhdivakkam Village, Ponneri Taluk, Thiruvallur District. The project proposal was placed in the 139<sup>th</sup> SEAC - Tamil Nadu meeting held on 23.11.2019 and after detailed deliberation, the SEAC - Tamil Nadu recommended the proposal for grant of Environmental Clearance to the SEIAA - Tamil Nadu subject to specific conditions, in

addition to the normal conditions. The above said proposal seeking Environmental Clearance was placed before 363<sup>rd</sup> Meeting of the State Level Environment Impact Assessment Authority held on 11.12.2019 and the authority had issued the Environmental Clearance vide Letter No. SEIAA-TN/F.6957/EC/ 8(b)/683/2019 dated: 11.12.2019. So, according to them, they have complied with all the procedure and issued the Environmental Clearance after due deliberated discussion and application of mind and they prayed for dismissal of the appeal, as there is no merit in the appeal.

9. The appellant filed rejoinder to the counter filed by Respondents No.1 and 2 contending that the subject area was originally covered within the CZMP of 1996 and the present controversy also has its roots in the fact that in another unapproved illegal map of 1997, the authority excluded these areas from the CZMP. In fact, the appellant along with others filed OA No. 241 of 2017 aggrieved by this illegal sheet 2 map of Ennore region and this Hon'ble Tribunal vide order dated 22.02.2021 had held that the 1997 Map was unapproved and directed that the original approved 1996 CZMP be used as a base map while delineating and drawing the revised CZMP. The Appellant herein had been actively involved in environmental causes in the Ennore region and destruction of eco sensitive areas such as the present. They filed W.P No. 30237 of 2018 on the file of the Hon'ble High Court, Madras regarding a similar attempt to construct an ash pond for NTECL Thermal Power Plant inside the Ennore creek. An order of injunction was passed by the Hon'ble High Court, further action has been taken by the MoEF and further destruction was stopped. The subject area is also part of the Ennore creek and the

destruction has to be stopped. The Appellant has also been working with the local fisher panchayats in Ennore such as Mugathuvarakuppam, Kaatukuppam etc. as part of the Coastal Resource Centre, providing assistance to the local fishers to protect their areas from pollution and protection of the creek. Protection of the Ennore wetland complex is directly connected to ensuring that Chennai does not flood during monsoon. Person aggrieved has to be interpreted widely in environmental issues, so that the merit and judicial review of clearances issued can be examined by this Hon'ble Tribunal. There is always an attempt on the project proponent to cast aspersions on persons speaking truth to authority. They denied the allegations regarding the malafides raised against the appellant in filing the appeal. The locus standi issue has been widely interpreted so as to include all persons who are interested in protecting environment in respect of environmental jurisdiction. The project proponent had wrongly classified the project as Category - 8 (b) thereby escaping the rigour of public consultation required for projects classified as industrial estate. A perusal of the Condition No.29 of the impugned Environmental Clearance (EC) indicates that there is a possibility of industries classified under Category A or Category B could be housed inside the said estate which would mean that the project ought to have been assessed under Category 7 (c) and not Category 8 (b) of the EIA Notification. The 2<sup>nd</sup> respondent (*wrongly shown as 4<sup>th</sup> respondent in the rejoinder*) has admitted while producing the documents that the classification of the area is poromboke and salt pans in the revenue records. The entire area was covered under the CRZ area demarcated in the 1996 approved CZMP. These naturally tidally influenced lands were used for salt production in dry seasons

earlier, with brackish water brought by the tides evaporated for manufacture of salt. During the monsoon and few months after monsoon, the entire area was inundated with the water. These wetlands are not excluded from the definition of wetlands under the 2017 Rules and it has been wrongly interpreted by the 1st respondent. Even assuming that it is not a wetland, it will be a water body, and it cannot be converted for any industrial purpose. The respondent's own studies and documents show that the project site is a tidally influenced water body apart from the photographs and Google earth imagery of the site produced by them. In the EIA report at page 40 while discussing the current status of the project site clearly mentioned that *"the project site is low lying in nature and is devoid of any noticeable vegetation. The site gets inundated during high tide period and is prone to flooding during monsoon...."* The field photographs at Annexure V of the IRS, Anna University report at Page 240 of the documents filed by the 1st respondent showed that the site is filled with water. The SIPCOT land allotment guidelines available on the website of the 1<sup>st</sup> Respondent has a map marking the location of the project site and it is clearly marked in an area marked on satellite imagery as a water body, evidenced by Annexure A14. The appellant had reiterated the definition of the wetland. They also relied on the guidelines for implementation of 2017 Rules. The area is a wetland as defined under 2017 Rules, even on the basis of the definition of Wetland Rules and also the guidelines issued by the MoEF&CC to identify the wetlands produced as Annexure - A15. Their attempt is to convert the wetland for industrial purpose and they cannot rely on 1997 Map in view of the order of this Tribunal in O.A. No.241 of 2017 (SZ) dated 22.02.2021 and the appellant had relied on the project site marked on the approved 1996

CZMP Map produced by the appellant as Annexure-A16. The EIA Report was never communicated to the public and it was not adverted to in the counter of the 1<sup>st</sup> Respondent regarding the non-availability of EIA Report in the public domain. The EIA Report was not prepared by an accredited agency. The project proponent has engaged CEHS, Annamalai University, Hubert Enviro Care Systems and ITCOT Chennai for undertaking the EIA study. The accreditation status of CEHS dated 18.04.2019 clearly demonstrates that they have not been accredited to undertake EIA studies for category 8(b) projects and as such, they are not qualified to undertake the present EIA study. The accreditation status of ITCOT consultancy services is made available as part of the EIA report and it is not an accredited EIA consultant. They could not have collected any data for this project, as the present project proponent as SIPCOT is a shareholder of the said agency and the present project is nothing but a special purpose vehicle of TIDCO and SIPCOT. So, there is a clear conflict of interest in ITCOT Consultancy who has been engaged for EIA study and the same has to be rejected and they have produced the list of shareholders of ITCOT as available in the website as Annexure A17. The mandate of the law is that an EIA Report has to be prepared only by a consultant with necessary sector specific accreditation from NABET. The law does not permit a situation where unaccredited consultants prepare an EIA Report/ work on preparation of an EIA Report along with another consultant with requisite accreditation and all of them produce an EIA report. Permitting such modus operandi will defeat the very purpose of accreditation as non-accredited consultants will prepare report, conduct studies, and perform tests, finally labelling the report with the name of an accredited consultant. M/s Hubert Enviro care systems Pvt. Ltd. appears

to have accreditation for category 8 (b) however, the EIA report has been prepared by two other consultants who do not possess requisite accreditation and the EIA report thus could not have been accepted by the SEIAA - Tamil Nadu. The data was collected during monsoon period and the EIA studies clearly states that primary baseline data collection should be during non-monsoon period evidenced by the MoEF&CC's sector specific manual for EIA studies produced as Annexure - A18. The CPCB in its report on mixing heights also clearly states that during monsoon pollution levels will be lower due to washout effect and they produced extract from the CPCB report as Annexure - A19. The baseline data was collected prior to issuance of ToR viz., 31.10.2019 and the EIA report was submitted on 20.11.2019. It was also mentioned in the EIA report that the baseline data used for the evaluation was collected between July-September 2019, well before the issuance of the ToR. The same is sought to be justified by the 1<sup>st</sup> Respondent relying on the Office Memorandum dated 09.08.2017. According to the appellant, the baseline data can be collected even prior to TOR is void as it is contrary to the judgment of this Hon'ble Tribunal in **Sreeranganathan K.P. Vs Union of India & Ors. (Appeal No. 172 of 2013)** wherein it was stated that the baseline data collected prior to the issuance of ToR is against EIA Notification and as such, it cannot be relied on. The minutes of the 132<sup>nd</sup> of the SEAC - Tamil Nadu will go to show that there was no discussion about the project and nothing was mentioned about these aspects which is evidenced from Annexure - A21. They have falsely mentioned in the Form -I that it was a dry terrain but the EIA Report shows otherwise. The filling up of water bodies was done by the 1<sup>st</sup> Respondent without

obtaining Consent to Establish from the State Pollution Control Board. So, the contention of the 1<sup>st</sup> Respondent cannot be accepted.

