

Item No.4 & 5:

Court No.1

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

(Through Video Conference)

Appeal No.32 of 2020 (SZ)

With

Appeal No.34 of 2020 (SZ)

IN THE MATTER OF

1) D. Ranjith Kumar
S/o. T. Dheenadhayalan
19, Vellar Street
Manallur Village Post
Gummidipoondi,
Thiruvallur District – 601 202.

2) S. Jagan Kumar
S/o. Srinivasalu
88, Malliah Street,
Manallur Village Post,
Gummidipoondi
Thiruvallur District – 601 202.

...Appellant (s)

Versus

1) Union of India
Represented by its Secretary
The Ministry of Environment, Forest and Climate Change
New Delhi
Indira Paryavaran Bhawan
Jor Bagh Road, Ali Ganj,
New Delhi – 100 003.

2) Tamil Nadu Pollution Control Board
Represented by its Member Secretary
76, Mount Salai,
Guindy, Chennai – 600 032.

3) The District Environmental Engineer
Tamil Nadu Pollution Control Board
EPIP Building (AO Block)
SIPCOT Industrial Complex
Gummidipoondi – 601 201.
Thiruvallur District.

4) M/s. State Industries Promotion Corporation of Tamil Nadu (SIPCOT) Ltd.

Represented by its Managing Director
19/A, Rukmani Lakhmipathy Road,
Egmore, Chennai – 600 008.

....Respondent(s)

With

1) G. Praveena

D/o. D. Gurunathan
Aged about 37 years
568, Santhapet, Manallur Village
Gumudipoondi Taluk, Thiruvallur District – 601 201.

2) S. Sivakumar

S/o. Sivalingam
Aged about 43 years
No.40, Perumal Kovil Street, Soorapoondi Village,
Gummidipoondi Taluk, Thiruvallur District – 601 201.

...Appellant (s)

Versus

1) Union of India

Represented by its Secretary to Government
Ministry of Environment, Forest and Climate Change
Indira Paryavaran Bhawan
Jor Bagh Road, New Delhi – 100 003.

2) The State Industries Promotion Corporation of Tamil Nadu (SIPCOT) Ltd.

Represented by its Managing Director
19/A, Rukmani Lakhmipathy Road,
Egmore, Chennai – 600 008.

....Respondent(s)

Appeal No.32/2020:

For Appellant(s):

Mr. A. Yogeshwaran.

For Respondent(s):

Mr. G.M. Syed Nurullah Sheriff for R1.
Mr. S. Sai Sathya Jith for R2, R3.
Mr. N.R. Elango, Senior Advocate along with
Mr. Ramesh Venkatachalapathy for R4.

Appeal No.34/2020:

For Appellant(s):

Mr. A. Yogeshwaran.

For Respondent(s):

Mrs. Me. Saraswathy for R1.
Mr. N.R. Elango, Senior Advocate along with
Mr. Ramesh Venkatachalapathy for R2.

Judgment Reserved on: 23rd August 2022.

Judgment Pronounced on: 30th September 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.

Whether the Judgment is to be published in the All India NGT Reporter – Yes.

COMMON JUDGMENT

Delivered by Justice K. Ramakrishnan, Judicial Member

1. Both the appeals are filed by two different persons challenging the same Environmental Clearance granted to the 4th respondent by the 1st respondent/Ministry of Environment, Forest & Climate Change (MoEF&CC) for establishing an industrial park in Thiruvallur District vide Proceedings F.No.21-59-2015-IA.III dated 10.11.2020.
2. Since the grounds and the facts mentioned are common, we are taking grounds and allegations made in the Appeal No.32 of 2020 (SZ) for this purpose as a leading case.
3. Both the appellants are residents of Manallur Village, Gummidipoondi Taluk, Thiruvallur District.
4. It was alleged in the appeal memorandum that the project site is situated approximately 5.5 Kms from the Pulicat Lake Bird Sanctuary which is a Ramsar protected area. The said lake is the second largest brackish water eco-system on the East Coast of India having a length of 60 Km and breadth of 0.2 to 17.5 km with high water spread area of 460 Sq. Km and low water spread area of 250 Sq. Km. It is having access both to Tamil Nadu and Andhra Pradesh and lot of rare species are available in that bird sanctuary. In *Goa Foundation's* case viz., in W.P. No.460 of 2004, the

Hon'ble Apex Court has directed the State Governments to forward the proposal for eco-sensitive zone within 10 Km of National Park and Wildlife Sanctuary. Pursuant to the said decision, the National Board for Wildlife (*hereinafter referred to as 'NBWL'*) prepared guideline dated 09.02.2011 for notifying eco-sensitive zone around the Pulicat Lake Bird Sanctuary. A final notification dated 26.06.2015 was published prohibiting the establishment of any new polluting or highly polluting industry in the Eco-Sensitive Zone. It further prohibited production of any hazardous substances apart from regulating pollution from existing units in terms of air and water, disposal of solid wastes and discharge of treated effluents as per the environmental regulations. The 4th respondent had proposed to establish and develop an industrial park at Manallur and Soorapoondi Villages for Synthetic Organic Chemicals and Integrated Paint Industries (at an estimated cost of Rs.250 Crores) in an extent of 691.587 Acres of land in the revenue limits of Manallur Village, Gummidipoondi Taluk, Thiruvallur District.

5. It was further alleged in the appeal memorandum that this area is having hilly terrain and also adjoining to the agricultural lands and habitation. The 4th respondent had obtained Terms of Reference (ToR) from the MoEF&CC vide F.No.21-59/2015 - IA.III dated 22.07.2015 and its extension issued upto 21.07.2019 by MoEF&CC vide letter F.No.21-59/2015 - IA.III (Pt) dated 13.11.2018. The Environmental Impact Assessment was done by M/s. Centre for Environment, Health and Safety (*in short CEHS*), Annamalai University and information and technical brief was surveyed by M/s. ITCOT Consultancy and Services Ltd. After obtaining the ToR and preparing the draft EIA Report, the public hearing was conducted on 03.07.2019 and some of the appellants have participated in the public hearing and aired their grievances on behalf of the residents of the village. Thereafter, the final EIA Report was prepared and application for EC was made by the 4th respondent to the 1st respondent and it was placed in the 230th meeting of the Expert Appraisal Committee (EAC) held on 28.01.2020, and the Committee had deferred the proposal for want of additional information from the project proponent and called for a revised EIA report from the 4th respondent.

