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Bombay High Court

Case No: Public Interest Litigation No. 115 of 2010 With Civil Application No. 143 of 2010 and Civil Application No. 87 of 2012

Gram Panchayat Navlakh Umbre	APPELLANT
Vs	
Union of India and others	RESPONDENT

Date of Decision: June 28, 2012

Acts Referred:

- Constitution of India, 1950 - Article 136, 14, 21, 226, 48
- Environment (Protection) Act, 1986 - Section 15, 17, 19(b), 3, 3(3)

Citation: (2013) 1 ABR 439 : (2012) 114 BOMLR 2695

Hon'ble Judges: R.D. Dhanuka, J; D.Y. Chandrachud, J

Bench: Division Bench

Advocate: K. Sultan Singh with Mr. V. Hari Pillai, Mr. K. Himmat Singh, Ms. Susha Unni and Mr. Samar Vijay Singh instructed by Ms. Sartaj Shaikh and Sushila K. Chaurasia, for the Appellant; Ajay Basutkar for Respondent No.1, Mr. S.R. Nargolkar, Addl. GP. for Respondent No.2, Smt. Sharmila U. Deshmukh for Respondent No.5, Mr. Navroz Seervai with Mr. and Milind Sathe , Mr. K.A. Setalvad , Mrs. R.H. Khan, Abhishek Sing and Mr. S.D. Bavalekar instructed by Mulla and Mulla and Craigie Blunt and Caroe for Respondent No.6, for the Respondent

Judgement

Dr. D.Y. Chandrachud, J.

Rule. The Learned Counsel for the Respondents waive service. By consent, the Petition is taken up for hearing and final disposal. The gram panchayat of the village Navlakh Umbre has moved these proceedings under Article 226 of the Constitution through an association by the name of Navlakh Umbre Parisar Paryavaran Vikas Sangh. The Petition challenges the environmental clearances granted to the Sixth Respondent for setting up a 355 MWs combined cycle power project. The project is to come up in or around the villages of Navlakh Umbre and Badhalwadi, about 35 kms north west of Pune in the Maval Taluka. The Petition, which is in the nature of a public interest litigation, has been placed before the Division Bench in pursuance of

administrative directions of Hon''ble the Chief Justice in view of an order of the Supreme Court dated 2 May 2012 directing the disposal of the Petition by 30 June 2012. Accordingly the Petition has been heard for final disposal with the consent of all the parties.

2. On 14 September 2006 the Ministry Of Environment and Forests of the Union Government (MOEF) issued a notification in exercise of powers inter alia conferred by Section 3 of the Environment (Protection) Act 1986 stipulating a requirement of a prior environmental clearance for setting up new projects or activities and for the expansion or modernization of existing projects or activities falling within the purview of the notification. The power project which is sought to be set up by the Sixth Respondent falls in category B-1 of the Schedule to the notification.

3. Between January and March 2008 agreements to sell were executed between agriculturists and a company by the name of Helios Constructions Private Limited in respect of the land on which the power project is to be set up. It is common ground that initially clearance for setting up a Special Economic Zone was obtained from the Director of Industries. The company which purchased the land was subsequently amalgamated with the Sixth Respondent, Hindustan Electricity Generation Company Private Limited. Baseline studies for setting up the power project were conducted between March and May 2008. On 24 March 2009 and 30 June 2009 the MOEF had issued circulars mandating a prior environmental clearance for the setting up of power projects.

4. On 30 September 2009 the Sixth Respondent filed an application before the State Expert Appraisal Committee (SEAC) for setting up a power project of 355 MWs +/- 10%. Form 1 in which the application was submitted envisaged three phases of which Phase - I would consist of 355 MWs. On 29 October 2009, at the 18th meeting of the SEAC draft terms of reference as submitted by the Sixth Respondent were approved and it was envisaged that on the completion of the Environmental Impact Assessment (EIA) and a public hearing, the Sixth Respondent would approach the SEAC. The Terms of Reference contained a disclosure that the study period on the basis of which the proposal was mooted was between March and May 2008, the area for the study being 10 kms around the site. The first phase envisaged the acquisition of 195 acres of land, while the second phase involved an acquisition of 172 acres of land. Following the approval of the terms of reference a public notice was issued on 9 January 2010 in the newspapers for a public hearing as contemplated by the notification dated 14 September 2006. On 26 January 2010 the Gramsabha of several villages passed a resolution opposing the project on account of environmental concerns. On 11 February 2010 the Maharashtra Pollution Control Board (MPCB) conducted a public hearing.

5. On 13 January 2010 / 15 March 2010 the Sixth Respondent submitted an application to the Union Ministry of Environment and Forests for the expansion of its power project from 355 MWs to 2500 MWs. On 22 March 2010 a circular was

issued by the MOEF inter alia highlighting that in several cases proposals for expansion have been received though environmental clearance had not been granted or had only recently been issued. The circular inter alia clarified that in case environmental clearance for the earlier proposal was still to be accorded, the project proponent shall apply afresh and submit a comprehensive proposal for the entire project, clubbing all the phases, in order that the environmental issues could be addressed holistically.

6. On 15 April 2010 a "rapid" Environmental Impact Assessment (EIA) was submitted by the Sixth Respondent to the SEAC. Hearings of the 26th meeting of the SEAC commenced on 15 April 2010. On 16 April 2010 the SEAC recorded that the Sixth Respondent had completed the required EIA and had completed a public hearing. The SEAC formulated its decision to recommend the proposal for the grant of a prior environmental clearance to the State Environment Impact Assessment Authority (SEIAA) subject to compliance with certain conditions. Between November 2009 and April 2010 a further baseline monitoring study was conducted on behalf of the Sixth Respondent at the project site which found no significant changes in the results or parameters of the data collected between March and May 2008.