10. As regards the 2<sup>nd</sup> Respondent's contention is concerned, according to the Environmental Clearance (EC), there was nothing mentioned about the present project in the minutes of the 139<sup>th</sup> Meeting of SEAC - Tamil Nadu dated 23.11.2019. The SEIAA - Tamil Nadu has not mentioned about the same as well. Even as per the contentions of the respondents that the EIA Report was submitted by the project proponent on 20.11.2019 and the SEAC - Tamil Nadu's 139<sup>th</sup> Meeting was held on 23.11.2019, SIEAA's 362<sup>nd</sup> Meeting was held on 27.11.2019 and in 363<sup>rd</sup> Meeting of the SEIAA - Tamil Nadu held on 11.12.2019 issued the impugned Clearance. The minutes of - 139<sup>th</sup> Meeting of SEAC - Tamil Nadu held on 23.11.2019 which will go to show that the meeting had taken place for three days and there was no mention as to whether the same has been circulated and there were other 25 Agenda Items which has been discussed on the same day and the each project was considered within 13 minutes and only 4 out of 12 members of SEAC - Tamil Nadu have signed the minutes and the agenda prepared for this meeting available in the SIEAA's website indicate that this item was not listed for consideration either on 22.11.2019 or 23.11.2019. Even in 362<sup>nd</sup> Meeting of the SEIAA - Tamil Nadu held on 27.11.2019 and the minutes of the 363<sup>rd</sup> Meeting of the SIEAA merely mentions that there was detailed discussion took place with no elaboration on the contents of the discussion. It was also seen from the impugned Environmental Clearance (EC) that a "revised" EIA was submitted by the project proponent to the SEIAA - Tamil Nadu on 09.12.2019 and thereafter, the SEIAA - Tamil Nadu granted clearance on

11.12.2019 after its meeting. The revised EIA report ought to have been sent to the SEAC - Tamil Nadu for consideration and without getting their remarks on the same, relying on the revised EIA Report, SEIAA - Tamil Nadu issuing the clearance is illegal. While the construction work was in progress, the Tamil Nadu Pollution Control Board vide letter dated 10.02.2021 instructed the unit not to carry out establishment activity without obtaining CTE of the Board, evidenced by Annexure - A25. In Para 15 of the counter affidavit of the 1<sup>st</sup> Respondent it was mentioned that the project has commenced even during February, 2020 whereas, the requisite consents have been granted only on 22.03.2021. They are carrying on the activities in violation of the provisions of the environmental laws. He prayed for accepting their contentions and allowing the appeal.

11. Heard Mr. A. Yogeshwaran, the learned counsel appearing for the appellant, Mr. N.R. Elango, learned Senior Advocate along with Mr. Ramesh Venkatachalapathy appearing for the 1<sup>st</sup> Respondent and Mr. G.M. Syed Nurullah Sheriff, the learned counsel appearing for the SEIAA - Tamil Nadu/2<sup>nd</sup> Respondent.

12. Mr. A. Yogeshwaran, the learned counsel appearing for the appellant argued that the entire project area is part of CRZ area under the 1996 CZMP Plan and this Tribunal by Judgment dated 22.02.2021 in O.A. No.241 of 2017 (SZ) (P. Mahendran & Ors. Vs. The Union of India & Ors.) did not approve the 1997 Plan in respect of Ennore Creek and based on the documents available, this Tribunal came to the conclusion that it was not properly approved as required under the CRZ Notification and

the guidelines issued therein and for preparation of CZMP Plan for CRZ Notification, 2019, 1996 CZMP has to be taken as a baseline, but excluding certain constructions already made for the purpose of locating the CRZ area under the said notification. Further, the documents produced by the 1<sup>st</sup> Respondent themselves will go to show that these properties are classified as Government Poramboke and salt pan in the revenue records whereas, the 1<sup>st</sup> Respondent in the Form - I Application for the Environmental Clearance (EC) mentioned that this as a dry terrain. Further, the Environmental Clearance (EC) was granted excluding the CRZ area and restricting the remaining area alone, but this fact was not mentioned in the Form - I Application and according to the learned counsel for the appellant, this is a suppression of material fact.

13. The learned counsel for the appellant further argued that the EIA Report was prepared by a consultant who was not an accredited agency to conduct the EIA Study and to prepare the EIA Report for categories under Item 8 (b) of the EIA Notification, 2006. Further, one of the agencies to whom the work was granted to conduct the study viz., ITCOT, Chennai cannot be said to be a proper independent agency without any conflict of interest, as the SIPCOT is a shareholder of this institution. Further, the present project itself is a special purpose vehicle of the SIPCOT, TIDCO and the 1<sup>st</sup> Respondent as a joint venture that is being established. So, it cannot be said to be a report submitted by an independent consultant with no conflict of interest and an accredited consultant approved by the MoEF&CC and such a report should not have been accepted by the SEIAA - Tamil Nadu. Merely, because the final report was submitted by an agency which was accredited will not be

sufficient, if the independent consultants who have been authorized for the purpose of conducting the study and preparation of report, based on the material collected by an unaccredited agency, cannot be said to be a report prepared by an accredited agency. So, this report should not have been accepted by the SEIAA - Tamil Nadu and nothing was mentioned about the same as to why they are accepting the same as well.

**14.** The learned counsel for the appellant further argued that it is also seen from the photographs and the EIA Report submitted by the project proponent themselves that at the time of conducting the study, it was inundated with the water due to high tide effect. Further, the land was reclaimed by the project proponent so as to make it appear that it is a dry land. As per the provisions of the Wetland Rules, 2017, the salt pans are included as wetland and this should not be converted for industrial purpose. Further, though it was mentioned in the Environmental Clearance (EC) that in 139<sup>th</sup> Meeting of the SEAC - Tamil Nadu, this proposal was considered and recommended but a perusal of the agenda for the meeting prepared will go to show that this item was not included. So, it is not known as to when it was presented before the SEAC - Tamil Nadu and considered. The SEIAA - Tamil Nadu has produced the minutes of 139<sup>th</sup> Meeting of SEAC - Tamil Nadu wherein, this was taken as table agenda and it is not known as to when the relevant documents were circulated to the members of the SEAC - Tamil Nadu. Though there were 12 members, at the time of appraisal, only 4 members were present and signed the report and it is not known as to whether the opinion of the other members were obtained or not for this purpose. Further, there was nothing mentioned about the consideration of alternate site and it does

not contain any assessment of anticipated impact and no assessment of biodiversity impact was made, though it was mentioned in the ToR that such a study will have to be conducted. Further, it is seen from the proceedings of the SEIAA - Tamil Nadu in which this proposal was considered and decided to issue clearance that there was a subsequent EIA Report obtained, but it was not referred to the SEAC - Tamil Nadu for further consideration to get their recommendations. It is also not known as to when that EIA Report was filed and when it was circulated among the members for their consideration. So, there is no proper application of mind on the part of the authorities in accepting the proposal and granting the same. Further, if the industrial park has to be taken as a township project under Item 8 (b) of the EIA Notification, there should not be any industry of Category A or Category B to be established in the industrial park. But one of the conditions in the Environmental Clearance (EC) shows that if any such industries will have to be established, those units will have to obtain prior Environmental Clearance (EC). If this is allowed to continue and such establishments are also anticipated, then it cannot be treated as a township project under Item 8 (b) and it should have been taken as project for industrial estate under Item 7 (b) of the EIA Notification. That also shows that improper application of mind on the part of the SEIAA - Tamil Nadu while granting the Environmental Clearance (EC). They have not mentioned about the reclamation work to be done, change of land use, eco-sensitive area, existence of tidal effect etc. It was mentioned in the EIA Report that this area will have to be filled with wet ash and if wet ash is used as filling material, then it requires a top cover (granular material). They have not considered about the impact of such fillings in that area and

reclamation as per the CPCB guidelines of disposal of fly ash, the same cannot be used for filling the flood plain area or ecologically sensitive areas and they should not have used the fly ash for that purpose and if any filling was done, the same will have to be removed and this aspect has not been considered by the SEIAA - Tamil Nadu while imposing conditions.

15. The learned counsel for the appellant relied on the decision reported in **Hanuman Laxman Aroskar Vs. Union of India & Ors. (2019) SCC Online 441, Sreeranganathan K.P. Vs. Union of India & Ors. (Appeal No. 172 of 2013)** vide Judgment dated 28.05.2014 and **Utkarsh Mandal Vs. Union of India & Ors. [Writ Petition (Civil) No.9340 of 2009]** of Delhi High Court.

16. The appellant had produced certain video graph and photographs which will go to show the presence of migratory birds in this area when it was flooded with water and the submissions of the 1<sup>st</sup> Respondent that because of the proximity to the Pulicat Bird Sanctuary, birds are coming to that area also will support the case of the appellant that this area will have to be maintained for the purpose of on way transit of the migratory birds during the season.