Further, it was placed in the 239th meeting held on 29th - 30th July, 2020 where the EAC had deferred consideration of the proposal, as the 4th respondent had not uploaded the revalidated report and for want of additional documents. The EIA report submitted by the 4th respondent indicated suppression of facts, lack of information and clarity but despite the same, later the EAC had recommended the project in the 241st Meeting of the EAC and accepting the recommendation, the impugned EC was granted to the 4th respondent.

6. The issuance of EC was challenged on the following grounds:-

- 6.1 In the 230th Meeting held on 28.01.2020, the EAC had informed that as on that date M/s. CEHS, Annamalai University had no accreditation, though their application for renewal was pending. Further, it was also noted that the project area is within 5.5 Km from the Pulicat Lake Bird Sanctuary which was not mentioned in the Form - I Application and further studies will have to be conducted taking into these aspects, as certain things mentioned in the earlier report were not sufficient. Thereafter, the 4th respondent had terminated the service of M/s. CEHS and engaged M/s. Hubert Enviro Care Systems Private Limited for revision and validation of the EIA Report after obtaining NOC from M/s. CEHS, Annamalai University and M/s. ITCOT Consultancy and Service Limited. Subsequently, the validation was done and subsequent report was filed. There also, there was no proper appraisal done and thereafter, no public hearing was conducted on the basis of the new EIA Report which is highly essential as per the EIA Notification, 2006 and as such, the issuance of the EC is vitiated. Further, there was no clearance obtained from NBWL, as the project area is within default eco-sensitive zone of 10 Km and only later, they have applied for clearance to the NBWL and that is pending.
- 6.2 There are villages situated near the area and the existence of those villages was not mentioned and the impact of the project on agricultural land was also not assessed. The baseline data

was taken only for one month that too for few hours on two days and that will not represent the entire year Ambient Air Quality.

- 6.3 Further, the cumulative impact of the industries likely to come was not discussed even in the EIA Report, but only they have mentioned that necessary steps will be taken by the industries which are going to be located at the time when they are applying for the EC and general methods by which the pollution can be addressed alone were mentioned.
 - 6.4 Further, as per the restrictions in the eco-sensitive zone, no Red Category industry can be permissible and this aspect has not been considered either by the EAC or by the MoEF&CC before granting the EC.
 - 6.5 There are water bodies available even as per the documents produced by the project proponent and what are all the methodology required for protecting the same were not mentioned as well.
 - 6.6 Even as per the map produced, there are number of villages situated within 10 Kms and impact of the same on this project was not mentioned.
7. So, according to the appellant in both the cases, the EIA Report prepared and the procedure adopted is not proper and the draft EIA Report prepared by an unaccredited agency should not have been used for any purpose. The suppression of material facts has not been considered. Moreover, it was alleged in the appeal memorandum in Appeal No.34 of 2020 that there was also violation of siting criteria of CPCB as per the Zoning Atlas. So, they prayed for setting aside the EC granted.
 8. The 1st respondent/MoEF&CC has filed counter affidavit more or less raising similar contentions in both the cases. They denied the allegation that there was no proper application of mind etc. They also mentioned about the type of industries which requires EC and as per the EIA Notification, Entry No. 7 (c), the project requires EC and if it will be treated as Category- A, if atleast one industry in the proposed industrial estate falls under Category – A, the entire industrial area shall be treated

as Category – A, irrespective of the area or the industrial estate with area greater than 500 Ha and housing atleast Category – B industry. Since in this case, the industry is intended to have Category – A project as well, this was treated as Category – A and appraised by the MoEF&CC. The 4th respondent had applied for Terms of Reference vide proposal No. IA/TNINCP/271 17/2015 dated 22.07.2015 for development of Manallur Industrial Park in Gummidipoondi Taluk of Thiruvallur District. The Expert Appraisal Committee (EAC) (Infrastructure - 1) in its 147th EAC meeting held on 23rd - 24th April, 2015 appraised the project and recommended the Terms of Reference (TOR) for preparation of EIA/EMP report as per the provisions of EIA Notification, 2006. It was also contended that on recommendation of EAC, the 1st respondent has granted TOR on 22.07.2015 and its extension was issued on 13.11.2018, for preparation of EIA/EMP report and conducting public hearing and copy of the ToR letter dated 22.07.2015 was produced as Annexure – R1. The public hearing was conducted on 03.07.2019 at K.V.C. Mahal, Sathyavedu Road, Madharapakkam, Gummidipoondi Taluk, Thiruvallur District under the supervision of the District Collector, wherein all issue raised by the concerned person has been addressed. The project proponent vide online proposal No. IA/TN/NCP/27117/2015 had applied on 24.12.2019 for grant of EC and the proposal was discussed and appraised by the Expert Appraisal Committee (Infrastructure - 1) in its 230th meeting held on 28th – 29th January, 2020. The EAC after detailed deliberations during 230th meeting held on 28th – 29th January, 2020, inter-alia observed as follows: *“i. Though the consultant has already applied for accreditation (renewal) but as on date he does not possess accreditation certificate from QCI/NABET. ii. The certificate from Chief Wildlife Warden that states the distance of existing Pulicat Wildlife Lake Sanctuary or any other protected area located in the close vicinity of the proposed project site was not provided. iii. Proponent has mentioned that there is no protected area within 10 km range of the proposed site. However, as per Ministry's Decision Support System, Pulicat Lake Wildlife Sanctuary is located at 5.5 km from project site. iv. Proponent shall revise the EIA/EMP report by incorporating all above mentioned observations of EAC.”* The EAC deferred the proposal with the above observation and directed the project proponent to provide the information with regard to the above said observations. The copy of the

