

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

APPLICATION NO. 123 OF 2015 (SZ).

IN THE MATTER OF:

V.V.Minerals
Represented by its Managing Partner, Mr.S.Vaikundarajan
Tisaiyanvilai,
Keeraikaranthattu via
Tirunelveli

..... Applicant

Versus

1. Ministry of Environment, Forests and Climate change,
Represented by its Secretary,
Government of India,
Indira Paryavaran Bhavan,
Jor Bagh road,
New Delhi-110 003.

2. The Member Secretary,
Tamil Nadu Pollution Control Board,
Saidapet, Chennai.

3. Director of Environment
State of Tamil Nadu
Ground Floor, Panagal buildings,
1, Jeenis Road,
Saidapet, Chennai.

..... Respondents.

Counsel appearing for the Applicant: M/s. S.Rajmakesh

Counsel appearing for the Respondents: Mr.G.Rajagopalan, Additional Solicitor General of India assisted by Mr. G.M. Syed Nurullah Sheriff for

Respondent No.1; Mrs. H.Yasmeen Ali for Respondent No.2 and M/s. M.K. Subramanian and P. Velmani for Respondent No.3.

ORDER

PRESENT:

1. Hon'ble Justice M. Chockalingam

Judicial Member

2. Hon'ble Shri P.S.Rao

Expert Member

Dated, 8th February, 2016.

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| 1. Whether the judgment is allowed to be published on the Internet. | Yes / No |
| 2. Whether the judgment is to be published in the All India NGT Reporter. | Yes / No |

This application is filed challenging the insistence of obtaining a separate No Objection Certificate (NOC) from the Tamil Nadu Pollution Control Board (TNPCB), in respect of Special Economic Zone (SEZ) which is approved and notified by the 1st respondent herein, under the provisions of the Special Economic Zones Act, 2005 (SEZ Act, 2005) .

2) The brief facts as could be inferred from the application are that the applicant is engaged in the business of mining and separation of beach sand minerals and intends to operationalize the SEZ at Thiruvambalapuram Village, Radhapuram Taluk, Tirunelveli District for the specific purpose of carrying on activities of manufacture and export of mineral and mineral based products

therein. Applicant is the lawful holder of 166.66 hectares of land in Thiruvambalapuram Village and under the provisions of SEZ Act, 2005 applied to the Development Commissioner, State of Tamil Nadu on 22.05.2012 for setting up a SEZ. Under Section 3 (2) of the SEZ Act, 2005 once an application for setting up a SEZ is received, it has to be forwarded to the Central Government along with the recommendations of the State Government and under Rule 4 (1) of the SEZ Rules, 2006 the State Government has to forward the proposal within 45 days of its receipt to the Board of Approvals which thereafter, is considered by a High-level Scrutiny Committee. The Board of Approvals is a body which issues the Letter of Approval to the SEZ developers and the Deputy Secretary of the Ministry of Environment, Forests and Climate Change (MoEF&CC) is an *ex officio* member of the Board which in turn rightly raises the presumption in law that the Board has satisfied itself to the fulfillment of all legal requirements before issuance of a Letter of Approval to any project proponent who is desirous of setting up an SEZ. It is relevant to point out that the setting up of individual units within the SEZ would have to obtain necessary approvals/permissions and clearances through the Unit Approval Committee and the Letter of Approval issued by the Board of Approvals do not entail any separate Environmental Clearance (EC).

3) After due enquiry, the Board of Approvals granted formal approval to the Applicant *vide* its Letter of Approval bearing No.F.1/21/2009-SEZ dated

05.12.2012 conceding eligibility to the applicant to undertake activities to set up the SEZ and it also contained various conditions. After fulfillment of these conditions by the applicant which was satisfied by the 3rd respondent herein, a Notification bearing S.O.No. 3723 (E) dated 16.12.2013 was issued wherein it was stated:

“Whereas M/s. V.V.Minerals, a private organization, has proposed under Section 3 of the Special Economic Zones Act, 2005 to set up a sector specific Special Economic Zone for mineral and Mineral based products at Thiruvambalapuram Village, Radhapuram Taluk, Tirunelveli District in the State of Tamil Nadu. Whereas, the Central Government is satisfied that the requirements under sub section (8) of the Section 3 of the said Act, and other related requirements are fulfilled and it has granted letter of approval under sub-section (10) of Section 3 of the said Act, for development, operation and maintenance of the above sector-specific Special Economic Zone, on 5th December,2012”.

Thus, the SEZ came to be duly notified on 16.12.2013.