17. On the other hand, Mr. N.R. Elango, Senior Advocate appearing for the 1<sup>st</sup> Respondent argued that the proposal falls under the Item 8 (b) of the EIA Notification and it cannot be treated as a industrial estate and the appraisal is not expected to be as strict as in the case of industrial estate falls under Item 7 (b) of the EIA Notification, 2006. Further, there was no material suppression of fact and it was not a salt pan as defined under the

Wetland Rules, 2017. In the decision reported in **M/s. Ramgopal Estates Private Limited Vs. State of Tamil Nadu & Ors.** dated 02.03.2007 where the land acquisition for a larger extent which includes the project area for the purpose of creating an industrial estate was challenged on the ground that there are salt pans available which are ecologically sensitive and no industrial estate can be established in that area, as it will have great environmental degradation of that area. But after considering all the documents produced, the Hon'ble High Court came to the conclusion that these salt pans are man-made salt pans and it cannot be treated as wetland as envisaged under the Wetland Rules, 2010 as it stood then and these lands were transferred in favour of the industrial estate by the Salt Commissioner holding that they are not suitable for using as salt pans due to establishment of other industries in that area and the Hon'ble High Court came to the conclusion that there was no environmental impact on account of the establishment of the proposed industrial estate in that area and rejected the contentions of the persons who were opposing the land acquisition for that purpose and upheld the notification for acquisition of this area. So, at this stage, it cannot be argued that it is still a water body or an ecologically sensitive CRZ area. Further, these aspects were considered by the SEIAA - Tamil Nadu and the Environmental Clearance (EC) was granted only after excluding the CRZ area and as such, there was no CRZ area included in the project area. The document produced by the appellant by way of photographs and video clippings said to be taken from this area cannot be relied on, as there is a possibility of manipulating those digital documents and the same cannot be relied on without proper evidence to show that it was not manipulated and it related to this area. Merely because water was found during monsoon

season, cannot make it as a water body. Further, it was also considered in the EIA Report as to how this can be met with and the procedures have been provided. Since there is no biological diversity sources available, non-conduct of biological study, will not affect the project. Further, the EIA Report was prepared by an expert consultant having accreditation with National Accreditation Board for Education and Training (NABET) approved by the MoEF&CC. It cannot be said that SIPCOT is a shareholder of the ITCOT and there is conflict of interest for one of the consultant who prepared certain reports, as they have got only a negligible share and they are independent entities. Merely because inadvertently, a condition in the Environmental Clearance (EC) stating that if any Category A or Category B units are proposed to be established in this project site, then those units will have to obtain prior Environmental Clearance (EC) before establishing the same was incorporated will not vitiate the clearance as it is only a mistake, as it was specifically mentioned in the Form - I Application itself that they have no intention to set up any Category A or B units or any polluting units in this area and that was the reason why it was taken as a B2 - Category under Item 8 (b) of the EIA Notification, 2006. A perusal of the EIA Report and the minutes of the SEAC - Tamil Nadu and SEIAA - Tamil Nadu will go to show that it was properly appraised and wherever clarifications were required, SEAC - Tamil Nadu and SEIAA - Tamil Nadu had asked for the same and the same were produced by the project proponent which were also considered before recommending and issuing the Environmental Clearance (EC). The baseline study was conducted on the basis of the guidelines and notification issued by the MoEF&CC in 2017 on the basis of the standard ToR already issued in this regard and it is permissible

under law while preparing the EIA Report and this was intended for the purpose to avoid delay in preparing the EIA Report and submitting the same before the authorities.

**18.** So, according to the learned Senior Advocate for the 1<sup>st</sup> Respondent, there is no necessity to set aside the Environmental Clearance (EC) granted, if at all this Tribunal feels that some discrepancy crept in the Environmental Clearance (EC) granted by incorporating the impugned condition, that can be deleted by the Tribunal, as they have no intention to start any polluting industries or Category A or Category B industries in the proposed industrial park. Further, according to the learned Senior Advocate, none of the decisions relied on by the appellant are applicable to the facts of the case. So, he prayed for dismissal of the appeal.

**19.** On the other hand, Mr. G.M. Syed Nurullah Sheriff, the learned counsel appearing for the SEIAA - Tamil Nadu argued that since it is an industrial park where no "A - Category" or "B - Category" industries or polluting industries are expected to be established, under the EIA Notification, 2006, it can be treated as a township project falling under Item 8 (b) of the EIA Notification and not under Item 7 (c). Further, the documents produced by the SEIAA - Tamil Nadu will go to show that this item was taken as table item in the 139<sup>th</sup> Meeting of SEAC - Tamil Nadu and they considered the same and recommended for grant of Environmental Clearance (EC) with certain conditions and since it was taken as a table item, it could not be included in the agenda for the meeting earlier. Since these documents are available in the public domain of the SEIAA - Tamil Nadu, the SEAC - Tamil Nadu members are having access to the same

and it was placed before them sufficiently early for the purpose of consideration and since they have earlier considered the project on two or three occasions, it cannot be said that the documents produced were new for them and being Expert Members they have got expertise to verify the documents quickly and came to the conclusion as to whether this will have to be recommended or not to be recommended or any further studies will have to be conducted. The fact that the further EIA Report was called for before considering the project by the SEIAA - Tamil Nadu, even after the same was recommended by the SEAC - Tamil Nadu will go to show that there was proper application of mind and the fact that they have excluded the CRZ area from the purview of the project site also indicates that there was proper application of mind and they have considered all the aspects. It is only by mistake that the impugned condition referred to by the appellant that in case "A - Category" or "B - Category" industries will have to be established, they will have to obtain prior Environmental Clearance (EC) and that alone will not vitiate the appraisal of the project by the SEIAA - Tamil Nadu and this Tribunal has ample power to delete that condition on the basis of the purpose for which this industrial park has to be established based on the materials available on record and also on the basis of the undertaking given by the Senior Advocate appearing for the 1<sup>st</sup> Respondent in this regard. So, according to the learned counsel for the SEIAA - Tamil Nadu, there is no merit in the appeal and the same is liable to be rejected.

**20.** We have considered the pleadings, documents produced and the submissions and precedents submitted.

21. The points that arise for consideration are:-

- a. Whether the Environmental Clearance (EC) granted to the 1<sup>st</sup> Respondent for establishing a Polymer Industrial Park in the disputed land is liable to be set aside for any of the reasons mentioned in the appeal memorandum and also raised by the learned counsel for appellant at the time of hearing?
- b. If the Tribunal feels that there is no necessity to set aside the Environmental Clearance (EC), but certain studies will have to be conducted, then what is the nature of directions to be issued by the Tribunal applying the principle of “Sustainable Development” and “Precautionary Principle” without compromising the impact of the project on environment?
- c. Relief and cost.

**POINTS:-**

22. Before going into the facts and merits of the case, let us consider the precedents relied on by the counsel appearing for both sides.

23. In the decision report in **M/s. Ramgopal Estates Private Limited through its Managing Director Vs. State of Tamil Nadu & Ors. reported in (2007) 2 CTC 369 = (2007) 2 LW 122** relied on by the learned Senior Advocate for the project proponent for the proposition that the land in question is part of the larger area which was acquired for industrial estate by the SIDCO to establish a petro chemical park and other industries and the same was challenged before the Hon'ble High Court of Madras by certain parties against the acquisition alleging some environmental issues

as W.P. No.7613 of 2000, 17195 of 1998 and 17196 of 1998 and the question raised in those cases was that it was not fit for industrial estate as they are covered by salt pans and it would likely to cause endanger to Pulicat Lake and guidelines of CRZ Notification and the Hon'ble High Court came to the conclusion that the industrial development has to be promoted by protecting environment and also applying the "*Precautionary Principle*" and based on the documents produced for the purpose of acquisition, the environmental question that has been raised need not be gone into and before making acquisition, certain studies have been conducted and it is on that basis, the acquisition proceedings were initiated and as such, the grounds raised by the parties in the writ petitions are not sufficient to hold that the acquisition is bad. But at the same time, it was observed that being an industrial park or industrial estate to be established in that area, they will have to obtain prior Environmental Clearance (EC) and at that time, the impact of the project on environment could be considered by the authorities. With that observations and directions, the acquisition proceedings were upheld and writ petitions were dismissed.