7. On 19 May 2010 a representation was filed by the Petitioners before the SEAC setting out what they regarded to be legal infirmities and social and environmental concerns arising from the project. On 14 June 2010 the present proceedings came to be instituted. On 17 June 2010, a Division Bench of this Court, while issuing notice, recorded the statement of Senior Counsel appearing on behalf of the Sixth Respondent "that the project is at initial stage and awaiting necessary permissions and approvals". A statement was made on instructions that the Sixth Respondent " will not fell any more trees without obtaining prior approval from the relevant authorities". The recommendations made by the SEAC came up initially before the SEIAA on 9 July 2010 when the authority noted that the issue of granting environmental clearance would be considered after the submission of documents set out in the minutes. On 19 July 2010 a notice to show cause was issued by the MPCB to the Sixth Respondent alleging that the Sixth Respondent had carried out work at the site even before obtaining prior environmental clearance in breach of the provisions of the notification dated 14 September 2006. In its reply dated 20 July 2010 the Sixth Respondent asserted that it had a deemed clearance with effect from 10 June 2010 in terms of the notification dated 14 September 2006. According to the Sixth Respondent in August 2010 a study was commissioned by I.I.T. Chennai on air pollution. The report dealt with the dispersion of ground level concentration of NO2 emitted from the stack of the power project which showed that the predicted minimum 24 hours'' average level concentration was less than the prescribed limit for residential, rural and other areas.

8. On 20 October 2010 a notice was issued by the Petitioners u/s 19(b) of the Environment (Protection) Act 1986. Following this a criminal complaint was filed on

13 January 2011 against the directors and officers of the Sixth Respondent and against the members of the SEAC and SEIAA by the Petitioners. The complaint proceeded on the basis that SEIAA and SEAC did not have jurisdiction to grant a prior environmental clearance to the power project once the Sixth Respondent had moved the MOEF with a proposal for expansion. On 17 January 2011 and 5 February 2011 respectively the Judicial Magistrate, First Class issued process against accused Nos.1 to 7 who were officials of the Sixth Respondent and subsequently against accused Nos.8 to 18 comprising of members of the SEAC and SEIAA on the basis that prima facie there was a violation of the provisions of Sections 15 and 17 of the Environment (Protection) Act 1986. On 28 February 2011 an order was passed by the J.M.F.C. allowing the bail applications of some of the accused inter alia subject to the condition that no work shall be carried out at the project site till the decision of the complaint. The State of Maharashtra filed a writ petition before this Court seeking to quash and set aside the criminal proceedings which had been adopted against the members of the SEAC and SEIAA.

9. On 24 March 2011 the Sixth Respondent addressed a letter to the MOEF stating that from 7 July 2010 it had pursued the environmental clearance only for a proposed power project comprising of 355 MWs + or - 10% and not for the proposed expansion to 2500 MWs. At the hearing before the SEIAA on 28 March 2011 the authority decided to refer the matter to the MOEF for a clarification with reference to the circular dated 22 March 2010. By a communication dated 26 April 2011 the MOEF confirmed the request of the Sixth Respondent for the withdrawal of the proposal for expansion to 2500 MWs. On 28 April 2011 the Sixth Respondent addressed a communication to the State of Maharashtra confirming the withdrawal of its application before the MOEF for expansion of its power project. Following this, the MOEF by a communication dated 3 August 2011 confirmed that the proposal for expansion had been withdrawn and that the project being a category B project would have to be appraised by the SEAC / SEIAA. As regards the allegation of environmental violations, the MOEF directed that its circular dated 16 November 2010 should be followed.

10. Apart from the petition filed by the State for quashing the criminal proceedings against the officials of the SEAC and SEIAA (Writ Petition 833 of 2011), a petition was filed before this Court by the Sixth Respondent (Writ Petition 8581 of 2011) seeking the issuance of a prior environmental clearance certificate. By a judgment dated 18 October 2011 a Division Bench of this Court quashed and set aside the issuance of process against the members of the SEIAA and SEAC. On 15 November 2011 a Division Bench of this Court disposed of Writ Petition 8581 of 2011 by directing the SEIAA to consider the application of the Sixth Respondent for environmental clearance to the project in the light of a decision taken at a meeting held on 28 March 2011, but without insisting on the requirement that the Sixth Respondent produces a copy of the order given for the installation of the machinery on the site and that the Sixth Respondent will not pursue expansion prior to the installation and

commissioning of the project. The Division Bench was of the view that before the SEIAA issued an environmental clearance, the Sixth Respondent could not be expected to place an order for the installation of machinery. The Court also recorded the statement of the Sixth Respondent that it had already withdrawn the proposal for expansion as noted in the letter dated 3 August 2011 of the Central Government and hence "there is no question of the Petitioner going for expansion.

11. On 4 January 2012 the State Government addressed a communication to the Sixth Respondent adverting to the fact that on a site visit conducted by the Regional Officer of the MPCB, a report had been presented to the Department of Environment from which it was noted that the Sixth Respondent had carried out tree cutting leveling and filling work at the site and that the approximate quantity of soil involved in the filling was about 1 lac cubic meters. The communication of the State Government referred to a memorandum of the MOEF dated 19 August 2010 according to which no activity relating to any project shall be undertaken without obtaining a prior environmental clearance except for fencing of the site and the construction of temporary sheds for security guards. The communication of the State Government called upon the Sixth Respondent to furnish a written communication in the form of a resolution of its Board of Directors stating that the violations of the Environment (Protection) Act 1986 would not be repeated. The communication was again challenged before a Division Bench of this Court. By an order dated 15 February 2012 the Division Bench directed the Sixth Respondent to submit a resolution to the Environment Department of the State Government to the effect that neither the Sixth Respondent nor its directors had committed any violations of the Environment (Protection) Act 1986 or the rules and, without prejudice to this contention, to furnish a commitment that no breaches would be committed thereafter. The Division Bench directed that upon the submission of such an undertaking, the Environment Department of the State Government "shall issue the requisite permission within two weeks from the date of receipt of the resolution". Following the order of the Division Bench, the SEIAA granted its approval to the project at its meeting held on 8/9 December 2011. A formal permission was communicated thereafter on 22 February 2012. On 5 March 2012 the writ petition was disposed of by the Division Bench. The Division Bench clarified that the Court had not expressed any opinion on any of the contentions raised in the petition or on the communication of the State Government dated 4 January 2012 about the Sixth Respondent or its directors having committed a violation of the Environment (Protection) Act 1986 or in regard to the contention of the Sixth Respondent relating to a deemed prior environmental clearance.

12. In proceedings under Article 136 of the Constitution, the Supreme Court by an order dated 1 March 2012 directed that the permission granted to the Sixth Respondent by the letter dated 22 February 2012 shall remain in abeyance. By a subsequent order dated 2 May 2012, the Supreme Court directed that it would be open to the Sixth Respondent to (i) place its orders for purchase of machineries; (ii)

construct a boundary wall around the premises where the power plant is proposed to be set up; (iii) plant trees; (iv) furnish notice to proceed to the contractors and (v) take steps to tie up finances including equity participation, if any, at its own risk and subject to the final result of the present proceedings and the Special Leave Petition.