4) The State of Tamil Nadu issued G.O.Ms.No.719, Industries dated 23.09.1999 wherein a Single Window Committee was constituted for the purpose of simplified procedure and for issuing expeditious clearances, such as NOC from the TNPCB, the 2nd respondent herein, who is a member of this Committee which confirms to the provisions made in Section 19 of the SEZ Act, 2005. On approaching the Development Commissioner of the State of Tamil Nadu, who is the nodal agency for operationalizing the SEZ, the applicant was informed to obtain a separate NOC from the TNPCB, even after

drawing the attention to the provisions of the SEZ Act, 2005 regarding Single Window Clearance System.

5) When the 2nd respondent was contacted regarding the basis for the insistence of a separate NOC, it was informed to the Applicant that a separate internal instruction was issued by the 1st respondent in 2001 and applying under the provisions of the Right to Information Act, 2005, the Applicant came to know that the 1st respondent issued a letter bearing D.O. No.Z-12011/32/2001-IA-III dated 12.11.2001 wherein it was stated that:

“i. As per the amendment dated 1st August, 2001 made in the EIA Notification, 1994, units to be located in Special Economic Zones do not require mandatory public hearing. In view of the same, projects like airport, port and power plant to be located in SEZ are exempted from mandatory public hearing.

ii. NOC from the State Pollution Control Board is a pre-requisite for grant of environmental clearance and hence would need to be submitted”.

6) The Applicant further states that the Letter dated 12.11.2001 is an internal communication which is issued without any legal authority and stands superseded on the enactment of the SEZ Act, 2005 and especially of Section 19. It was categorically informed to the Applicant by the 2nd respondent that unless an application for NOC is submitted, the Applicant cannot obtain EC. The Applicant craves intervention of this Tribunal to dispense with the need of approaching the 2nd respondent for a separate NOC and clearances which frustrates the purpose of the SEZ Act, 2005 and whether the regulatory

compliance under the Water (Prevention and Control of Pollution) Act, 1974 (Water Act, 1974) and the Air (Prevention and Control of Pollution) Act, 1981 (Air Act, 1981) stands superseded by the provisions of the SEZ Act, 2005.

7) The 1st respondent in its reply stated that under the Environment (Protection) Act, 1986 read with Environment (Protection) Rules, 1986, the 1st respondent has issued Notification No. S.O. 1533 (E) dated 14.09.2006, (hereinafter referred to as the “EIA Notification, 2006”) with its subsequent amendments. As per the EIA Notification, 2006 Industrial estates /parks/ complexes/ areas, Export Processing Zones (EPZs), Special Economic Zones (SEZs), Biotech Parks, Leather Complexes are covered under Schedule at Sl.No.7 (c) of the EIA Notification, 2006. The activities carried out by the Applicant i.e. manufacture and export of mineral and mineral based products, may fall under item 2 (b) ‘Primary Processing’ of the Schedule to the EIA Notification, 2006. The project in question would be covered under Category A or B of the Schedule to the EIA Notification, 2006 depending upon the processing capacity and the area and extent of SEZ, and shall require EC accordingly, at the Central level or by the SEIAA as the case may be.

8) The 2nd respondent in their reply points to the amendment dated 01.08.2001 made in the EIA Notification, 1994 which mandates a NOC from the TNPCB and states that no application for NOC/Consent of the TNPCB under the Water Act, 1974 and the Air Act, 1981 was received from the

Applicant so far. The 3rd respondent put forth that that the Applicant has sought relief with respect to the acts of the 2nd respondent on instructions issued by the 1st respondent and they- Department of Environment- are not involved in these issues.

DISCUSSION & CONCLUSION:

9) As seen above, the Applicant has brought forth this Application seeking a declaration that there is no separate requirement of obtaining EC or separate environment approvals or consent from the 2nd Respondent in respect of the SEZ which were approved and notified by the Central Government.

10) Advancing the argument on behalf of the Applicant, the Learned Counsel would submit that he was first granted in principle, approval by Central Government by a communication dated 15.12.2012 and the same was issued only after obtaining formal inputs from all the Ministries including the 1st Respondent. One of the conditions of the said Letter of Approval is that the Applicant must obtain various approvals from statutory authorities under various statutory laws. Thereafter, the Applicant submitted to the Ministry of Commerce and Industries (Ministry) that SEZ has been duly established. The Ministry undertook the process of satisfying itself that the Applicant fulfilled all the conditions under the approved laws. The Ministry has followed requisite procedures including intensive in-depth consultations with the 1st Respondent. It is pertinent to point out that the Ministry issued Notification bearing S.O No.