**24.** So, that will not help the 1<sup>st</sup> Respondent to come to the conclusion that all environmental issues and impacts have been considered by the Hon'ble High Court while considering the acquisition proceedings and there is nothing left to the regulators who are expected to consider the impact of the project on environment and the conditions to be imposed for sustaining the development applying the '*Precautionary Principle*'. Further, it is not known as to whether this area is also considered for Petro Chemical Industries. So under such circumstances, the above

decision is not a bar for this Tribunal to go into the question of environment impact of the project in question and whether that has been properly appreciated by the regulator before recommending and issuing the Environmental Clearance (EC).

**25.** In the decision reported in **Sreeranganathan Vs. Union of India (Appeal No.172 of 2013 and connected cases)** of this Tribunal for the proposition that if the EIA Report was prepared by an agency which was not accredited by the MoEF&CC and the NABET, then the report prepared by them cannot be said to be a proper report which cannot be relied on for the purpose of appraising the project. In this case, how far the above decision can be applicable to the facts can be considered after considering the qualification and accreditation of the consultants who have been engaged for preparing the EIA Report.

**26.** The decision reported in **Hanuman Laxman Aroskar Vs. Union of India & Ors. reported in 2019 SCC Online SC 441** was relied on for the proposition that if any material suppression of fact has been committed by the project proponent in the Form - I Application which could not have been appraised by the SEAC - Tamil Nadu or the issuing authority, then that may be a ground for setting aside the Environmental Clearance (EC) granted.

**27.** This decision was also relied on by the learned counsel for the appellant for the proposition that appraisal of the fact means there must be a proper application of mind and it must be elicited from the proceedings that they have considered the materials and then came to the conclusion. If such a

conclusion could not be possible from the proceedings, then it cannot be said to be a proper appraisal and it can be treated as a case of non-application of mind and that can be a ground for setting aside the Environmental Clearance (EC) granted.

28. It was also observed in that decision that the environmental impact assessment must reflect the nature of the project, likelihood of impact of the project on environment, mitigation measures provided, if there are any ecological areas, then what is the nature of further precautions to be taken to minimize the impact on the ecologically sensitive area and these things will have to be reflected in the EIA Report and that will have to be appraised by the EAC and also the issuing authority. Further, the grievances raised in the public consultation also have to be considered by the EAC so as to ascertain as to whether the socio-economic impact on the community people have been properly addressed in the EIA Report.

29. Further, it was also observed in this decision that *“This analysis of the EIA report is, to say the least, sketchy and perfunctory and discloses an abdication of its functions by the EAC. The requirement that the EAC must record reasons, besides being mandatory under the 2006 notification, is of significance for two reasons: (i) The EAC makes a recommendation to the regulatory authority 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) provides, shall normally accept the recommendations of the EAC. Where it disagrees, it would request reconsideration, stating the reasons for its disagreement. In turn, the EAC will consider the observations of the regulatory authority and furnish its views within a stipulated period; 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 EAC for its recommendation are a basic link in the ultimate decision of the regulatory authority. They constitute substantive material which will be considered by the Tribunal when it considers a challenge to the grant of an EC."

30. Further, it was observed in the decision that "The EAC is an expert body. It must speak in the manner of an expert. Its remit is to apply itself to every relevant aspect of the project bearing upon the environment. It is not bound by the analysis which is conducted in the EIA report. It is duty bound to analyse the EIA report. Where it finds it deficient it can adopt such modalities which, in its expert decision-making capacity, are required. The reasons which are furnished by the EAC constitute a live link between its processes and the outcome of its adjudicatory function. In the absence of cogent reasons, the process by its very nature, together with the outcome stands vitiated."

31. It was further observed in the same decision that "The EAC, as an expert body, has to scrutinize all relevant aspects of the project or activity proposed, including its impact on the environment. In taking that decision, the EIA report is an input for its analysis. The scrutiny and appraisal has to be undertaken by the EAC as an expert body and its reasons must reflect that this has been done."

32. In the decision reported in **Utkarsh Mandal Vs. Union of India reported in MANU/DE/3070/2009**, after elaborately considering the provisions of the EIA Notification, it was observed that the "The decision of the EAC may not necessarily be binding on the MoEF&CC but is certainly an input into the decision making process. Considering that it constitutes the view of the expert body, its advice would be a valuable input. In terms of the procedure evolved by the MoEF&CC to deal with applications for EIA clearance, the objections at the

*public hearing and the response thereto of the project proponent are placed before the EAC (Mines) for evaluation and for taking a decision which will constitute the advice to the MoEF&CC on such project proposal. The EAC is therefore performing a public law function and is expected to adhere to those very standards which law requires the MoEF&CC to adhere to. The requirement of an administrative decision making body to give reasons has been viewed as an essential concomitant of acting fairly. Given that such a decision is in any event amenable to judicial review, the failure to make known the reasons for the decision makes it difficult for the judicial body entrusted with the power of reviewing such decision as to its reasonableness and fairness. The decision must reflect the consideration of the materials available before the decision maker and the opinion formed on such material."*

- 33.** With the above principles in mind, the case in hand has to be considered.
- 34.** It is an admitted fact that 1<sup>st</sup> Respondent was granted 265.66 Acres of land by TIDCO for the purpose of establishing a Polymer Industrial Park to incorporate non-polluting industries not falling under "A - Category" or "B - Category" of the EIA Notification which requires Environmental Clearance (EC).
- 35.** It was also an admitted fact that since it requires Environmental Clearance (EC), they applied for Environmental Clearance (EC) treating this as a "B1 - Category" under Item 8 (b) of the schedule to the EIA Notification, 2006, based on the explanation given in Item 7 (c) of schedule to EIA Notification, 2006. Since it is "B1 - Category" of township project, public consultation was exempted under the EIA

Notification, but the EIA Report is required for the purpose of evaluation. The EIA Study was conducted by three agencies namely, (i) Centre for Environment, Health and Safety, (ii) ITCOT Consultancy and Services Limited and (iii) Hubert Enviro Care System Private Limited and they submitted the report. Along with the report, the project proponent applied for issuance of Terms of Reference and the same was issued on 31.10.2019 and the EIA Report was prepared and submitted within a period of less than one month i.e. on 20.11.2019 for consideration. Thereafter, the SEAC - Tamil Nadu recommended the project and the same was accepted by the regulating authority and the impugned Environmental Clearance (EC) was granted.

**36.** The grant of Environmental Clearance (EC) was challenged by the appellant on the following grounds:

- a.** There was suppression of material facts in the Form - I Application, as it was mentioned in the application that it is a dry land whereas, even as per the documents produced, it is shown as Poramboke and salt pan. This aspect has not been considered by the SEAC - Tamil Nadu at all.
- b.** There was nothing mentioned about the nature of land, whether any modification will have to be made like reclamation etc. in the Form - I Application, whereas in the EIA Report categorically stated that it is a low lying area filled with water and there is a possibility of flood during high tide period during monsoon and in order to avoid this, they will have to make reclamation of the area by filling up the land with 1 to 2 meters height.

- c. The material used for filling was shown as Wet Fly Ash with upper layer with some granular material. The impact of fly ash on the neighbouring area has not been considered by the SEAC - Tamil Nadu or issuing authority.
- d. The Centre for Environment, Health and Safety, Annamalai University is not an accredited agency to appraise Item 8 (b) Project and thereby, they are not an accredited agency.
- e. As on the date of the project appraisal, they were not having expertise in making assessment of Item 8 (b), as the application for Environmental Clearance (EC) was filed as though it is an Item 8 (b) project.
- f. As per CZMP of 1996, these areas are all salt pans lying in between the inter-tidal area having eco-sensitive value.
- g. Some of the documents produced by the appellant by way of photographs will go to show the eco-sensitive value and presence of migratory birds in that area and impact on the flora and fauna has not been considered by the SEAC - Tamil Nadu as well as by the issuing authority. Though in the ToR, it was specifically mentioned that biodiversity study will have to be conducted in respect of this area, no such study was conducted.
- h. The flood mitigation aspect was also not properly considered in the EIA Report except providing certain storm water drains. But they have not assessed the impact of raising the level of the ground in the downstream and upstream areas and the nearby CRZ area and neighbouring properties.
- i. In the Environmental Clearance (EC), it was mentioned that the project was appraised by the SEAC - Tamil Nadu in their 139<sup>th</sup>

Meeting, but the agenda prepared will go to show that this item was not included for two days on which it was expected to be considered this project. Further, even on the basis of the documents produced by the SEIAA - Tamil Nadu, it is revealed that this was placed as table agenda on the last day of 139<sup>th</sup> Meeting and it is not known as to when the documents were circulated to the members and whether they have got opportunity to see the documents before appraising the project.