13. In the petition as it has been originally filed, the Petitioners have sought to challenge, inter alia the orders dated 29 October 2009 and 16 April 2010 passed by the SEAC and sought a direction to the effect that the proposed project should be shifted to an alternate industrial site and ought not be established at the proposed site at village Navlakh Umbre. Consequential reliefs have been sought, inter alia for conducting a comprehensive study, a fresh public hearing and a restraint on undertaking any activity pertaining to the project. In Civil Application 143 of 2010 the Petitioner sought a direction restraining the Sixth Respondent from proceeding further with all work and activity and a direction to the MPCB and SEIAA to file reports. In Civil Application 87 of 2012 the Petitioner has sought to place certain additional documents on the record and to challenge the environmental clearance granted by the SEIAA on 26 August 2010. Learned Senior Counsel appearing on behalf of the Sixth Respondent has not opposed the Civil Application in so far as it seeks to challenge the subsequent permissions and to place additional documentary material on the record before the Court so as to enable the Court to render a complete adjudication of all the issues that arise in these proceedings.

14. Counsel appearing on behalf of the Petitioners submitted that -

i) The Terms of Reference which form the basis of Environmental Impact Assessment (EIA) studies were approved by the SEAC without any application of mind. Neither was any site visit conducted by the SEAC nor was any environmental issue considered or discussed before the Terms of Reference were approved;

ii) The final EIA report purportedly furnished by the project proponent was not analyzed or scrutinized by the SEAC and the recommendation accorded to the project was without application of mind. The procedure which has been prescribed in the notification dated 14 September 2006 was evidently not followed. The final EIA report was filed before the SEAC on 15 April 2010. The notification dated 14 September 2006 provides for the procedure to be followed in the SEAC on receipt of the final EIA. The final EIA has to be scrutinized and objections have to be formulated. The SEAC, however, issued its recommendations on the very next day without having regard to the circumstances to which a reference is required by the terms of the notification;

iii) The recommendation issued by the SEAC on 16 April 2010 suffered from a lack of jurisdiction. The Sixth Respondent had moved an application before the Central Government on 15 March 2010 for expansion of the project. On 16 April 2010 when a recommendation was issued by the SEAC, the proposal for expansion was pending before the Union Government. In terms of the circular issued by the MOEF on 22

March 2010, once a proposal for expansion was moved before the Central Government and prior environmental clearance has not been granted by the SEAC, a fresh proposal for the entire project was required to be submitted to the Central Government and the jurisdiction to decide upon it vested exclusively with the MOEF. The withdrawal of the application for expansion before the Central Government took place much later. The Sixth Respondent in its letter dated 24 March 2011 also clarified that it was with effect from 7 July 2010 that the Sixth Respondent ceased to press the application for expansion. Consequently on the date on which the SEAC granted its recommendation, it had no jurisdiction to do so;

iv) In the present case the EIA studies and environmental data preceded the formulation of the terms of reference, whereas the clear intendment of the notification dated 14 September 2006 is that such studies must be undertaken after the terms of reference are formulated;

v) The villagers on whose behalf these proceedings have been instituted had addressed repeated representations to all statutory authorities concerned including the SEAC and SEIAA drawing attention to the violations on the part of the developer in commencing work in the absence of an environmental clearance. No just and fair opportunity of being heard was afforded to them. Despite the undertaking furnished to this Court on 17 June 2010, the Sixth Respondent continued to carry out work without prior environmental clearance and in breach of the clear mandate of the notification. The MPCB having found justification in the grievance of the Petitioners in regard to the carrying on of work illegally, also issued a notice dated 19 July 2010. SEIAA has proceeded to grant its clearance without any adjudication of the notice;

vi) The plea of the Sixth Respondent of a deemed environmental clearance with effect from 3 June 2010 is based on the foundation that the SEIAA had not acted upon the recommendation of the SEAC within the prescribed period of 45 days. This claim is unsustainable because - (1) The recommendation of the SEAC dated 16 July 2010 is invalid both for want of jurisdiction and on the grounds set out earlier; (2) Even before this Court on 17 June 2010 the Sixth Respondent stated that it had yet not secured environmental clearance; (3) The Sixth Respondent participated before the SEIAA without raising the claim that it had secured a deemed environmental clearance; and (4) Until date no court or authority has adjudicated upon the claim of the Sixth Respondent to a deemed environmental clearance.

15. The learned AGP appearing on behalf of the State Government, as well as the SEAC and SEIAA submitted that -

i) The SEAC and SEIAA were justified in ruling upon the application filed by the Sixth Respondent. On 16 April 2010 the SEAC was not informed of the fact that the Sixth Respondent had moved the MOEF with a proposal for expansion. In any event, the circular dated 22 March 2010 postulates the filing of a fresh proposal before the

MOEF. In view of the mandate of the circular dated 22 March 2010, the earlier proposal filed by the Sixth Respondent before the MOEF on 15 March 2010 would cease to have any validity. In the absence of a fresh proposal by the Sixth Respondent before the MOEF comprehensively dealing with all phases of the project, the SEAC was within jurisdiction in entertaining the application for the grant of a clearance for the project to the extent of 355 MWs;

ii) On the withdrawal of the application filed by the Sixth Respondent before the MOEF for expansion, the SEAC would in any event have jurisdiction to consider the original proposal for a project of 355 MWs. In that view of the matter and since as a result of the subsequent developments, the Union Government clarified that the proposal for expansion has been withdrawn and the file has been closed, there is no reason for this Court in the exercise of its jurisdiction in a public interest petition to interfere with the grant of environmental clearance by the SEAC / SEIAA;

iii) The issue as to whether the SEAC did have jurisdiction is covered by the judgments of the Division Bench of this Court dated 18 October 2011 and 15 November 2011;

iv) The SEAC is composed of experts drawn from diverse fields. The SEAC in the present case considered relevant material and its recommendations were based on facts on the record;

v) The SEIAA is guided by the recommendations of the SEAC since the latter is a committee of experts drawn from diverse fields. Yet the SEIAA must apply its mind to the recommendations, which it has done before proceeding to grant an environmental clearance.