3723 dated 16.12.2013 expressly declaring that the Central Government has satisfied that all the requirements and laws were fulfilled and only thereupon the SEZ has been duly notified. When the Applicant wanted to operationalise the SEZ, it was informed that NOC would have to be obtained from 2nd Respondent, TNPCB. The Applicant replied that no such requirement of NOC could be validly insisted upon. At that juncture, the 2nd Respondent drew the Applicant's attention to the letter dated 12.11.2011 issued by MoEF&CC whereby it was provided that NOC from the TNPCB was a pre- requisite for grant of clearance and since, the 2nd Respondent continued to insist upon NOC from the TNPCB, the Applicant was constrained to file the instant Application. It is further submitted by the Counsel that the letter dated 12.11.2011 is only an internal communication which has no force or validity after passing of the SEZ Act, 2005 that too in light of Section 19 of the said enactment.

11) The Learned Counsel appearing for the TNPCB would contend that the State of Tamil Nadu has constituted a Single Window Clearance Mechanism for the purpose of issuing expeditious clearances such as NOC from the TNPCB and the 2nd respondent is also a member of this Committee. As per the amendment dated 01.08.2001 made in the EIA Notification, 1994 the units to be located in SEZ do not require mandatory public hearing and in view of the same, projects like Airport, Port and Power plants to be located in SEZ are exempted from the mandatory public hearing. An NOC from the TNPCB is a

pre- requisite for the grant of EC and hence, the Applicant has to necessarily submit the same. But the Applicant has not filed any Application for NOC or Consent of the TNPCB under the Water Act, 1974 and Air Act, 1981 and hence, the Application has got to be dismissed. The Learned Counsel for the 3rd respondent would submit that the Department of Environment has nothing to state since it is not involved in the above issues.

12) Placing the arguments on behalf of the 1st respondent, MoEF&CC, the Learned Additional Solicitor General of India Mr.G.Rajagopalan, would submit that under the Environment protection Act,1986 read with the Rules thereon, that the 3rd respondent has issued a notification i.e. EIA Notification,2006 with its subsequent amendments. Under the provisions of the EIA Notification, 2006 construction of new projects/activities or expansion/modernization of existing projects/activities listed in Schedule annexed to the said Notification entailing capacity addition with change in process/ technology can be done only on receipt of prior EC from the Central Government or SEIAA, as the case maybe. Pointing to the Notification, the Counsel would submit that the activities carried out by the applicant i.e. manufacturing and export of mineral and mineral based products would fall under item 2 (b) of the Schedule to the EIA Notificaton,2006. Thus, in view of the provisions of the EIA Notification,2006 the project of the applicant would be covered under Category 'A' or Category 'B' of the Schedule to the

Notification depending upon the processing capacity and the area, extent of the SEZ and shall require the EC accordingly by the Central Government or by the SEIAA.

13) The Learned Counsel would further contend that the reliefs sought for by the applicant are very vague and it is also not made clear by making averments in the application whether the applicant required EC at the State level or Central level. Pointing to the definition of 'environmental pollution' as found in Section 2 (c) of the Environment protection Act, 1986 it was contended that both the Central Government and the State have to act in coordination with each other since the main object is to see the effective compliance of the safeguards. In view of the same, the 2nd respondent, TNPCB was perfectly correct in insisting upon the production of NOC by the applicant even before making an application for prior EC to its project. It can be taken that the grant of NOC by the 2nd respondent, TNPCB can be taken not only as a first step but also a condition precedent for making an application for prior EC for the project of the applicant. If NOC is refused, there would be no need for the applicant to make an application for prior EC before the authority as mandated by the EIA Notification, 2006. Hence, the application has got to be dismissed.

14) Admittedly, the Applicant is engaged in the business of mining and separation of beach sand minerals in the SEZ at Thiruvambalapuram Village, Radhapuram Taluk, Tirunelveli District. The SEZ has been set up for the

specific purpose of carrying on activities of manufacture and export of mineral and mineral based products therein. The Applicant made an Application to the Development Commissioner, State of Tamil Nadu on 22.05.2012 in accordance with the provisions of the SEZ Act, 2005 and Rules made there under through proper channel. At that stage, the 2nd respondent, TNPCB pointing to a communication dated 12.11.2001 bearing D.O. No.Z-12011/32/2001-IA-III from the 1st respondent insisted upon the production of NOC from the TNPCB as a pre-requisite for grant of EC as stated in the information made available to the applicant as follows:

“i. As per the amendment dated 1st August, 2001 made in the EIA Notification, 1994, units to be located in Special Economic Zones do not require mandatory public hearing. In view of the same, projects like airport, port and power plant to be located in SEZ are exempted from mandatory public hearing.

ii. NOC from the State Pollution Control Board is a pre-requisite for grant of environmental clearance and hence would need to be submitted”.