- j. Further, the SEAC - Tamil Nadu had directed to have a further study to be conducted regarding the CRZ area and its impact by IRS, Chennai and though such a report was prepared and submitted by the project proponent and a revised proposal was made on that basis by the project proponent on 09.12.2019, and it was taken up on 11.12.2019 of the 363<sup>rd</sup> Meeting of the SEIAA - Tamil Nadu and without transmitting the documents to SEAC - Tamil Nadu for further consideration, they have simply accepted and issued the clearance which is against the procedures according to the appellant.
- k. Further, the conditions in the Environmental Clearance (EC) will go to show that non-application of mind, as in the condition, it was mentioned that in future, if "A - Category" or "B - Category" units will have to be established in this area, then those units will have to apply for prior Environmental Clearance (EC) which is against the project proposal itself, as if the project proponent has intention to have "A - Category" or "B - Category" units, then it will have to be treated as industrial estate or industrial park project under Item 7 (c) of the EIA Notification, 2006, and then public hearing etc. will have

to be conducted and the nature of appraisal, nature of ToR will be entirely different.

1. Primary data collection was done during monsoon season which is not permissible, as the study was conducted between July - September and the data were collected prior to ToR was issued. Further, it will be seen from the documents produced by the 1<sup>st</sup> Respondent themselves that Thiruvallur District, used to get good rain in both monsoon season namely, Northeast and Southwest and this was collected in one of the season and thereby, it will not reflect the correct data and thereby, the EIA report is vitiated. This aspect has not been considered by both the SEAC and SEIAA. So, that shows the non-application of mind on the part of the SEAC - Tamil Nadu and SEIAA - Tamil Nadu while recommending the project and issuing the Environmental Clearance (EC).

37. So, according to the learned counsel for the appellant, the entire procedure is vitiated and it is liable to be set aside.

38. On the other hand, the contention of the SEIAA - Tamil Nadu was that it was properly appraised and it was taken as a table agenda in the 139<sup>th</sup> Meeting of SEAC - Tamil Nadu and that was the reason why it was not reflected in the original agenda prepared and the documents were circulated to the members in advance and being expert members, they are capable of understanding the project and appraise the same in the right perspective with short time. Further, the fact that further study will have to be conducted and that will have to be placed before SEIAA - Tamil Nadu for considering before issuing Environmental Clearance (EC) as

condition in their recommendation also will go to show that there was proper application of mind. Further, even if one of the conditions have been inadvertently added, that will not vitiate the Environmental Clearance (EC) granted, if all aspects have been considered before issuing the Environmental Clearance (EC) and this Tribunal can delete that condition and direct the project proponent not to undertake any project falling under "A - Category" or "B - Category" in their project area and for that purpose, the Environmental Clearance (EC) need not be set aside.

39. On the other hand, the learned Senior Advocate appearing for the project proponent argued that whether it was a salt pan having the impact of wetland has been considered by the Hon'ble High Court of Madras in the Writ Petition challenging the acquisition proceedings and came to the conclusion that it is not a wetland and they are man-made salt pans and the acquisition proceedings were upheld holding that there is no environmental impact on account of acquisition. Further, the area falling under the CRZ has been later excluded and only the remaining area has been included in the project area in respect of which alone the Environmental Clearance (EC) was granted. Further, the report of the IRS, Anna University, Chennai will go to show that there is no eco-sensitive areas falling near the project area and as such, there is no adverse impact on coastal environment on account of the project. So, all these aspects have been considered by the authorities.

40. As regards the qualification of the consultant is concerned, as on the date of preparation of EIA Report, the application for renewal of Centre for Environment, Health and Safety, Annamalai University is pending with

the authorities and they have been permitted to apprise the authorities in respect of the EIA Report already prepared by them on the date of application. Further, another consultancy viz., Hubert Enviro Care System Pvt. Limited is concerned, they have got accreditation in respect of project and as such, the EIA Report is not vitiated. As regards the ITCOT Consultancy & Services Limited, Chennai is concerned, they have got only a small share and as such, it cannot be said to be an interested agency and that report will not be vitiated.

41. As regards the primary data collection is concerned, according to the learned Senior Advocate as per the Notification of 2017 issued by the MoEF&CC, primary data collected within a period of 3 years can be utilized for the purpose of preparation of the EIA Report and it was done within that period. Further, this was intended for the purpose of quickening the process of preparing the EIA Report and to avoid delay in submission of the report to obtain Environmental Clearance (EC). So, according to the learned Senior Advocate, there is no vitiating circumstance which requires setting aside the Environmental Clearance (EC).

42. It will be seen from the documents produced by the 1<sup>st</sup> Respondent themselves that as per the revenue records, these S.F. No.143 and 187 of Puzhathivakkam Village and S.F. No.2053 B Part of Voyalur Village, Ponneri Taluk, Thiruvallur District are shown as "Government Poramboke" and "Salt pan". But in the Form - I Application, it was shown as "dry land". Further, in the Form - I Application, whether there are any land use change or reclamation is required for preparation of the

project area, it was mentioned that “Nil”, but the EIA Report shows otherwise.

43. The learned counsel for the appellant relied on the CZMP Plan of 1996 which was prepared on the basis of the CRZ Notification, 1991 and superimposing the project area in that plan, he had pointed out that the area where the project has intended to come is a salt pan area as per the CZMP prepared as per CRZ Notification of 1991, approved in 1996. But these areas have been excluded as per 1997 CZMP Plan prepared by the State of Tamil Nadu and this was challenged before this Tribunal by some parties including the appellant herein by filing **Original Application No.241 of 2017 (SZ)** challenging the CZMP 1997 Plan and this Tribunal, by Judgment dated 22.02.2021, disposed of the matter with the following directions:-

*“64. So, the application is disposed of as follows:-*

- a. The applicant is permitted to file representation before the concerned authorities as permitted by the Hon’ble High Court in W.P. No.29928 of 2019 and W.P. No.7019 of 2018 in respect of preparation of Coastal Zone Management Plan (CZMP) in tune with CRZ Notification, 2019.*
- b. While preparing the Coastal Zone Management Plan (CZMP), the Tamil Nadu Coastal Zone Management Authority (TNCZMA) and National Coastal Zone Management Authority (NCZMA) are directed to take 1996 approved plan with modification that has been provided in respect of Thiruvallur District as per the modified approval dated 30.09.1997 by the MoEF&CC.*
- c. Wide publication should be given by the authorities, calling for objections regarding the Coastal Zone Management Plan (CZMP) as provided under the guidelines, before finalizing the plan and consider the objections and representations received in this regard from the public and take appropriate decision in preparing the final CZMP for State of Tamil Nadu including Thiruvallur District in respect of the area in question namely, Ennore Creek, in tune with the provisions of the CRZ Notification, 2019.*
- d. Considering the circumstances, the parties are directed to bear their respective costs in the application.*

e. The Registry is directed to communicate this order to the Ministry of Environment, Forests & Climate Change (MoEF&CC), New Delhi, Ministry of Environment, Forests & Climate Change (MoEF&CC), Regional Office, Chennai, Tamil Nadu Coastal Zone Management Authority (TNCZMA) and National Coastal Zone Management Authority (NCZMA) by e-mail immediately for their information and compliance of the direction.

65. With the above observations and directions, this application is disposed of."

44. This Tribunal came to the conclusion that 1997 Plan cannot be treated as an approved plan. Further, this Tribunal also relied on the letter issued by the MoEF&CC dated 30.09.1997 when they sought for modification of Sheet No.2 in respect of Ennore area in CZMP Plan of 1996 wherein the MoEF&CC has observed that "(i) Re-classification of the area from CRZ-I to CRZ-III is approved, (ii) Reduction of CRZ to 100 meters (or the width of the backwater, whichever is less) on both sides of the backwater instead of the present distance of 500 metres is approved, (iii) To adopt backwater area as demarcated by the Chief Hydrographer to Government of India and to modify the earlier map based on IRS Imagery Data, is approved and (iv) Regarding the exclusion of Salt Pan areas from the CRZ, in case the Salt Pan area lies in the inter-tidal zone, it will necessarily form part of the CRZ and under no condition this area can be excluded from the CRZ. If the Salt Pans lie outside the HTL of the backwater area, then 100m width, or the width of backwater whichever is less, of the Salt Pans will have to be demarcated as CRZ. The State Government may kindly demarcate the area as per above condition."