16. Learned Senior Counsel appearing on behalf of the Sixth Respondent submitted that :-

i) The terms of reference constitute the basis and foundation of the consideration of the project which takes places, once the final EIA has been formulated, before the SEAC. Merely because the decision of the SEAC is brief and was taken in a day does not show that there was no application of mind;

ii) The concept of a deeming provision is an integral part of the notification dated 14 September 2006, The notification prescribes time limits which are mandatorily required to be observed. The SEAC at its meeting held on 16 April 2010 recommended the grant of an environmental clearance to the SEIAA. Thereafter the SEIAA having failed to notify its decision within a period of 45 days, the Sixth Respondent must be deemed to have obtained permission to proceed with the work with effect from 3 June 2010. The petition before this Court was filed on the basis that the Sixth Respondent would assert a claim to a deemed permission. After the Division Bench passed its first order in the proceedings on 17 June 2010 the Sixth Respondent filed an affidavit in reply on 28 July 2010 asserting that it had deemed

permission. On 9 August 2010 the Petitioners, in the Civil Application, sought an injunction against the Sixth Respondent from carrying out work. Thereafter there was no ad interim order on the Civil Application for interim relief for a period of nearly two years. There was consequently in law no prohibition on the Sixth Respondent proceeding ahead with the work of the project;

iii) The use of the expression "jurisdiction" in the context of the exercise of the power by the SEAC to make its recommendation is erroneous. The power of the SEAC to make its recommendation does not raise an issue of jurisdiction as commonly understood in law. In any event, the order of this Court dated 18 October 2011 specifically dealt with the issue as to whether the SEAC had the jurisdiction to entertain the application of the Sixth Respondent and the issue was answered in favour of the Sixth Respondent. This has also been clarified in the subsequent order of the Division Bench dated 15 November 2011;

iv) A fresh study was carried out between November 2009 and April 2010, which confirmed the findings of the earlier study based on data gathered between March and May 2008. Even if a study could have been done in a better fashion, that would not invalidate the existing study, based on administrative law standards. The final EIA permission dated 22 February 2010 contains detailed specifications to be observed by the Sixth Respondent which shows an adequate and careful application of mind;

v) The proceedings before the SEIAA of 8/9 December 2011 would indicate that the authority had determined at the meeting that the environmental clearance should be granted. The order passed by the Division Bench thereafter, only directed the enforcement of the permission which was already decided upon at the meeting that was held on 8/9 December 2011.

17. The rival submissions now fall for consideration.

18. On 14 September 2006 the Union Government in the Ministry of Environment and Forests directed that thenceforth the setting up of new projects or activities as well as the expansion or modernization of existing projects and activities listed out in the Schedule to the notification shall be undertaken only after prior environmental clearance from the Central Government, or as the case may be, by the State Level Environment Impact Assessment Authority constituted u/s 3(3) of the Environment (Protection) Act 1986. Clause 2 of the notification specifies inter alia that while projects falling under Category A of the Schedule are required to be referred to the Central Government in the MOEF, projects falling under Category B would fall within the purview of the SEIAA. Thermal Power Plants are specified at Entry 1(d) of the Schedule. Plants involving a capacity of less than 500 MWs fall in Category B. Such projects require the prior environmental clearance of the SEIAA. Clause 4(iii) of the notification emphasizes that the SEIAA shall base its decision on the recommendations of the State Expert Appraisal Committee (SEAC) as constituted

under the notification. The SEAC at the level of the State Government and the EAC at the Central Government are required to screen, scope and appraise projects falling under Category B and Category A respectively. Clause 5(d) empowers the members of the SEAC, or as the case may be, EAC to inspect any site connected with the project or activity in respect of which prior environmental clearance is sought. Under clause 6 an application for prior environmental clearance is required to be submitted in Form I, after the identification of the prospective site and before commencing any construction activity or preparation of land at site.

19. Clause 7 of the notification specifies the stages involved in the grant of an environmental clearance. For new projects the process of granting an environmental clearance comprehends four stages, these being - (i) Screening, which is required for Category B projects; (ii) Scoping; (iii) Public consultation; and (iv) Appraisal. The first stage involving screening of a project requires the SEAC to determine whether or not the project or activity requires further environmental studies for the preparation of an Environmental Impact Assessment (EIA) for its appraisal prior to the grant of an environmental clearance. Projects requiring an EIA report are termed as Category B-1 projects.

The SEAC, in the preliminary process of screening is therefore required to determine at the outset whether or not the project requires further environmental studies in order to facilitate the preparation of an EIA. This is the first aspect to which attention is required to be devoted by the SEAC. The next stage involves scoping, under which the SEAC in the case of a Category B-1 project has to determine detailed and comprehensive terms of reference addressing all relevant environmental concerns for the preparation of an Environmental Impact Assessment report. The SEAC has to determine the terms of reference on the basis of the information furnished in the prescribed application form including the terms of reference as proposed, a site visit by a sub-group of the committee if it considers that to be necessary and other information that may be available with the committee. The obligation to determine the Terms of Reference is of the SEAC. Those which are suggested by the proponent of the project are at best, a guide. The SEAC is not confined to them nor is it constrained by what the project proponent suggests. The SEAC may bring to bear on its task any information that may be available with it. The Terms of Reference are required to be finalized by the SEAC within sixty days of the receipt of Form I. If the SEAC fails to do so, the terms of reference suggested by the applicant are to be deemed as final terms of reference approved for EIA studies. An application for a prior environmental clearance can be rejected at this stage itself by the regulatory authority on the recommendation of the EAC or the SEAC.

20. The third stage involves public consultation, a process by which the concerns of locally affected persons and others who have a plausible stake in the environmental impacts of the project or activity are ascertained with a view to taking into account all material concerns arising from the project or activity or design. The process of

public consultation is conducted by the State Pollution Control Board and has two components : (i) a public hearing in close proximity to the site to be carried out for ascertaining the views of locally affected persons and (ii) obtaining responses from other persons with a plausible stake in the environmental aspects of the project or activity. After the completion of the public consultation, the applicant is required to address all the material environmental concerns expressed during this process and to make appropriate changes in the draft EIA. The final EIA report is then to be submitted to the concerned regulatory authority for appraisal.