relevant portion of the minutes of the 230th Meeting was produced as Annexure - R2. The proposal was again taken by the EAC in its 239th meeting held on 29th - 30th July, 2020. During the appraisal, the EAC observed that the project proponent has not submitted information therefore, deferred the matter with same observation as mentioned above and copy of the relevant portion of minutes of the 239th Meeting was produced as Annexure - R3. Pursuant to the information sought by the EAC in its 230th and 239th meeting, the project proponent had submitted its point wise reply vide letter dated 14.08.2020. The project proponent had informed that they had appointed accredited consultant M/s. Hubert Enviro Care Systems Pvt. Ltd. instead of M/s. Centre for Environment, Health and Safety, Annamalai University and given no objection for utilizing the EIA/EMP report and baseline data of the project by M/s. Hubert Enviro Care System (P) Limited for appraisal by MoEF&CC and the copy of the letter so given was produced as Annexure - R4. The project proponent has given information that the Pulicat lake Bird Sanctuary is located at 5.77 Km (towards NE) from the project boundary and applied for NOC from NBWL. The proposal was again considered by the EAC in its 241st meeting held on 25th - 26th August, 2020. The EAC after examining the documents submitted by the project proponent and detailed deliberations during its 241st meeting, recommended the proposal for grant of Environmental Clearance with certain conditions which are stipulated in the Environmental Clearance dated 10.11.2020 and copy of the relevant portion of minutes of the 241st Meeting was produced as Annexure - R5. Upon recommendation of EAC, the 1st respondent has granted the Environmental Clearance subject to stipulation of various environmental safeguards, evidenced by Annexure -R6. While granting the Environmental Clearance, they stipulated a specific condition that *"The Environmental Clearance to the project is primarily under provisions of EIA Notification, 2006. It does not tantamount to approvals/consent/permissions etc. required to be obtained under any other Act/Rule/regulation. The Project Proponent is under obligation to obtain approvals /clearances under any other Acts/ Regulations or Statutes as applicable to the project. The project proponent shall obtain all other necessary statutory permission from the concerned authority."* They have issued the EC after considering all the necessary aspects. The fact that the EAC had deferred

the proposal twice and ask for further reports will go to show that there was application of mind. So, there was no ground made out for setting aside the Environmental Clearance granted.

9. The 4th respondent filed counter affidavit in Appeal No.32 & 34 of 2020 denying the allegations made in the appeal memorandums in both the cases. They further contended that the EC granted was proper. In order to meet the requirement of providing employment and also economic development, they have decided to have more industrial estates and the Government of Tamil Nadu had accorded Administrative Sanction vide G.O. Ms. No. 119, Industries Department dated 07.06.2013 for establishment of SIPCOT Industrial Park at Manallur and Soorapoondi Villages in Gummidipoondi Taluk, Thiruvallur District, Tamil Nadu. Since it falls under the regime of EIA Notification, 2006, they applied for EC. They submitted Form-I, Pre-Feasibility Report (PFR) and other necessary documents to MoEF&CC through a NABET Accredited EIA consultant viz., M/s. Centre for Environment, Health and Safety (CEHS) for getting Terms of Reference (ToR) and clearance for the proposed SIPCOT Industrial Park at Manallur. It is further contended that the same was granted and on that basis, public hearing was conducted and they also reiterated the contentions raised by the 1st respondent regarding the decisions of the EAC at different level and entrustment of the further study to an another expert agency M/s. Hubert Enviro Care System Private Limited and the study was conducted by them and it was properly appraised and they have taken into consideration and the documents produced and the details and the explanation given by the project proponent and the same was recommended by the EAC and clearance was granted by the MoEF&CC. So, there was no defect in the procedure. They denied the allegation that the EIA Report was prepared by an unaccredited consultant. M/s. CEHS had the requisite accreditation during conducting the baseline study (April to June 2018) and submission of the EIA Report (21.07.2019) of Manallur Industrial Park under 'Sector 31' in the QCI-NABET List of Accredited Consultant Organizations/Rev. 19, January, 2019 and it had NABET Accreditation valid till 20.07.2023. During the 230th Meeting of the EAC, M/s. CEHS has

presented the proposal before the Expert Appraisal Committee (EAC), but the appellants have mentioned that the project proponent had engaged M/s. Hubert Enviro Care Systems Pvt. Ltd. Though the earlier consultant is having required accreditation, but it was not renewed. In order to avoid further legal complications, as directed by the MoEF&CC, they have changed the consultant and as permitted by the EAC, they obtained NOC for using the baseline data collected by the previous consultant and on that basis, they conducted further study as well. The grievance raised in the public hearing was addressed and detailed reply was given for that purpose. They have also given the details of the flora and fauna available in Pulicat Lake Bird Sanctuary and also given the details of the pollution control mechanism adopted by them and also mitigation measures to be provided. They also provided the various methods by which the probable pollution that is likely to be caused can be mitigated. 3.085 Hectares of poramboke land has been excluded by Thiruvallur District Collector vide letter no. 14888/2018 dated 10.06.2019 and 2.985 Hectares of patta land is also excluded from land acquisition and the total area of the Industrial Park is reduced to 279.99.5 Hectares, though the original extent proposed was 286.065 Hectares. The Ambient Air Quality monitoring was done from April to June 2018 at 10 different locations in and around the project site within 10 km radius, which was provided along with the EIA Report and later, it was validated during February 2020 and the validated data was incorporated in the revised EIA Report. The public hearing was conducted and the views raised were addressed by giving detailed reply to the same and that was placed before the EAC which had considered the same. They have applied for clearance from the NBWL and that is pending. All socioeconomic aspects have been properly considered. They also provided 1.5% of project cost as CER activities with focus on health and sanitation facilities for surrounding villages and desilting of water bodies near the site, thereby improving the socio infrastructure made in that area. They have denied various allegations made in the appeal memorandum in both the cases. So, they prayed for dismissal of the appeals.