15) This demand for requirement of NOC cannot be countenanced in law for more than one reason as it is an internal departmental communication which cannot have any legal force since it was issued at a time when there was no law in force governing the establishment of SEZ. Hence a necessity arose for governing and granting approvals for establishment of SEZ. Prior to 2005, before the enactment of SEZ Act, 2005 approvals for establishing SEZ were granted based on import and export policy based on the Foreign Trade

(Development & Regulation) Act, 1992 and thus, different instructions were given by different authorities regarding establishment of SEZ. Prior to enactment of the SEZ Act, 2005 there was a body comprising a number of officials including the Member Secretary, TNPCB to grant the approvals and hence there was a necessity for insisting upon an NOC by the TNPCB for establishment of a SEZ.

The Statement of Objects and reasons of the SEZ Act, 2005 reads as follows:

“In order to give a long term stable policy framework with minimum regulatory regime and to provide expeditious Single Window Clearance Mechanism, a Central Act for SEZ has been found to be necessary in line with the international practice” and

Section 19 of the SEZ Act, 2005, expressly envisaging a Single Window Clearance Mechanism, reads as follows:

“19. Notwithstanding anything contained in any other law for the time being in force, the Central Government may, if required, -

(a) prescribe a single application form for obtaining any license, permission or registration or approval by a Developer, or an entrepreneur under one or more Central Acts;

(b) authorise the Board, the Development Commissioner or Approval Committee, to exercise the powers of the Central Government on matters relating to the development of a Special Economic Zone; or setting up and operation of units;

(c) prescribe a single form for furnishing returns or information by a Developer or an entrepreneur under one or more Central Acts”.

The above Single Window Clearance Mechanism provision, needless to say, has superseded the prior mechanisms.

16) Rule 17 (1) of the SEZ Rules, 2006 dealing with the setting up of a unit reads as follows:

“17. Proposal for approval of Unit.— (1) A consolidated application seeking permission for setting up of a Unit and other clearances, including those indicated below, shall be made to the Development Commissioner, in Form F, in five copies, with a copy to the Developer:—

- (a) Setting up of unit in a Special Economic Zone;*
- (b) Annual permission for sub-contracting;*
- (c) Allotment of Importer-Exporter Code number;*
- (d) Allotment of land/industrial sheds in the Special Economic Zone;*
- (e) Water connection;*
- (f) Registration-cum-Membership Certificate;*
- (g) Small Scale Industries Registration;*
- (h) Registration with Central Pollution Control Board;*
- (i) Power connection;*
- (j) Building approval plan;*
- (k) Sales tax registration;*
- (l) Approval from Inspectorate of Factories;*
- (m) Pollution control clearance, wherever required;*
- (n) Any other approval as may be required from the State Government.”*

It is pertinent to point out that Section 51 of the SEZ Act, 2005 in unambiguous terms makes it clear that provisions of that enactment shall have effect notwithstanding anything therein contained in law for the time being in force or for any other instrument in virtue of law other than that Act.

“51. (1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act”.

17) Thus, it would be quite clear that the provisions of the said enactment, SEZ Act, 2005 has superseded all the prior notifications, rules and orders pertaining to an SEZ. It is not the case of the respondents that the Letter dated 12.11.2001 relied on by the 2nd respondent, TNPCB is saved under provisions of SEZ Act, 2005 and it is actually not so. In view of the above central legislation i.e. the SEZ Act, 2005 and all the rules, bye laws and internal circulars with respect to the SEZs' issued prior to the Act, automatically stand superseded and cannot continue to have validity or force.

18) It is well admitted by the 2nd respondent, TNPCB that NOC was insisted only on the strength of the communication dated 12.11.2001 referred to above and does not claim any other source of power. When the Single Window Clearance Mechanism system is set up under the SEZ Act,2005 for issuance of licenses and approvals, a person like the applicant has to necessarily approach only that authority and nobody else and except pointing to the above communication dated 12.11.2001 the 2nd respondent, TNPCB had no justification to offer as to how NOC can be insisted upon from the applicant and hence it can be safely held that the demand for NOC by the 2nd respondent, TNPCB from the Applicant cannot be sustained in law and is liable to be set aside.

19) In so far as the contention made by the 1st respondent, MoEF&CC that the applicant has not clearly averred whether he required prior EC in view

of the mandate under the EIA Notification, 2006, the Tribunal is of the considered view that it does not require any consideration or answer since it is outside the scope of the application in hand. Hence, in view of the discussions made above, the applicant is entitled for a declaration that no separate demand of obtaining NOC or other separate environment approvals or consents from the 2nd respondent can be made in respect of the SEZ which are approved and notified by the Central Government.

20) With the above observations, the application stands as allowed.

No costs.

(Justice M. Chockalingam)

Judicial Member

Chennai.

8th February, 2016.

(Shri. P. S. Rao)

Expert Member

NGT