21. The fourth stage is that of appraisal in the course of which a detailed scrutiny is made by the SEAC of the application and all the other documents such as the final EIA report and the outcome of public consultation. The notification mandates that the process of appraisal must be carried out in a transparent manner in a proceeding to which the applicant is invited for furnishing clarifications. On the conclusion of the proceedings, the SEAC has to make recommendations to the regulatory authority either for the grant of a prior environmental clearance on stipulated terms or the rejection of the application for environmental clearance. The appraisal of an application has to be completed by the SEAC within sixty days of the receipt of the final EIA.

22. Upon the submission of the recommendations of the SEAC, the regulatory authority is to consider the recommendations of the SEAC and to convey its decision to the applicant within 45 days of the receipt of the recommendations. The importance which the notification ascribes to the recommendations of the SEAC is evident from the fact that the notification stipulates that the regulatory authority shall normally accept the recommendations of the SEAC. In cases where the SEIAA disagrees with the recommendations, it shall request reconsideration by the SEAC within a stipulated time frame indicating the reasons for its disagreement. Clause 8(iii) of the notification provides that in the event that the decision of the regulatory authority is not communicated to the applicant within the period specified, the applicant may proceed as if the environment clearance sought for has been granted, or as the case may be, denied in terms of the final recommendations of the SEAC. Appendix V to the notification specifies in detail the procedure for appraisal by the SEAC. Appendix V provides that the final EIA report and other relevant documents submitted by the applicant shall be scrutinized in the office within thirty days from receipt by the regulatory authority strictly with reference to the terms of reference and inadequacies noted must be communicated to the members of the SEAC. The composition of the SEAC is laid down in Appendix VI. The SEACs are to consist inter alia of experts drawn from diverse disciplines of environmental science.

23. Now it is in the background of the mandate of the notification dated 14 September 2006 that it would be necessary to consider the procedure that was followed in the present case. At the outset, it must be noted that the environmental studies which form the basis of the original proposal of the Sixth Respondent were

conducted between March and May 2008. The Sixth Respondent submitted an application before the SEAC on 30 September 2009. On 29 October 2009, the SEAC approved the draft terms of reference as submitted by the Sixth Respondent. The scheme of the notification dated 14 September 2006 contemplates an application by the project proponent, the finalization of comprehensive terms of reference by the SEAC and the conduct of EIA studies by the project proponent on the basis of the terms of reference approved by the SEAC. Thereupon a draft EIA report has to be prepared on the basis of the EIA studies. A public consultation is to take place on the basis of the draft EIA report. The final EIA report is prepared on the basis of a compliance of the grievances that are raised during the course of the public consultation. Thereupon a final EIA report has to be submitted to the SEAC. The SEAC in turn conducts a detailed scrutiny of the final EIA report, the report of the public consultation and the application and has to address environmental and other concerns. In the present case, it is evident that the SEAC initially dealt with the application submitted by the Sixth Respondent on 29 October 2009 when the draft terms of reference were approved. A public consultation took place thereafter on the basis of the draft EIA report. Upon the final EIA report being submitted to the SEAC on 15 April 2010, the SEAC took up the matter on the very next day. As a matter of fact, the record before the Court would indicate that the SEAC had already commenced its 26th meeting on 15 April 2010. The mandatory procedure which was required to be followed under the terms of the notification envisages that upon the submission of the final EIA report, the report is required to be scrutinized within thirty days of its receipt by the regulatory authority concerned strictly with reference to the terms of reference and the inadequacies, if any, are required to be noted and to be communicated to the members of the SEAC. Evidently, there was no such scrutiny of the final EIA report before it was taken up for consideration by the members of the SEAC within a day of its submission on 15 April 2010. The SEAC is primarily a body consisting of experts. The importance which the notification attributes to the SEAC is evident from the fact that under clause 4(iii), the SEIAA is required to base its decision on the recommendations of the SEAC. Moreover, under Clause 8(ii) the SEIAA is to normally accept the recommendations of the SEAC and where it differs from those recommendations to furnish reasons for the disagreement, while requesting reconsideration by the SEAC. The process of screening, scoping and appraisal by the SEAC is of utmost importance and is a vital element in the ultimate process of decision making leading upto the grant or rejection of an environmental clearance. The notification indicates time lines for the performance of various tasks which are assigned to the SEAC. Initially when it screens a proposal, the SEAC has to determine whether or not the project or activity requires further environmental studies for the preparation of an EIA report. In the stage of scoping the SEAC, before it formulates comprehensive terms of reference has to address all relevant environmental concerns for the preparation of an EIA report in respect of the project or activity for which clearance is sought. The notification envisages that, where it considers necessary, the SEAC can even conduct

a site visit. Once the terms of reference are formulated and finalized by the SEAC, the next stage involves the conducting of EIA studies. The Terms of Reference provide the analytical framework on the basis of which EIA studies are conducted. The preparation of the Terms of Reference is not a meaningless formality. They contain a framework of identifying environmental concerns with reference to which EIA studies are conducted. The notification requires public consultation not only with locally affected persons but all other persons having even a plausible stake in the environmental aspects of the project. Finally, when it comes to the stage of appraisal, the SEAC has to conduct the process in a transparent manner on the basis of the application and other documents such as the final EIA report, the report of public consultation and other relevant material.

24. In the present case, it is evident that the SEAC has acted in a casual manner without understanding either the vital implications of the function which is assigned to it under the notification or the consequences of its decision making process. The Court in the exercise of its power of judicial review is cognizant of the fact that the SEAC is drawn from experts in the field. Even so, it is necessary that the SEAC discharges its duties with a high degree of accountability and responsiveness having regard to the fact that it is an institution which is created with a view to facilitate environmental governance. Environmental governance requires decision makers to bear in mind the principles of sustainable development. The principles of sustainable development require a balance to be drawn between the need for development on the one hand and the protection of the environment on the other. In taking into account the principles of sustainable development, an authority such as the SEAC must bring its attention to bear on relevant factors such as the need to preserve the natural resources for the benefit of future generations, the sustainable prudent or rationale use of natural resources, the equitable engagement of natural resources and the need to ensure that environmental considerations are integrated into economic and development plans, programmes and processes. Among the fundamental principles of environmental governance are principles that foster access to information; access to justice to the community which is liable to be affected and governance based on rule of law. Access to information, particularly to impoverished and marginalised communities, which populate our rural land scape is of vital importance. Communities must have access to all information in order to be satisfied that a proposed project meets standards of safety; that the site upon which the project is to be located is environmentally conducive and that the project will not result in a destruction of the natural habitat. Denial of information is the surest way to deprive rural communities of human rights and leads to a sense of alienation. Access to information is a source empowerment. Participatory decision making must hence be an ingredient of environmental governance in a true sense of the term. Merely observing the forms of participation without the substance is to negate fundamental human rights. When expert bodies are conferred with statutory duties which are envisaged in the public interest, particularly having regard to the need to