10. The 4th respondent filed additional counter affidavit common to both the appeals reiterating the Office Memorandums issued by the MoEF&CC in respect of applying for Environmental Clearance and clearance from the NBWL in respect of eco-sensitive zones of the sanctuaries and protected parks and on that basis, they have filed an application for that purpose. At the 44th Meeting of the Expert Committee for declaration of eco-sensitive zone dated 18.01.2021 at Item No.3.20, the following has been mentioned:-

"Item No. 3.20 - Pulicat Bird Sanctuary, Tamil Nadu

The Principle Chief Conservator of Forest (PCCF), Government of Tamil Nadu, represented the State Government and stated that the proposal for ESZ around Pulicat Bird Sanctuary is under pre draft stage with zero extent on sides of the Protected Area. It was stated that surrounding areas of the Protected Area are private non forest land and the sanctuary already includes 13 villages. The distance between the boundary of these villages from HTL of the lake ranges from about 450 m to more than 5 kms at certain places and therefore this zone provides sufficient shelter and buffer to the birds. The State Government representative informed that they are working on the feasibility of proposing non-zero boundaries extent. It was assured that a proposal will be submitted soon. The Principle Chief Conservator of Forest, Government of Tamil Nadu after going through every relevant aspect has found that zero extent on sides of Pulicat Bird Sanctuary can be considered.

4. This respondent further states that Government of Tamil Nadu has also notified most of the boundary of lake as ESZ boundary and only in few places 1km has been ESZ boundary. The relevant map is annexed as annexure to this affidavit.

5. In compliance with the minutes of Ministry of Environment, Forest and Climate Change sent to Government of Tamil Nadu also has sent proposal and the same is pending with MOEF and CC

6. In the event of approval of said proposal then there shall be no necessary for getting NBWL clearance."

11. It is further contended that there was no procedural violation committed and they will start the project only after obtaining clearance from the NBWL.
12. Heard the learned counsel appearing for the appellant and respondents in both the cases.
13. The learned counsel appearing for the appellant in both the cases argued that there was suppression of fact of existence of Pulicat Lake within 10 Kms from the project area in the Form - I Application and original ToR was issued without taking into account this aspect and public hearing was conducted on that basis and the final EIA Report was prepared by the Centre for Environment, Health & Safety (CEHS), Annamalai University and in the 230th Meeting of the EAC, the committee found that

as on the date of preparation and submission of the report, the EIA Consultant has no accreditation, as their application for renewal was pending and also the existence of Pulicat Lake was not mentioned and on that basis, the project proponent was directed to give certain details. Accordingly, in the next meeting, they informed the committee that they have changed the consultant from CEHS to M/s. Hubert Enviro Care Systems Private Limited and the EAC found that they will have to obtain NOC from the original consultant who prepared the baseline data for the purpose of utilizing the same for preparation of the revised baseline data and they will have to conduct further study on that basis. It is thereafter, on the basis of the so called revalidated baseline data and data collected for one month by the new consultant, the further report was submitted. But quite unfortunately, there was no further public hearing was conducted on that basis, as new additional things were noted incorporating the Pulicat Lake etc. which was not brought under the notice of the public to address the same as well. So, as such without conducting the further public hearing or without uploading the same in the public domain giving opportunity to the public to file their objections/representations, the EAC had proceeded with the matter which is not proper. Further, the data collected by the consultant agency who has no accreditation as on that date should not have been relied on and they should have conducted further study on this aspect independently and the procedure adopted for revalidation by the EAC is without any authority.

14. Further, the learned counsel argued that there is no impact assessment done regarding the nature of industries, probable pollution that is likely to be caused and the mitigation measures and the impact of the Red Category industries which are to be housed in the Industrial Estate on Pulicat Lake and other forest area have not been properly mentioned and the measures provided in the EIA Report given was only vague and general.

15. The learned counsel also relied on the decisions of the Hon'ble Apex Court in I.A. No.1000 of 2003 in W.P. No.202 of 1995, wherein certain directions have been issued and there are certain restrictions made in respect of eco-sensitive zone. The Red Category industries are not supposed to be housed within the eco-sensitive zone and this aspect has not been considered by them. As per the CPCB Zoning Atlas, polluting industries should not be located in an area with high groundwater table. The present site is surrounded on all sides by villages and houses abutting the boundary of the proposed site and the groundwater table are high at about 1- 2 Meter depth. There are schools, hospitals situated within the vicinity. But at the time of appraisal of the EAC, the project proponent had stated that they have restricted the Red Category industry to 10% and the industries which will be falling in Entry No.5 (f). An attempt was also made by the Senior Counsel appearing for the project proponent that CEHS had accreditation and letter issued by the National Accreditation Board for Education and Training (NABET) on 02.07.2020 enable them to continue the process, but it only says that meanwhile this letter is issued to the CEHS to represent EAS in EAC/SEAC which were carried and completed prior to their application for renewal. But the EIA Report was not completed prior to their application for renewal. The CEHS did not possess the requisite accreditation even during the preparation and filing of the final EIA Report which is clear from the following:-

"a. Page 157 of PP's typed set - CEHS's accreditation certificate NOT filed as Annexure IV with the EIA, instead a screenshot of CEHS status has been filed which shows that they are in the process of complying as on December 17, 2018

b. Page 156 of PP's typed set contains another screenshot showing that CEHS is in the process of complying as on July 09, 2018

c. Page 158 of PP's typed set contains another screenshot showing that CEHS is in the process of complying as on January 2019

d. Page 159 - PP typed set contains a letter dated April 2019 from NABET saying that CEHS has reapplied for accreditation and that it is under process. Date of application has not been stated - but from the above dates, the application ought to be prior to July 2018.