45. But this Tribunal came to the conclusion that no such plan was produced and no such study was conducted and as such, this Tribunal found that the CZMP Plan of 1997 cannot be treated as an approved plan. But at the

same time, this Tribunal did not want to disturb the activities already done on the basis of the 1997 Plan till that date, but taking into consideration if possible remaining area will have to be protected.

46. So under such circumstances, it is necessary that further study will have to be conducted taking 1996 approved CZMP of Ennore Area with modification in the letter mentioned above to find out as to whether there was any salt pan in between the inter-tidal area or within 100 meter of the creek of the back water so as to exclude the same from this. We are not going into the question as to whether it is a wetland as provided under the Wetland Rules or not. If it is a natural salt pan, it will be treated as a wetland and if it is a man-made one for manufacture of salt, then it cannot be treated as wetland as per the Rules. If salt manufacturing is permitted by collecting the salt which was accrued in that area on account of the tidal effect naturally, then that aspect will have to be considered. Such a study was not conducted in that case so as to ascertain the real nature of the area. Further, the decision of the Hon'ble High Court of Madras challenging the acquisition proceedings relied on by the learned Senior Advocate also left open these environmental impact of projects has to be considered by the regulating authorities while considering the application for Environmental Clearance (EC) and precautionary measures will have to be taken to mitigate the impact of the project on those areas.

47. It is seen from the documents produced by the appellant as certain photographs that the entire area is seen water logged even after the monsoon season. Further, the EIA Report relied on by the 1<sup>st</sup> Respondent

themselves at 2.4.5 under the head “Current Status of the Project Site” it was mentioned that *“The project is low lying in nature and is devoid of any noticeable vegetation. The site gets inundated during the high tide period and is prone to flooding during monsoon. One of the reasons attributed to the same is the breaches on the embankment on the backwater channel. Topographic Survey was commissioned to assess the current ground levels and to estimate the extent of filling required to raise the land above the Max high water level. Based on which a suitable site grading plan has been devised.”*

48. So, it is clear from this that it is having a tidal effect due to breaches of embankment of the channel and or otherwise, it requires filling to a large extent, in respect of which study will have to be conducted.

49. At 2.6.1 under the head “Site Grading”, it was mentioned that “the low lying nature of the site calls for large scale filling. Accordingly, a grading plan is developed in such a way that it protects the site from being flooded and also provides an efficient drainage system for effectively draining the entire area. It is found that for about 70% of the area of site, the average depth of fill required is 2.00 m and about 1.50 m for the remaining area. Accordingly, the requirement of wet ash and granular material is estimated as below:-

Description	Cu.M.
Wet Ash	1404276
Granular Material	520102

50. So, it is clear from this, in order to fill up this area, huge quantity of wet ash is proposed to be used as filling material without making any treatment. What is the nature of treatment that they are going to do before it is being dumped in that area as filling material has not been

mentioned in the document and what is the nature of impact that is likely to be caused to the nearby CRZ area on account of such filling is also not clear from the studies conducted. These aspects were not considered either by the SEAC - Tamil Nadu or SEIAA - Tamil Nadu before recommending or issuing the Environmental Clearance (EC), as using the wet ash even in the land fill is not permissible without proper treatment and its impact on environment will be much more if it is being dumped as filling material without any treatment and without knowing the nature of heavy metals that will be available in the wet fly ash. This is really a major lapse on the part of the SEAC in not considering the same in its true spirit. That will amount to non-application of mind on the part of the authorities while appraising the project.

51. As per the ToR though the project proponent had stated that there was no biological diversity area available, that was not accepted by the SEAC - Tamil Nadu while recommending ToR which was approved by the SEIAA - Tamil Nadu and they instructed that biological diversity study will have to be conducted. But nowhere in the EIA Report, it reflects that such study has been conducted and what is the nature of impact and what are the mitigation measures provided for that purpose. This aspect is also either over looked or ignored by the SEAC - Tamil Nadu as well as SEIAA - Tamil Nadu and that goes to the root of very nature of compliance of ToR itself by the project proponent and this will also amount to non-application of mind on the part of SEAC - Tamil Nadu as well as SEIAA - Tamil Nadu before recommending and issuing the Environmental Clearance (EC) in favour of the project proponent.

52. As regards the complaint regarding collection of primary data before the ToR is issued, it may be mentioned that by virtue of Office Memorandum of 2017, the project proponents were permitted to rely on the primary data collected within a period of three years for the purpose of preparation of EIA Report even prior to issuance of ToR. This was intended for the purpose of avoiding delay in collection of materials which are required for the purpose of preparation of the EIA Report.

53. The dictum laid down in **Sreeranganathan K.P. Vs Union of India & Ors. (Appeal No. 172 of 2013)** is not applicable to facts of this case, as that was a case it was decided prior to 2000 Notification and as such, that will not be applicable to the facts of the case. But there is some valid point in the grounds raised by the appellant that the primary data was collected not in accordance with the guidelines issued by the CPCB and EIA Manual, and even as per directions issued in the Standard ToR as well as additional ToR, primary data will have to be collected for one season other than the monsoon season. The reason is that during the monsoon season, the pollution level will be less and that will not reflect the real status of the pollution level in the project area so as to prepare the modelling for assessing the pollution caused on account of various aspects to prepare the mitigation plan. It is seen from the EIA Report that the primary data was collected between July - September 2019. As per the documents produced by the 1<sup>st</sup> Respondent themselves from the Meteorological Department that Thiruvallur is an area which receives rain during both monsoon season viz., Northeast and Southwest and considerable amount of rain is received in that district during that period. Further, the EIA Report also reflect the presence of huge stagnation of

water in that area which reveals that there could have been rain prior to the preparation of the EIA Report and that could be during Southwest Monsoon period. So, the primary data collected during that period will not reflect the real pollution aspect and this aspect has not been considered by the SEAC - Tamil Nadu or SEIAA - Tamil Nadu before recommending and issuing the Environmental Clearance (EC). This also will go to show that there was no proper application of mind and appraisal of the project in the manner in which it was expected under the EIA Notification, 2006.

54. Further, it is seen from the documents produced that the original agenda of SEAC - Tamil Nadu for the 139<sup>th</sup> Meeting in which this project was said to have been appraised, this project was not included. But it is seen from the documents produced by the SEIAA - Tamil Nadu that this was included as a Table Item as last item on the second day of 139<sup>th</sup> Meeting of SEAC - Tamil Nadu. Table items are normally placed during the meeting, considering the urgency of the project with the permission of the members of the Expert Appraisal Committee and it will be normally taken on the same day of the meeting. If that be the case, there was no possibility for the SEIAA - Tamil Nadu circulating all the documents including the EIA Report prepared for members of the committee in advance to go through and appraise the project in its right perspective.

55. In the decision reported in *Rajeev Suri Vs. Delhi Development Authority & Ors.* 2021 SCC Online SC 7, it has been observed that normally there is a presumption that the documents will be circulated among the members and even if, large number of items were placed, being a committee that

consists of experts, they would have appraised the documents and come to a conclusion that this will have to be recommended or not to be recommended or any further clarification has to be obtained and with that details, they may be discussing and appraising the project and it was also observed in that decision, normally as submitted by the learned counsel for the regulating authority/SEIAA - Tamil Nadu that the agenda will be prepared atleast one week prior to the meeting and all necessary documents will be circulated and made available to the Expert Members atleast before one week of the meeting, but there is no possibility of such circulation in this case. Normally, it is circulated even on the previous date of the meeting, then the agenda item will be considered as additional agenda item and not as Table agenda. Nothing was mentioned about the same either in the counter statement or at the time of hearing, as at what time this was circulated among the members.

**56.** So under such circumstances, there is some force in the submission made by the learned counsel for the appellants that there was no time for the Expert Members of the SEAC - Tamil Nadu to go through the documents and they have without appraising the same, mechanically approved and recommended the project and as such, there is no proper appraisal of the project. The only condition imposed was that they will have to get a report from the Coastal Zone Management Authority regarding the CRZ Zone and that will have to be placed before the SEIAA - Tamil Nadu for consideration before issuing the Environmental Clearance (EC).