protect sensitive interests such as those of the environment, it is necessary that those duties must be performed scrupulously keeping in mind the safeguards which are provided by enacting legal provisions. In the present case, the SEAC evidently completed its task within a day of the presentation of the final EIA report. In doing so the SEAC evidently failed to take into consideration the mandate of the notification dated 14 September 2006 and the considerations which are regarded by the notification as relevant and germane to the discharge of its duties. The final resolution of the SEAC, recommending the grant of approval on 16 April 2010 was to the following effect -

Decision : The project proponent has got the EIA completed and conducted public hearing. Copies of the EIA and public hearing have been submitted. The main findings of the EIA were explained. It was pointed out that the concerns expressed at the time of the public hearing are being complied with. The project proponent explained that they eventually propose to put up thermal plants for a total capacity of around 2500 MW. They stated that they are adopting the latest and clean technology. They explained the various steps which will be taken up to ensure all environmental safeguards.

It was decided to recommend the proposal for grant of prior environment clearance subject to the project proponent complying with the following:

(i) The projected level of NOx and the simulation model to work out the pollution level after commencement of the plant should be cross checked from a reputed organization like NEERI or IIT and their report submitted. If their reports indicate the need for any mitigating steps, the same should be worked out, and indicated.

(ii) The EIA carried out is rapid for a short period, since the project is proposed to be expanded to a large magnitude, a comprehensive study should be initiated to avoid delay in future.

25. The first part of the decision of the SEAC contains merely a record of the fact that the EIA was completed and that a public hearing was conducted. The SEAC notes that the main findings of the EIA were explained. The SEAC records the submission of the project proponent that (i) the concerns that were expressed at the time of the public hearing were complied with; (ii) the project proponent would be adopting the latest and clean technology; and (iii) steps that would be taken to ensure environmental safeguards were explained. There is no analysis by the SEAC of the environmental concerns; no analysis of the impact of the project on the environment and no analysis of the steps that would be taken to address environmental effects or damage. None of the reasons would indicate an independent applicant of mind. The SEAC recommended the grant of an environmental clearance subject to the Sixth Respondent getting the project level of NOx crosschecked from a reputed organization and if mitigating steps were required, to adopt those steps. The SEAC also took note of the fact that the EIA

which had been carried out was "rapid"; and "for a short period". In that context, the SEAC noted that since the project was proposed to be expanded, a comprehensive study should be initiated to avoid delay in the future. The concern of the SEAC appears to have been more to avoid a delay in the project than that of a need to protect and preserve the environment. When the notification requires a screening, scoping and appraisal of the project, by an expert body such as the SEAC, the record must indicate a due and proper application of mind by the SEAC to all aspects of environmental concern. This would include - (i) Environmental studies carried out to assess the nature of the existing environment and the impact of the proposed project on the environment; (ii) The consequences of the project on issues such as water and air pollution; (iii) The impact of the project on the existing natural resources and the extent of the use and depletion of natural resources; (iv) Whether an ecological sensitive area would be affected and if so, the nature and effect thereof; (v) The impact of the project on concerns such as biodiversity; (vi) The nature of the technology that is sought to be put in place; and (vii) The safeguards that must be introduced in order to ensure that the adverse impacts of the project are contained within prescribed statutory requirements. This list of factors, we wish to clarify, is not exhaustive. But the important point to be noted is that the SEAC and the SEIAA are important instruments of ensuring regulatory compliance and environmental governance in accordance with law. The decision making process of those authorities besides being transparent must result in a reasoned conclusion which is reflective of a due application of mind to the diverse concerns arising from a project such as the present. The mere fact that a body is comprised of experts is not sufficient a safeguard to ensure that the conclusion of its deliberations is just and proper. That safeguard, particularly for the wider community, must be reflected in the manner in which the authority conducts its process and in the outcome of its process. In matters of environmental governance the only available safeguard for the community at large is that the process which the authority follows must adhere to fair and transparent principles established by law and that the reasons which emanate from the public body must be suggestive of the decision maker having taken into consideration all relevant aspects and having borne in mind the need to preserve and protect the environment. The balance which is drawn by the authority between the need for development on the one hand and the protection of the environment on the other, must be reflected in its formulation. In the present case, the entirety of the appraisal of the SEAC is contained in the extract which we have set out above. That in our view, does not satisfy the requirements of a transparent, accountable and responsive decision making process. These three elements, in our view, are key requirements of a process which is fair and in accordance with Article 14 of the Constitution.

26. Environmental protection is often pitched against the demands of economic development. While dealing with those conflicts, policy makers and judicial bodies across the world have applied the concept of sustainable development. The 1987

Report of the World Commission on Environment and Development (Brundtland Report) defined Sustainable Development as "Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs". This responsibility was enunciated in 1972 by the Stockholm Convention to which India was a party. In 1992 the Rio Declaration on Environment and Development, to which also India is a party, adopted the notion of sustainable development.

27. Courts in India have accorded a constitutional position to sustainable development, sourcing the doctrine from Articles 21, 48, 48Aand 51A of the Constitution. Directions have been issued from time to time to foster an effective administrative set up for preventing environmental degradation resulting from developmental activities (M.C. Mehta Vs. Union of India (UOI) and Others,). In matters involving environment and ecology, the doctrine of Public Trust enjoins the Government to protect resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. The heart of the public trust doctrine is that it imposes limits and obligations upon government agencies and their administrators on behalf of all the people and especially future generations. Professor Joseph L. Sax in his classic article, "The Public Trust Doctrine in Natural Resources Law: Effective Judicial Intervention" Michigan Law Review, Vol.68 No.3 (Jan.1970) PP 471- 566, indicates that the public trust doctrine, of all concepts known to law, constitutes the best practical and philosophical premise and legal tool for protecting public rights and for protecting and managing resources, ecological values or objects held in trust. The doctrine, in its present form, was incorporated as a part of Indian law by the Supreme Court in M.C. Mehta Vs. Kamal Nath and Others, and also in M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and Others, .