e. It is the case of the Project proponent that EIA study was completed in December 2018 and Draft EIA submitted to TNPCB on 03.01.2019.

f. Public Hearing conducted on 03.07.2019 and minutes from the collector was received on 20.07.2019 (see letter dated 23.07.2019 from SIPCOT to MOEF & CC)

g. EIA report after public hearing uploaded on - 21.07.2021 or 23.07.2021.

h. Therefore, So EIA report was completed only after 19.07.2019 and CEHS did not possess necessary accreditation even at the time of completion of EIA report or its submission and the EAC's observation is correct.

i. In fact in the reply of SIPCOT dated 21.05.2020 to queries raised in the 230th EAC meeting, they have only stated that they have changed the consultant. They do not contest the EAC's observation about CEHS not having accreditation-rather, they change the consultant.

j. The crucial date is July, 2019 when the EIA Report was uploaded and during

this period, CEHS did not have accreditation. No certificate to this effect was filed by SIPCOT."

16. Further, M/s. ITOCT had participated in the preparation of the EIA Report which is having conflict of interest, as that institution is a Special Purpose Vehicle for SIPCOT and TIDCO and as such, it cannot be said to be an independent agency. This issue was considered by this Tribunal in **Appeal No.11 of 2020 (SZ)** in another matter relating to the SIPCOT itself viz., the Polymer Industrial Park Limited.
17. Further, the EIA Report was also not in tune with the ToR issued. There was absence of cumulative impact assessment. There was no mention about the process emission, main source of fugitive emission from the proposed unit, the generic random data generated is used in AEROMOD Process to return a finding that there will be no impact on area due to this project. It is not a scientific method by which it will have to be done. There are other industries situated within that area and that has not been properly considered and there was no proper socio-economic impacts, disaster management plan, etc. The absence of conducting cumulative impact assessment was considered by the Tribunal in **T. Muruganandham & Ors. Vs. Union of India & Ors. Appeal No.50 of 2012**
18. On the other hand, the learned counsel appearing for the MoEF&CC argued that all procedures have been followed and when it was brought to the notice that the earlier EIA Report was prepared by an agency which is not having accreditation as on that date, they were directed to conduct further study and accordingly, further report was submitted. Further, the public hearing was conducted in respect of the industry and main grievance of the persons were regarding pollution aspect that has been addressed by the project proponent and as such, there is no necessity for conducting further public hearing. The proceedings for getting clearance from the National Board of Wildlife (NBWL) is pending and the without getting the same, they cannot start the unit as well. It is for the NBWL to consider as to whether the clearance can be granted for Red category industries or not.

19. The learned Senior Counsel appearing for the project proponent argued that all necessary procedures for applying for the EC have been complied with. The environmental impact assessment was done by the proper accredited agency and when certain doubts were raised by the EAC about the accreditation of M/s. CEHS, Annamalai University in abundant caution, they have changed the consultant and the revised EIA Report was submitted and the revalidation of the EIA Study was conducted on the basis of the approval given by the MoEF&CC and there was no necessity for conducting further public hearing as the entire issue was before the public when the public hearing was conducted and the main grievance was only in respect of compensation and possible pollution that is likely to be caused to be addressed. The EAC as well as the issuing authority have considered all these aspects and only thereafter, they have issued the EC.
20. The learned Senior Advocate also wanted to impress upon the Tribunal that the CEHS has got necessary accreditation and their application for renewal was pending and they were permitted to present their document before the authorities and subsequently, the renewal was granted to them which is valid upto 2023. Further, all necessary studies have been conducted. The water bodies inside the project area as per the original proposal has been excluded and necessary draining system has been provided to collect the water so as to maintain the percolation pond. Further, the Hon'ble Apex Court had on several occasions come to the conclusion that the protection of environment and sustainable development will have to be balanced.
21. According to them, there is no necessity to set aside the EC granted and there is no necessity to stop the project especially when they cannot start the project without getting necessary clearance from the NBWL. Further, they are even prepared to forego the 10% Red Category industries if necessary to avoid any pollution being caused to the Pulicat lake.

22. The learned Senior Advocate relied on the decision reported in **Lafarge Umiam Mining Private Limited Vs. Union of India & Ors. (2011) 7 SCC 338, Puducherry Environment Protection Association Vs. Union of India** of the Hon'ble High Court of Madras in W.P. No.11189 of 2017 reported in MANU/TN/3293/2017, **Electrosteel Steels Limited Vs. Union of India & Ors.** reported in MANU/SC/1261/2021 dated 09.12.2021 in **Civil Appeal No.7576-7577 of 2021** of the Hon'ble Apex Court in support of their case.
23. We have considered the pleadings, submissions (both oral and written) made by the learned counsel appearing for the parties and also perused the documents available on record.
24. The points that arose for consideration in both the appeals are:
 - a. Whether the EC granted to the 4th respondent is liable to be set aside for any of the reasons stated in the appeal memorandum and the points projected at the time of hearing by the learned counsel for the appellants?
 - b. What are all the further directions (if any) to be issued applying the '*Precautionary Principle*', if this Tribunal felt that the EC need not be set aside, but further studies are required?
 - c. Relief and costs.

POINTS:-

25. Both these appeals have been filed against the grant of EC to the 4th respondent for establishing a new industrial park in the impugned site.
26. It is an admitted fact that originally when Form - I Application was submitted, the existence of Pulicat Lake within 10 Kms of default eco-sensitive zone was not mentioned. This was not even considered by the EAC at the time of issuing the ToR. It is on the basis of the ToR earlier issued in 2015 and later extended, the studies were conducted by the CEHS, draft EIA Report/EMP prepared and it is on that basis, public hearing was conducted on 03.07.2019.