57. Further, it is seen from the documents produced on the side of the SEIAA - Tamil Nadu that based on the recommendations, the SEIAA - Tamil Nadu in their 362<sup>nd</sup> Meeting directed the project proponent to get a report from the Institute of Remote Sensing, Anna University, Chennai in respect of CRZ area under the CRZ Notification and on that basis, a further report was obtained and revised proposal was placed by the project proponent before the SEIAA - Tamil Nadu and on next meeting viz., 363<sup>rd</sup> Meeting, the SEIAA - Tamil Nadu considered these things and decided to issue the Environmental Clearance (EC) without any further discussion. Under the EIA Notification, once the SEAC - Tamil Nadu has sent the proposal with their recommendations, if there is any modification or disagreement or further particulars required, then it will have to be referred back to the SEAC for their further opinion and after getting their opinion, the SEIAA - Tamil Nadu will have to take an independent decision (See Para (8) of the EIA Notification, 2006). But in this case, though a revised proposal for the reduced area was produced based on the report prepared by the IRS, Anna University, Chennai obtained by the project proponent, the same has not been referred back to the SEAC - Tamil Nadu for further opinion as to whether that was in tune with the recommendations made by them and if any further conditions will have to be imposed. That also shows that there is a procedural violation in appraising the project by the SEIAA - Tamil Nadu which will go to the root of the matter and vitiate the proceedings.

58. As regards the competency of the consultants are concerned, the Centre for Environment, Health and Safety, Annamalai University is an accredited agency for conducting the EIA Study and their certificate of

accreditation produced along with the EIA Report issued by the NABET dated 18.04.2019 shows that they have been accredited to carry out the EIA Consultancy in respect of the following activities:-

Sl. No.	Name of the Sector	Cat.	Section No. as per NABET Scheme	Sector No. as per MoEF&CC EIA Notification
1	Mining of minerals including Open cast/underground mining	A	1	I (a) (i)
2	River Valley projects	A	3	1 (c)
3	Cement plants	A	9	3 (b)
4	Distilleries	A	22	5 (g)
5	Industrial Estates/ Parks/ Complexes/ Areas, Export Processing Zones (EPZs), Special Economic Zones (SEZs), Biotech Parks, Leather Complexes	A	31	7 (c)
6	Common hazardous waste treatment, storage and disposal facilities (TSDFs)	A	32	7 (d)
7	Ports, harbours, break waters and dredging	B	33	7 (e)
8	Common effluent treatment plants (CETPs)	B	36	7 (h)

59. It is seen from this they are not authorized to conduct the EIA Study in respect of Item 8 (b) Category as per the EIA Notification, 2006, though they have been authorized to do the sector study in respect of Industrial Estates/Parks/Complexes/Areas, Export Processing Zones (EPZs), Special Economic Zones (SEZs)/Biotech Parks/Leather Complexes (Item 7 (c) of the EIA Notification, 2006). It is also seen from the report which was sent as a reply to the letter dated 09.03.2019 by the Centre for Environment, Health and Safety (CEHS) that their application for renewal of accreditation is pending. That shows that as on the date of issuance of letter, they do not have the accreditation. So, they are not entitled to carry out the EIA Study in this regard at that time.

60. As regards the ITCOT is concerned, the Special Purpose Vehicle project of SIPCOT and TIDCO and both of them have shareholding in ITCOT. They are having some interest in the project which is being done as a joint venture project of TIDCO, SIPCOT and Tamil Nadu Polymer Industries Park Limited. So, it cannot be said to be an independent consultancy which is dealing with the project. The purpose of entrusting an independent agency the task to do the EIA Report work is to ensure transparency and also get an unbiased report based on the study and they will not be having any interest in the project. If any person who is interested in the project is doing the project work, then it cannot be said to be done in a transparent and unbiased manner by an independent agency considering it in an independent angle.

61. In the decision reported in **Sreeranganathan K.P. Vs Union of India & Ors. (Appeal No. 172 of 2013)**, this Bench has categorically held that any report prepared by a person not having accreditation at the relevant time cannot be relied on for the purpose of assessing the environmental impact assessment, as it cannot be said to be an agency which is having accreditation to do that particular study.

62. It is seen from the counter statement filed by the 1<sup>st</sup> Respondent that the environmental impact assessment study was subsequently entrusted to the Hubert Enviro Care System Private Limited who are having accreditation to prepare the EIA Report in respect of projects including Item 8 (a) and Item 8 (b) of Schedule to the EIA Notification, 2006 and their accreditation was extended till 23.01.2020 and that information was given by letter dated 23.10.2019. It is not known as to whether as on the date of entrustment of the study to them, whether they are having proper

accreditation or not. Further, it is not clear from the EIA Report as to whether they have conducted any independent evaluation of the work done by the Centre for Environment, Health and Study, Annamalai University. It is also not clear from the documents that as on the date when the work was entrusted and the EIA Study was conducted, whether the Hubert Enviro Care System Private Limited is having accreditation or not. If the accreditation was extended only on 23.10.2019, then it cannot be said that at the time of conducting the environmental impact study, they have got the proper accreditation as well.

**63.** So under such circumstances, there is some force in the submission made by the learned counsel for the appellant that the EIA report prepared by the consultants cannot be said to be a proper acceptable EIA Report by the accredited agencies and as such, the same should not have been relied on by the SEIAA - Tamil Nadu for the purpose of considering the project. These aspects were also not considered by the SEAC - Tamil Nadu or SEIAA - Tamil Nadu while considering the project.

**64.** It is also seen from the Environmental Clearance (EC) that one of the conditions was that if any "A - Category" or "B - Category" projects are to be established in the proposed area, then they will have to obtain necessary Environmental Clearance (EC) prior to establishment of the same which is against the proposal submitted by the project proponent themselves. Further, Item 7 (c) of the Schedule to the EIA Notification, 2006 reads as follows:-

7(c)	Industrial estates/ parks/ complexes/ areas, export processing Zones (EPZs), Special Economic Zones (SEZs), Biotech Parks, Leather Complexes.	<p>If at least one industry in the proposed industrial estate falls under the Category A, entire industrial area shall be treated as Category A, irrespective of the area.</p> <p>Industrial estates with area greater than 500 ha. and housing at least one Category B industry.</p>	<p>Industrial estates housing at least one Category B industry and area &lt;500 ha.</p> <p>Industrial estates of area &gt; 500 ha. and not housing any industry belonging to Category A or B.</p>	<p>“Genral as well as special conditions shall apply.</p> <p>Note:  1. Industrial Estate of area below 500 ha. and not housing any industry of Category ‘A’ or ‘B’ does not require clearance.  2. If the area is less than 500 ha. but contains building and construction projects &gt; 20,000 Sq. mts. And or development area morethan 50 ha it will be treated as activity listedat serial no. 8(a) or 8(b) in the Schedule, as the case may be.”</p>
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65. If any “A - Category” or “B - Category” project has to be included, then it will go out of Item 8 (b) of the Schedule to the EIA Notification, 2006 and this will have to be treated under Item 7 (c) of the Schedule to the EIA Notification, 2006.

66. It is seen from the EIA Report that the project area is low lying and needs filling to an extent of 1 to 2 meters and it was inundated during heavy rains. So, there is a necessity to have a study of biological diversity of the area both during non-monsoon season as well as monsoon season, so as to ascertain whether this area is used for breeding purposes also by the marine aquatic fauna or by mainland species.

67. In order to ascertain the real nature of the land, as most of the area has been filled with fly ash and levelled by the project proponent, it is necessary for the SEIAA - Tamil Nadu to issue directions to the project proponent to remove the filled up area by fly ash to ascertain the real nature of land in question and this must be done within a period of 45

days, well before the onset of the Southwest monsoon, then only true picture of the area can be ascertained during the non-monsoon season and monsoon seasons.

68. The overall circumstances mentioned above will go to show that there are serious lapses in the appraisal and assessment of the project by the SEAC - Tamil Nadu and SEIAA - Tamil Nadu and the same is not in accordance with the procedure provided under the EIA Notification, 2006 and as such, the Environmental Clearance (EC) granted cannot be said to be strictly following the procedure provided under the EIA Notification, 2006 and the same is liable to be set aside.

69. So, we feel that the appeal can be disposed of with the following directions:-

a. The Environmental Clearance (EC) granted to the 1<sup>st</sup> Respondent for the Polymer Industrial Park by the 2<sup>nd</sup> Respondent/SEIAA - Tamil Nadu vide their proceedings Letter No. SEIAA-TN/F.6957/EC/8(b)/683/2019 dated 11.12.2019 is set aside and the same is remitted to the SEIAA - Tamil Nadu for fresh consideration with the following directions:-

i. The SEIAA - Tamil Nadu is directed to refer the matter to the SEAC - Tamil Nadu for issuing further Terms of Reference (ToR) for conducting further EIA study on the basis of the observations made by this Tribunal regarding the existence of salt pan in this area as per 1996 CZMP which is also subject to tidal influence with the assistance of Institute of Remote Sensing, Anna University, Chennai

and conduct a study regarding the impact of the project on salt pans and arrive at the extent of natural salt pan that is available in that area.