28. The precautionary principle and the polluter-pays principle were also recognized in M. C. Mehta where the Court held that the principle of sustainable development involves the anticipation of environmental harm and taking measures to avoid it or to choose the least environmentally harmful activity. The Supreme Court held that the State government committed a patent breach of public trust by leasing ecologically fragile land for a Motel, and ordered compensation by way of costs for the restitution of the environment and ecology of the area. In Vellore Citizens Welfare Forum Vs. Union of India and others, the Supreme Court ordered the closure of all the tanneries in certain districts which did not invest in effluent treatment plants and held that "Environmental measures by the central government and the statutory authorities must anticipate prevent and attack the causes of environmental degradation and where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

29. In Intellectuals Forum, Tirupathi v. State of A.P. & Ors. AIR 2006 SC 1352, the Supreme Court held that the government was bound to protect historical tanks in view of the concept of ''sustainable development'' and the ''public trust doctrine''. The principle of ''Inter-Generational Equity'' was also given legal status, which was then reiterated in several cases including A.P. Pollution Control Board Vs. Prof. M.V. Nayadu (Retd.) and Others, where it was held that the State cannot be allowed to commit an act or omission which will infringe the right of the community and to alienate property to any other person or body. The fact that a party has spent money on developing land was held to be immaterial.

30. In T.N. Godavaraman Thirumulpad Vs. Union of India (UOI) and Others, , the Supreme Court held that adherence to the principle of Sustainable Development is a constitutional requirement, and that it is the duty of the State to devise and implement a coherent and co-ordinated programme to meet its obligation of sustainable development based on inter-generational equity.

31. In Bombay Dyeing and Mfg. Co. Ltd. Vs. Bombay Environmental Action Group and Others, , the Supreme Court held that while the need to protect the environment is a priority, a balance has to be drawn with the need to promote development:

The harmonization of the two needs has led to the concept of sustainable development, so much so that it has become the most significant and focal point of environmental legislation and judicial decisions relating to the same. Sustainable development, simply put, is a process in which development can be sustained over generations. Making the concept of sustainable development operational for public policies raises important challenges that involve complex synergies and trade-offs.

32. An intention to develop is not sufficient to sanction the destruction of local ecological resources. In applying the principle of sustainable development, there must be a balance between developmental needs which project proponents assert, and environmental damage and degradation, that communities seriously apprehend.

33. During the course of the hearing of these proceedings, the AGP appearing on behalf of the SEIAA and SEAC stated before the Court that the SEAC, was not informed, when it took its decision on 16 April 2010 of the pendency of the application by the Sixth Respondent before the MOEF for the expansion of its project. On the issue of whether the SEAC had jurisdiction to entertain the application, we must at the outset indicate that a Division Bench of this Court presided over by the Learned Chief Justice has come to the conclusion in its judgment dated 18 October 2011 that the SEAC did have jurisdiction to entertain the application. Having regard to that finding, which is contained in the judgment of the Division Bench dated 18 October 2011, and which has been reiterated subsequently by the same Bench in its order dated 15 November 2011, it would not be consistent

with judicial discipline for this Court to re-examine the same issue afresh. The judgment of the Division Bench dated 18 October 2011 arose out of an order of the Judicial Magistrate, First Class issuing process in a criminal complaint instituted by the petitioner alleging a violation of the provisions of Sections 15 and 17 of the Environment (Protection) Act 1986. The complaint proceeded on the basis that the SEAC had no jurisdiction to entertain the application for environmental clearance, once the Sixth Respondent had moved the MOEF with a proposal for expansion. The J.M.F.C. issued process and the order issuing process against the officials of the State Government was challenged by the State in writ proceedings before this Court. The Division Bench, in its judgment dated 18 October 2011 came to the conclusion that Section 17 of the Environment (Protection) Act 1986 could have no application to the members of the SEAC or the SEIAA, when they acted as authorities under the notification dated 14 September 2006. Apart from this, the Division Bench took note of the fact that the Central Government had closed the file regarding the proposal of the Sixth Respondent for the expansion of its project. In that view of the matter, the Division Bench quashed and set aside the order of the Magistrate issuing process. This order was construed subsequently by the Division Bench in a further order dated 15 November 2011 in which the Court held that the challenge to jurisdiction of the SEAC and SEIAA had already been negatived in the judgment dated 18 October 2011. These orders of the Division Bench are the subject matter of a challenge before the Supreme Court where Special Leave Petitions are pending. As another Division Bench of the same Court, discipline requires us not to take any view at variance with the judgment of the Division Bench, so long as it continues to hold the field.

34. In our view, the issue must be looked at from a slightly different perspective, quite apart from the issue of jurisdiction. As the record before the Court would indicate, the Sixth Respondent moved the Union Government with an application for expansion of its project capacity to the extent of 2150 MWs on 13 January 2010 / 15 March 2010. The AGP stated before us that on 16 April 2010 when the SEAC made its recommendations for the grant of an environmental clearance, it was not in knowledge of the fact that the MOEF had already been moved by the Sixth Respondent for the grant of clearance for an expanded capacity. The minutes of the decision of the SEAC record that the project proponent explained that it eventually proposes to put up a thermal plant for a total capacity of around 2500 MWs. In response to this the SEAC stated that since the EIA which had been carried out was ''rapid'' and ''for a short period'' and since the project was proposed to be expanded to a large magnitude, a comprehensive study should be initiated, "to avoid delay in future". In our view, the SEAC ought to have been informed by the Sixth Respondent, when it proceeded to take its decision on 16 April 2010, of the fact that at that time an application which had been filed by the Sixth Respondent for a further expansion of its capacity to the extent of 2150 MWs was pending before the MOEF. The circular which was issued by the MOEF on 22 March 2010 took note of

the fact that where a proposal for expansion was submitted without a prior environmental clearance having been granted for the original project, a fresh proposal should be submitted so as to enable a holistic appraisal of the entire project from the environmental perspective. The rationale for the circular is that different authorities should not consider piecemeal, requests for environmental clearance but an overall assessment should be made by MOEF of all the ramifications. If the SEAC were to be informed of the pendency of an application before the Central Government at that stage, that in our view, was a material circumstance which would have had some bearing on the outcome of the proceedings before the SEAC. We clarify once again at the cost of repetition that this is not an issue which pertains to the jurisdiction of the SEAC (which as noted above is concluded by the judgment of the Division Bench), but about the conduct and fairness of the approach of the project proponent in the present case. The MOEF, by its letter dated 24 March 2011 clarified that the project proponent had with effect from 7 July 2010 ceased to pursue its proposal for expansion. The clear intendment of that communication is that on the date on which the SEAC took its decision on 16 April 2010, there was a live proposal before the Union Government which was pending consideration. The failure to inform the SEAC of the existence of such a proposal is a matter which reflects on the candor with which the proceeding was conducted before the SEAC and is, in our view, indicative of a circumstance which vitiates the decision making process.