27. It is seen from the Project Mile Stone submitted by the CEHS that ToR for the project was issued on 22.07.2015, extensions were granted on 13.11.2018, baseline data was collected for the period April to June 2018 and the public hearing was conducted on 03.07.2019. But it is an admitted fact that at the time when the baseline data were collected, the application for renewal of the accreditation with regard to the CEHS was pending which is clear from the documents produced by the project proponent themselves viz., letter dated 18.04.2019 issued by the National Accreditation Board for Education and Training (NABET) that the consultant had now reapplied for accreditation and their application was under process. The same was the situation in the letter dated 28.01.2020 as well. Further, in the letter dated 02.07.2020 issued by the NABET, it was mentioned that however requirement for fulfilling the shortfalls under the process but due to the outbreak of Covid-19, the supplementary assessment could not be conducted for issuing the letter and certificate of accreditation under EIA Scheme. Meanwhile, this letter is issued to enable the CEHS to represent EIAS in EAC/SEAC which were carried and completed prior to their application for renewal. But in none of the letters, it was mentioned as to when their accreditation expired and when the application for renewal was filed. A reading of the letter dated 18.04.2019 will go to show that this was issued in reference to their letter dated 09.03.2019 stating that they were accredited for conducting certain studies but they have reapplied for accreditation and their application was under process.
28. So, it is not clear from the documents produced that as to when the application for accreditation was filed, whether it was prior to study conducted by them or not. However, it is an admitted fact that in the 230th Meeting of the EAC dated 28.01.2020, the EAC had opined that since the consultancy had no accreditation, the same cannot be considered and the project proponent has to file a revised EIA Report. It was also mentioned in that meeting that the Pulicat Lake is situated within 5.5. Km from the project area and this fact was not mentioned and clarification will have to be issued on that aspect. It is on that basis, the project proponent had changed the consultant by engaging M/s. Hubert Enviro

Care Systems Private Limited and prepared the revised EIA Report incorporating the shortcomings.

29. It may be mentioned here that at the time when the public hearing was conducted, there was nothing mentioned about the Pulicat Lake and public were not aware of the mitigation measures taken by the project proponent in this regard and if this was brought to the notice of the public at that time, they could have even raised the question of establishment of the unit which is expected to be housed viz., Red Category industry. Moreover, no further ToR was issued regarding the further studies to be conducted on that basis as well.
30. So under such circumstances, there is some force in the submission made by the learned counsel for the appellant that there was no fresh public hearing conducted on the basis of the revised EIA report which contains more details including the existence of Pulicat Lake within 5.5 Km and further studies conducted in this regard to be addressed by the public. So, under such circumstances, we feel that there is a necessity for conducting a fresh public hearing on the basis of the revised EIA Report prepared by the new accredited agency for this project.
31. It is needless to say that now they cannot contend that the CEHS has proper accreditation and they are entitled to submit the EIA Report and present the same etc. especially when they have changed the consultancy on the basis of the observation made by the EAC.
32. As regards the zoning regulation also, there was some observation made by the EAC in their 239th Meeting, minutes of which were produced by the appellants as well as the MoEF&CC. There also they mentioned about the non-mentioning of these aspects in the EIA Report. It is thereafter, they have restricted the Red Category industry falling under Entry No.5 (f) to the extent of 10% of the project area, as earlier they intended to have more Red Category industries within the project area. Further, the explanation given by the project proponent is that the mitigation measures have to be taken by the Red category industries which are

going to be housed in that area when they apply for EC. We are unable to accept the same. Suppose, certain industries though declared as Red category industries, need not require EC, then there was no possibility for conducting any impact assessment study at that time. So, at the time when they are conducting the impact assessment study and also comprehensive impact of the project on environment, these aspects will have to be considered and the probable pollution that is likely to be caused on the basis of the data collected from other similar industries and probable mechanism that is likely to be adopted for that purpose, etc. must have been projected in the EIA Report, but that was not done in this case. They were only relying on certain scientific studies and on the basis of the software prepared for that purpose by some agency, projecting the possible pollution and came to the conclusion that there is no possibility of any impact of pollution in that area. The method adopted by them appears to be not proper in view of the possible pollution that is likely to be caused by housing the Red category industries along with the other category industries and the nature of hazardous/solid/liquid waste to be generated and its impact etc. and that will have to be addressed properly.

33. Further, the nature of emission that is likely to be emitted from the stack provided by the Red category industries has to be taken into account without pollution control mechanism and the mitigation measures will have to be provided after projecting the additional pollution that is likely to be caused. Further, though it was mentioned in the EIA Report that there are certain forest area and the reserve forest area and certain water bodies situated within a distance of 2 – 5 Km, what is the nature of impact that is likely to be caused on the forest and water bodies have not been elaborated in the EIA Report. The Cumulative Impact Assessment Study on the basis of any existing industries nearby also has not been conducted and nothing was mentioned about any existing industries nearby situated as well.
34. So under such circumstances, we feel that the impact assessment conducted by the project proponent is not proper and further they should not have relied on the baseline data collected by the earlier consultant

which includes M/s. ITCOT which is a Special Purpose Vehicles for the SICOT Industries as observed by this Tribunal in Appeal No.11 of 2020, when this aspect was considered in respect of the same project proponent with regard to another industrial park in another area, the Tribunal found that the report is vitiated and directed them to conduct a further study in that case.