- ii.** The 1<sup>st</sup> Respondent/project proponent is also directed to carry out the study of biological diversity of the area in question also taking into account that the area is subject to tidal influence which was directed to be conducted by them as per the Terms of Reference issued earlier.
- iii.** It is seen from the EIA Report that the project area is low lying and needs filling to an extent of 1 to 2 meters and it was inundated during heavy rains. So, there is a necessity to have a study of biological diversity of the area both during non-monsoon season as well as monsoon season, so as to ascertain whether this area is used for breeding purposes also by the marine aquatic fauna or by mainland species.
- iv.** In order to ascertain the real nature of the land, as most of the area has been filled with fly ash and levelled by the project proponent, it is necessary for the SEIAA - Tamil Nadu to issue directions to the project proponent to remove the filled up area by fly ash to ascertain the real nature of land in question and this must be done within a period of 45 days, well before the onset of the Southwest monsoon, then only true picture of the area can be ascertained during the non-monsoon season and monsoon seasons.

- v. The EIA Report is directed to be prepared by a competent accredited agency having validity as on the date of preparation of the EIA Report till it is being filed and considered, considering the aspects referred to in the Judgment including permissibility and whether untreated wet fly ash is permitted for filling the impugned area, the impact of filling up of the land with wet fly ash and its impact on downstream area and also neighbouring CRZ area and if it is not permissible to use treated or untreated wet fly ash, whether such a filling up with other permissible material is allowed in the impugned area and what would be the flood impact that is likely to be caused during monsoon on either side of the project area due to filling up of the area and what are all the mitigation measures to be made for that purpose.
- vi. The baseline study will have to be conducted at a time when there is no rain preferably between January - May to ascertain the real position of pollution in that area.
- vii. The EIA Study must identify the flora and fauna available, existence of any migratory birds coming to that area, whether this area is situated between the inter-tidal portion where the tidal effect will be available during high tide period during non-monsoon or monsoon periods and whether any alternate site will have to be considered by the project proponent and which are all those areas and what is the reason for selecting this area for establishing the project and other things which the

SEAC - Tamil Nadu feel necessary for the purpose of consideration to assess the impact of the project on environment and further remedial measures to be taken in this regard.

**viii.** After getting the EIA Report so prepared, then the SEIAA - Tamil Nadu is directed to place the same before the SEAC - Tamil Nadu and the SEAC - Tamil Nadu may consider these reports after detailed deliberation and take decision as to whether the project will have to be recommended or not and if so, with what conditions.

**ix.** If the members of the SEAC - Tamil Nadu wants to inspect the area to ascertain the real nature of the area, then they are directed to conduct inspection as well and thereafter, evaluate the project in a proper manner and take appropriate decision as to recommend or not to recommend or if to recommend, with what conditions.

**x.** After getting the recommendation from the SEAC - Tamil Nadu, the SEIAA - Tamil Nadu is directed to consider the same and take appropriate decision regarding the issuance or otherwise of the Environmental Clearance (EC) of the project in accordance with law.

**b.** The SEIAA - Tamil Nadu is directed to complete the process of assessment as early as possible at any rate **within a period of 9 (Nine) months.**

70. The points are answered accordingly.

**71. In the result, the appeal is allowed in part and disposed of with the following directions:-**

i. The Environmental Clearance (EC) granted to the 1<sup>st</sup> Respondent for the Polymer Industrial Park by the 2<sup>nd</sup> Respondent/SEIAA - Tamil Nadu vide their proceedings Letter No. SEIAA-TN/F.6957/EC/8(b)/683/2019 dated 11.12.2019 is set aside and the same is remitted to the SEIAA - Tamil Nadu for fresh consideration with the following directions:-

a) The SEIAA - Tamil Nadu is directed to refer the matter to the SEAC - Tamil Nadu for issuing further Terms of Reference (ToR) for conducting further EIA study on the basis of the observations made by this Tribunal regarding the existence of salt pan in this area as per 1996 CZMP which is also subject to tidal influence with the assistance of Institute of Remote Sensing, Anna University, Chennai and conduct a study regarding the impact of the project on salt pans and arrive at the extent of natural salt pan that is available in that area.

b) The 1<sup>st</sup> Respondent/project proponent is also directed to carry out the study of biological diversity of the area in question also taking into account that the area is subject to tidal influence which was directed to be conducted by them as per the Terms of Reference issued earlier.

- c) It is seen from the EIA Report that the project area is low lying and needs filling to an extent of 1 to 2 meters and it was inundated during heavy rains. So, there is a necessity to have a study of biological diversity of the area both during non-monsoon season as well as monsoon season, so as to ascertain whether this area is used for breeding purposes also by the marine aquatic fauna or by mainland species.
- d) In order to ascertain the real nature of the land, as most of the area has been filled with fly ash and levelled by the project proponent, it is necessary for the SEIAA - Tamil Nadu to issue directions to the project proponent to remove the filled up area by fly ash to ascertain the real nature of land in question and this must be done within a period of 45 days, well before the onset of the Southwest monsoon, then only true picture of the area can be ascertained during the non-monsoon season and monsoon seasons.
- e) The EIA Report is directed to be prepared by a competent accredited agency having validity as on the date of preparation of the EIA Report till it is being filed and considered, considering the aspects referred to in the Judgment including permissibility and whether untreated wet fly ash is permitted for filling the impugned area, the impact of filling up of the land with wet fly ash and its impact on downstream area and also neighbouring CRZ area

and if it is not permissible to use treated or untreated wet fly ash, whether such a filling up with other permissible material is allowed in the impugned area and what would be the flood impact that is likely to be caused during monsoon on either side of the project area due to filling up of the area and what are all the mitigation measures to be made for that purpose.

f) The baseline study will have to be conducted at a time when there is no rain preferably between January - May to ascertain the real position of pollution in that area.

g) The EIA Study must identify the flora and fauna available, existence of any migratory birds coming to that area, whether this area is situated between the inter-tidal portion where the tidal effect will be available during high tide period during non-monsoon or monsoon periods and whether any alternate site will have to be considered by the project proponent and which are all those areas and what is the reason for selecting this area for establishing the project and other things which the SEAC - Tamil Nadu feel necessary for the purpose of consideration to assess the impact of the project on environment and further remedial measures to be taken in this regard.

*h)* After getting the EIA Report so prepared, then the SEIAA - Tamil Nadu is directed to place the same before the SEAC - Tamil Nadu and the SEAC - Tamil Nadu may consider these reports after detailed deliberation and take decision as to whether the project will have to be recommended or not and if so, with what conditions.

*i)* If the members of the SEAC - Tamil Nadu wants to inspect the area to ascertain the real nature of the area, then they are directed to conduct inspection as well and thereafter, evaluate the project in a proper manner and take appropriate decision as to recommend or not to recommend or if to recommend, with what conditions.

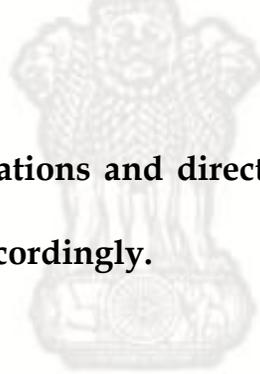
*j)* After getting the recommendation from the SEAC - Tamil Nadu, the SEIAA - Tamil Nadu is directed to consider the same and take appropriate decision regarding the issuance or otherwise of the Environmental Clearance (EC) of the project in accordance with law.

**ii.** The SEIAA - Tamil Nadu is directed to complete the process of assessment as early as possible at any rate **within a period of 9 (Nine) months.**

**iii.** Considering the circumstances, parties are directed to bear their respective costs in the appeal.

iv. The Registry is directed to communicate this order to the SEIAA - Tamil Nadu and direct them to take back the file relating to the SEIAA - Tamil Nadu, if any, produced at the earliest.

72. With the above observations and directions, this appeal is allowed in part and disposed of accordingly.



सत्यमेव जयते

Sd/-

Justice K. Ramakrishnan, JM

Sd/-

Dr. Satyagopal Korlapati, EM

Appeal No.11/2020 (SZ)  
04<sup>th</sup> May 2022. Mn.

NGT