35. Clause 8(vi) of MOEF notification, dated 14th September 2006 provides thus :

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

In this case, the Sixth Respondent failed to disclose to the SEAC the application made to the MOEF for an additional 2150MW. Concealment of such information, material to appraisal and to a decision on the application would have the effect of rendering the application liable for rejection.

36. Insofar as the SEIAA is concerned, it is evident from the notification that the recommendations of the SEAC constitute the basis and foundation of the proceedings before the SEIAA. Now at this stage, it will be necessary for the Court to advert to the record of the decision making process before the SEIAA. The proceedings before the SEIAA took place initially on 9 July 2010 when the authority decided to consider the proposal after the submission of certain documents, among them being compliance of the recommendations submitted by the SEAC. Thereafter on 7 August 2010, the Sixth Respondent submitted details of an air pollution study

carried out by I.I.T. Chennai as recommended by the SEAC. On 26 August 2010 the SEIAA noted that the Sixth Respondent had simultaneously approached the MOEF for getting environmental clearance for its expansion which had not been initiated. After considering the report of I.I.T. Chennai, the authority decided to accord environmental clearance subject to various conditions, among them being a requirement that a copy of the order for the installation of machinery at site shall be furnished. On 28 March 2011 the SEIAA decided to refer the case to the MOEF for a clarification with regard to its circular dated 22 March 2010. On 4/5 August 2011, the SEIAA was of the view that since proceedings were pending before the Court, no question arose on issuing a clearance at that stage. On 23/24 November 2011 the SEIAA was informed of the decision of this Court in Writ Petition 8581 of 2011. The authority recorded that it needed time to scrutinize the documents submitted by the project proponent including comments in respect of the objections which were raised against the project. The proceedings were then adjourned to 8/9 December 2011. The notice of the hearing on 8/9 December 2011 was furnished to the petitioner at 9.00 p.m. on 8 December 2011. The petitioner submitted a reply to the SEIAA on 9 December 2011 seeking an adjournment of the proceedings. The reply was communicated through an email at 10.45 a.m. on 9 December 2011. The SEIAA, however, proceeded with the hearing on 9 December 2011 in the absence of the Petitioner. The decision of the SEIAA records that taking into account the directions of this Court, the submission of information by the project proponent, the contents of the EIA report, a public hearing report and a deed of commitment filed by the project proponent, the authority had decided to accord approval for the grant of an environment clearance. Evidently, the final decision was arrived at in the absence of the petitioner who had submitted a detailed note of objections on 28 November 2011. We find that the decision which has been arrived at by the SEIAA is unsustainable for several reasons. Firstly, the recommendation of the SEAC was to form the basis and foundation of the ultimate grant of approval by the SEIAA. Once the underlying decision of the SEAC is found to be flawed, the decision of the SEIAA must stand vitiated. Secondly, the order of the SEIAA does not reflect an application of mind to the environmental issues and concerns emanating from the project. Thirdly, even at its meeting on 23/24 November 2011 the SEIAA had considered it appropriate to defer a final decision since it required time to scrutinize relevant documents including comments in respect of various objections raised against the project. For this purpose a meeting was convened on 8/9 December 2011. The record does not indicate whether those concerns were duly allayed. In any event, a decision was taken in the absence of the petitioner who had communicated that the notice of the hearing was received only the previous night and that it was not possible for the petitioner to attend the hearing the next morning due to a court proceeding.

37. The foundation of the submission of the Sixth Respondent that it has received deemed permission for the project with effect from 3 June 2010, is on the basis of

the recommendations that were issued by the SEAC on 16 April 2010. The recommendations of the SEAC have been held to be invalid and contrary to law. The basis on which the submission of deemed permission has been urged would have no foundation whatsoever. The Court must also express its concern about the manner in which both the SEAC and SEIAA have proceeded to grant clearances without application of mind to the question as to whether, in breach of the specific conditions of the notification dated 14 September 2006, the Sixth Respondent had carried out development work at site without a prior environmental clearance. As we have noted earlier, a notice to show cause has already been issued to the Sixth Respondent, which has yet to be adjudicated upon. The Petitioners have repeatedly drawn attention to their grievance that even without an environmental clearance, the Sixth Respondent has proceeded with work at the site in breach of the notification dated 14 September 2006. The issue as to whether an applicant for environmental clearance has acted in breach of the condition which prohibits work prior to the receipt of environmental clearance is a material consideration in determining whether environmental clearance should be granted. A project proponent who seeks an environmental clearance under the law must demonstrably act in accordance with law. There is a serious allegation of a breach by the Sixth Respondent which resulted in the issuance of a notice to show cause by MPCB. That issue cannot be disassociated from the grant of an environmental clearance and a clearance could not have been granted without a definitive conclusion, arrived at in accordance with the principles of natural justice, on the issue of breach. In the circumstances, we are of the view that the orders of the SEAC dated 29 October 2009 and 16 April 2010 and the order of the SEIAA dated 22 February 2012 would have to be quashed and set aside. We order accordingly. We remand the proceedings in consequence back to the SEAC for a fresh decision on the application submitted by the Sixth Respondent in accordance with law. We also clarify that we have not entered a finding of fact on the allegation that the Sixth Respondent has committed a violation of the notification dated 14 September 2006 by proceeding ahead with the work of development even before the receipt of environmental clearance. We leave that aspect open to be adjudicated upon by the competent authority after furnishing to the Sixth Respondent and to the Petitioner an opportunity of being heard.
We direct that the SEAC shall conclude the exercise expeditiously.

Rule is made absolute in the aforesaid terms.

There shall be no order as to costs.

In view of the disposal of the petition, Civil Applications 143 of 2010 and 87 of 2012 are disposed of.