35. Further, it is was not clear from the location that has been taken for the purpose of Ambient Air Quality includes the nearby forest area which was found to be in existence within a distance of 2 - 5 Km from the project site and what was the impact of the industries on that as well. The nature of flora and fauna available in those reserve forest and what was the impact of this project on those flora and fauna were also not discussed in the EIA Report. So, under such circumstances, it cannot be said that the revised EIA Report is reflecting all aspects and whatever given in the EIA Report will go to show that they have only given a general idea about the project and the general pollution that is likely to be caused and general methodology by which it can be curtailed etc. alone which was not the purpose of conducting the EIA study to assess the real impact of the project in the area. Further, there was nothing mentioned in the EIA Report regarding the nature of occupation undertaken by the people within 10 Km area though there are villages situated in that area.
36. We are not relying on the photographs produced by the appellant, as rightly pointed out by the Senior Counsel for the 4th respondent that they are not authenticated documents, but that can be used for the purpose of showing that there are settlements available in that area. The impact of the project on those aspects was not reflected as well.
37. So, there is some merit in the submission made by the learned counsel for the appellant that the EIA Report does not reflect the real impact of the project either on Pulicat Lake or on the reserve forest nearby and the villages that are situated as well. Even as per the nature of classifications of lands on which the project proponent want to establish the project also shows that there are certain cultivations being done like mango trees etc.

It cannot be said to be a barren land as such though certain lands were vacant and most of the lands are Government Poramboke. It was also seen from the Form - I Application that Kuttai mentioned in Survey No.273 was excluded from the project area though a percolation pond is included. What is the nature of protective measures that they are going to undertake for protecting the percolation pond is also not clear from the EIA Report.

38. We also depreciate the methodology adopted by the MoEF&CC in bifurcating the procedure for obtaining these two clearances viz., EC and Wildlife Clearance for the purpose of appraisal of the project which are likely to come within the eco-sensitive zone or default eco-sensitive zone. It is always better that if clearance from the NBWL is required that must be obtained prior to the application of EC, so that if the NBWL did not accord clearance, there is no necessity for conducting any further studies in this aspect as required under the EIA Notification and that can be avoided. Further, the EAC as well as the issuing authority viz., the MoEF&CC also will get an opportunity to evaluate the conditions imposed by the NBWL in such cases so that that can also be incorporated and deliberated and further stringent conditions (if any) required for protection of environment can also be imposed by them while recommending the project and issuing the EC. So, this may be revisited by the MoEF&CC and take appropriate decision in this regard in order to protect the environment and also waste of time by the EAC to consider the aspect in eco-sensitive zone, if the NBWL did not grant the clearance, there is no necessity for further study to be conducted in this regard.
39. So under such circumstances, we feel that there is a necessity for a revisit of the EIA Report and for that purpose, the EC granted has to be suspended atleast for some period, directing the project proponent to conduct further studies and thereafter, conduct fresh public hearing on that basis and then appraised the project by the EAC a fresh especially when the project cannot start without obtaining clearance from the NBWL.

40. In view of the detailed discussions and observations made above, we feel that the appeals can be disposed of by giving following directions:-

- a. The Environmental Clearance granted to the 4th respondent by the 1st respondent/MoEF&CC for establishing an industrial park in Manallur Village, Thiruvallur District vide Proceedings F.No.21-59-2015-IA.III dated 10.11.2020 is hereby suspended till further studies and appraisal to be done as directed by this Tribunal in the following directions.
- b. The MoEF&CC is directed to refer the matter to the EAC for the purpose of issuing additional ToR so as to conduct further studies by the project proponent on the following aspects:
 - A fresh baseline data has to be collected for one season and secondary data will have to be collected for the remaining period so as to assess the impact of the project in the project area and the neighbouring villages.
 - Mention about the number of villages that is coming within 10 Km radius and the nature and categorization of the land and the nature of land use for which it has been put and impact of the project on those lands if they are agricultural lands and agricultural activities are being undertaken.
 - Ascertain the number of industries (if any) situated within a distance of 10 Km and conduct a cumulative impact assessment of the project area and nearby area and then submit a mitigating measures that they are going to take to overcome the possible pollution that is likely to be caused on account of the industrial park.
 - While conducting the Ambient Air Quality test, the monitoring stations will have to be located in such a way that it must cover the reserve forest area, lake which are situated within a distance of 10 Km and then assess the impact of the project on those areas as well.
 - Furnish the details regarding the flora and fauna in the nearby reserve forest which are situated within a distance of 10 Km which admittedly are in existence as per the EIA Report and

the impact of the project on those flora and fauna on account of the establishment of the project.

- While considering the impact of the project, mention about the nature of industries that are likely to be housed, the probable pollution that is likely to be caused with pollution index which are likely to be projected by similar industries in other areas so as to assess the likely impact of the project on environment and the neighbouring areas and on that basis, they are expected to suggest necessary mitigation measures and also the CSR that will have to be provided to mitigate the loss that is likely to be caused to the neighbouring villages and they are not only expected to consider the villages which are coming within the project area alone for the purpose of establishment of the unit alone but the neighbouring villages abutting the industrial park as well.
 - Consider the groundwater table in the neighbouring areas by conducting proper hydrological study and thereafter, provide necessary mitigation measures to reduce the impact of the project.
- c. On the basis of the further ToR issued, the project proponent is directed to prepare a draft EIA Report and conduct a fresh public hearing as required under Para (7) of the EIA Notification by uploading the EIA Report on the basis of the ToR issued along with the EIA Report already prepared by them and after getting the views of the public, prepare a final EIA and EMP and place the same before the MoEF&CC for further appraisal.
 - d. On receipt of the same, the MoEF&CC is directed to refer the same for further appraisal to EAC and the EAC is directed to conduct a further appraisal in an effective manner and address all the issues and then make their recommendations or findings and then refer the matter to the MoEF&CC for further appraisal.
 - e. After getting the recommendations/findings from the EAC, the MoEF&CC is directed to appraise the same and make further amendments incorporating the conditions or otherwise based on the

recommendations/findings of the EAC and make amendment to the EC already granted, if it proposes to grant EC, after taking into account all the impacts and the restrictions of housing such units in the eco-sensitive zone etc.

- f. The NBWL is also directed to consider these aspects while considering the application for clearance to be granted under the Wildlife (Protection) Act, 1972. Till such time, the MoEF&CC is directed to await the clearance granted by the NBWL for the purpose of appraisal of the project by the EAC as well as the MoEF&CC and then take appropriate decision in this regard.
- g. The MoEF&CC is directed to issue ToR as directed after getting recommendation from the EAC **within a period of 1 month** from the date of receipt of this Judgment and on receipt of the same, the project proponent is directed to complete the study and prepare the draft EIA Report **within a further period of 5 months** and thereafter, public hearing will have to be conducted **within a further period of 2 months** after complying with the procedure provided under the EIA Notification and then, final EIA Report will have to be prepared and appraisal and consideration have to be completed by the EAC and the MoEF&CC **within a further period of 6 months** of completion of the public hearing.
- h. The 4th respondent is directed not to carry out any activity in the project area without completion of the above process as directed by this Tribunal and further directions to be issued by the MoEF&CC in this regard.

41. The points are answered accordingly.

42. **In the result, both these appeals are disposed of with the following directions:-**

- I. The Environmental Clearance granted to the 4th respondent by the 1st respondent/MoEF&CC for establishing an industrial park in Manallur Village, Thiruvallur District vide Proceedings F.No.21-59-2015-IA.III dated 10.11.2020 is hereby suspended till further studies and appraisal to be done as directed by this Tribunal in the following directions.

II. The MoEF&CC is directed to refer the matter to the EAC for the purpose of issuing additional ToR so as to conduct further studies by the project proponent on the following aspects:

- A fresh baseline data has to be collected for one season and secondary data will have to be collected for the remaining period so as to assess the impact of the project in the project area and the neighbouring villages.
- Mention about the number of villages that is coming within 10 Km radius and the nature and categorization of the land and the nature of land use for which it has been put and impact of the project on those lands if they are agricultural lands and agricultural activities are being undertaken.
- Ascertain the number of industries (if any) situated within a distance of 10 Km and conduct a cumulative impact assessment of the project area and nearby area and then submit a mitigating measures that they are going to take to overcome the possible pollution that is likely to be caused on account of the industrial park.
- While conducting the Ambient Air Quality test, the monitoring stations will have to be located in such a way that it must cover the reserve forest area, lake which are situated within a distance of 10 Km and then assess the impact of the project on those areas as well.
- Furnish the details regarding the flora and fauna in the nearby reserve forest which are situated within a distance of 10 Km which admittedly are in existence as per the EIA Report and the impact of the project on those flora and fauna on account of the establishment of the project.
- While considering the impact of the project, mention about the nature of industries that are likely to be housed, the probable pollution that is likely to be caused with pollution index which are likely to be projected by

similar industries in other areas so as to assess the likely impact of the project on environment and the neighbouring areas and on that basis, they are expected to suggest necessary mitigation measures and also the CSR that will have to be provided to mitigate the loss that is likely to be caused to the neighbouring villages and they are not only expected to consider the villages which are coming within the project area alone for the purpose of establishment of the unit alone but the neighbouring villages abutting the industrial park as well.

- Consider the groundwater table in the neighbouring areas by conducting proper hydrological study and thereafter, provide necessary mitigation measures to reduce the impact of the project.

- III. On the basis of the further ToR issued, the project proponent is directed to prepare a draft EIA Report and conduct a fresh public hearing as required under Para (7) of the EIA Notification by uploading the EIA Report on the basis of the ToR issued along with the EIA Report already prepared by them and after getting the views of the public, prepare a final EIA and EMP and place the same before the MoEF&CC for further appraisal.
- IV. On receipt of the same, the MoEF&CC is directed to refer the same for further appraisal to EAC and the EAC is directed to conduct a further appraisal in an effective manner and address all the issues and then make their recommendations or findings and then refer the matter to the MoEF&CC for further appraisal.
- V. After getting the recommendations/findings from the EAC, the MoEF&CC is directed to appraise the same and make further amendments incorporating the conditions or otherwise based on the recommendations/findings of the EAC and make amendment to the EC already granted, if it

proposes to grant EC, after taking into account all the impacts and the restrictions of housing such units in the eco-sensitive zone etc.

- VI. The NBWL is also directed to consider these aspects while considering the application for clearance to be granted under the Wildlife (Protection) Act, 1972. Till such time, the MoEF&CC is directed to await the clearance granted by the NBWL for the purpose of appraisal of the project by the EAC as well as the MoEF&CC and then take appropriate decision in this regard.
- VII. The MoEF&CC is directed to issue ToR as directed after getting recommendation from the EAC **within a period of 1 month** from the date of receipt of this Judgment and on receipt of the same, the project proponent is directed to complete the study and prepare the draft EIA Report **within a further period of 5 months** and thereafter, public hearing will have to be conducted **within a further period of 2 months** after complying with the procedure provided under the EIA Notification and then, final EIA Report will have to be prepared and appraisal and consideration have to be completed by the EAC and the MoEF&CC **within a further period of 6 months** of completion of the public hearing.
- VIII. The 4th respondent is directed not to carry out any activity in the project area without completion of the above process as directed by this Tribunal and further directions to be issued by the MoEF&CC in this regard.
- IX. Considering the circumstances, parties are directed to bear their respective cost in the respective appeals.
- X. The Registry is directed to communicate this order to the MoEF&CC, NBWL and SPCB for their information and compliance of directions.
- XI. The MoEF&CC is directed to take back the file (relating to the issuance of EC) produced before the Tribunal at the earliest.

43. With the above observations and directions, both these appeals are disposed of accordingly.
44. In view of the disposal of both the appeals, the pending interlocutory applications [I.A. Nos.141 & 142 of 2022 (SZ)] are also disposed of, as no further separate order are required in this regard.

Sd/-
Justice K. Ramakrishnan, J.M.

Sd/-
Dr. Satyagopal Korlapati, E.M.

Appeal No.32/2020 (SZ)
I.A. No.142/2022 (SZ)
Appeal No.34/2020 (SZ)
I.A. No.141/2022 (SZ)
30th September, 2022. Mn.

