

Item No. 02

(Court No. 1)

**BEFORE THE NATIONAL GREEN TRIBUNAL  
SPECIAL BENCH**

(By Video Conferencing)

Appeal No.06/2019 (CZ)  
(I.A. No. 24/2019)

Budhsen Rathour

Appellant

Versus

Union of India & Ors.

Respondent(s)

Date of hearing: 28.03.2022

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON  
HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER  
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER  
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER  
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER  
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER**

Appellant: Mr. Saurabh Sharma, Advocate

Respondent(s): Mr. Shireesh Shrivastava, Advocate for MoEF & CC  
Mr. Sachin K. Verma, Advocate for the State of M.P  
Ms. Parul Bhaodria, Advocate for MPPCB  
Mr. Om Shankar Shrivastav, Advocate for R - 4

**ORDER**

1. This appeal has been preferred against EC dated 11.01.2019 for expansion of Khairaha Underground Coal Mining Project of M/s South Eastern Coalfields Limited located in District Shahdol (Madhya Pradesh) from 0.585 MTPA to 0.819 MTPA.

2. The impugned EC was granted in pursuance of recommendations of EAC in 41<sup>st</sup> Meeting held on 13-14.12.2018 read with Minutes of 36<sup>th</sup> Meeting held on 31.08.2018 reproduced below:

**Minutes of 36<sup>th</sup> Meeting held on 31.08.2018**

**“36.1.3** *The EAC, after detailed deliberations on the proposal, noted the following:-*

*The proposal is for environment clearance to the project for expansion of Khairaha Underground coal mining project from 0.585 MTPA to 0.819 MTPA by M/s South Eastern Coalfields Ltd in an area of 472.065 ha (ML area 470.872 ha) at tehsil Burhar, District Shahdol (MP).*

*There is no forest land involved under the project. Further, no National Park, Wildlife Sanctuaries, Eco-sensitive Zones are located within 10 km from the mine lease boundary.*

*The proposal seeks environmental clearance under the provisions contained in Para 7(10) of the EIA Notification, 2006, without any ToR for the project and the fresh public hearing.*

*Total area of the coal mine as per the block allotment is 652.874 ha. However, as per approved Mining Plan, the area has been reported to be 472.065 ha. **The Mining Plan, including Mine Closure Plan, is reported to have been approved by the SECL Board on 25<sup>th</sup> November, 2017.***

***Earlier, the project for its capacity of 0.585 MTPA was granted environmental clearance by the Ministry vide letter dated 28<sup>th</sup> July, 2005 based on the public hearing was conducted on 3<sup>rd</sup> in October, 2003.***

***The Regional Office, Bhopal has conducted site inspection of the area on 9<sup>th</sup> May, 2018 to monitor the status of compliance of conditions, stipulated in the environment clearance dated 28<sup>th</sup> July, 2005 and submitted the report vide their letter dated 18<sup>th</sup> June, 2018.***

**36.1.4** *The Committee, after detailed deliberations, observed that **in compliance of this Ministry's Notification dated 6<sup>th</sup> April, 2018, the project proponent needs to obtain the environmental clearance under the EIA Notification, 2006 for considering the present proposal for expansion. Accordingly, and based on its earlier recommendations in similar proposals, the Committee desired for additional information in respect of the following:-***

***Public notice to be issued in leading newspapers (one national and two local) for information of the stakeholders about commencement of the project and present coal mining operations of capacity 0.585 MTPA in mine lease area of 470.872 ha, inviting comments and their redressal,***

***Valid Mining Plan and the Mine Closure Plan duly approved by the competent authority,***

***Compliance status of the conditions stipulated in the environmental clearance dated 28<sup>th</sup> July, 2005 from the Regional Office at Bhopal.***

***Consent to operate from the State Pollution Control Board for the present mining operations.***

***Forest clearance for the Revenue Forest land of 6.825 ha involved in the earlier mine/ease.***

***Redressal of issues raised during the last public hearing conducted by the SPCB on 30<sup>th</sup> October, 2003.***

***Coal production realized from the mine from 1994-95 vis-a-vis capacity stipulated in the environment clearance dated 28<sup>th</sup> July, 2005.***

***Details of court cases and the compliance status.***

***The proposal was, therefore, deferred for the needful on the above lines.***

***6. That Office Memorandum was issued by the MoEF&CC on 15.09.2017 for production capacity expansion up to 40% of production capacity without Public Hearing with certain conditions. On the basis of the above OM a proposal was submitted for grant of Environmental Clearance for expansion and was recommended for grant of Environmental Clearance for expansion from 0.585 MTPA to 0.819 MTPA to Khiraha Under Ground Mine without a public hearing in the existing mine lease area of 472.065 ha.”***

#### **41<sup>st</sup> Meeting held on 13-14.12.2018**

***41.5.3*** Earlier, the proposal for re-validation of existing environmental clearance dated 28<sup>th</sup> July, 2005 in terms of the Ministry's Notification dated 6<sup>th</sup> April, 2018, was considered by the EAC in its meeting held on 31<sup>st</sup> August, 2018. During the meeting, the EAC desired/insisted for the information as under:-

- (i) Public notice to be issued in leading newspapers (one national and two local) for information of the stakeholders about commencement of the project and present coal mining operations, inviting comments and their redressal.*
- (ii) Valid Mining Plan and the Mine Closure Plan duly approved by the competent authority,*
- (iii) Compliance status of the conditions stipulated in the environmental clearance dated 28<sup>th</sup> July, 2005 from the Regional Office at Nagpur,*
- (iv) Consent to operate from the State Pollution Control Board for the present mining operations,*
- (v) Redressal of issues raised during the last public hearing conducted by the SPCB on 30<sup>th</sup> October, 2003, along with the R&R details duly certified by the State Government,*
- (vi) Details of court cases and the compliance status*

***41.5.4*** During deliberations on the proposal, the Committee noted the following: -

**The proposal is for revalidation of environmental clearance dated 28<sup>th</sup> July, 2005 as mandated under the Ministry's Notification dated 6<sup>th</sup> April, 2018, and grant of environmental clearance to the project for expansion of Khairaha Underground Coal Mining Project from 0.585 MTPA to 0.819 MTPA in mine lease area of 472.065 ha of M/s South Eastern Coalfields Limited located in tehsil Burhar, District Shahdol (Madhya Pradesh) under the provisions contained in para 7(ii) of the EIA Notification, 2006, without any fresh ToR for the project and exemption from public hearing in terms of the Ministry's OM dated 15<sup>th</sup> September, 2017.**

No forest land is involved in the project.

Mining Plan, including the Progressive Mine Closure Plan for the project of capacity 0.585MTPA was approved by CIL Board on 25<sup>th</sup> September, 2003 with an initial capital outlay of Rs.88.3303 Crores. Revised Mining Plan for the project for expansion from 0.585 MTPA to 0.819MTPA has been approved by SECL Board on 25<sup>th</sup> November, 2017.

Earlier, environmental clearance was granted by the Ministry vide letter dated 28<sup>th</sup> July, 2005 based on public hearing conducted by the State Pollution Control Board on 30<sup>th</sup> October, 2003 for production capacity of 0.585 MTPA in mine lease area of 513.50 ha. The revised mining plan for the proposed expansion project involves an area of 472.065 ha, as per the notification under the Coal Bearing Act, 1957 for the actual land of 478.89 ha and after excluding revenue forest land of 6.825 ha.

Consent to Operate for the existing production capacity has been obtained from the Madhya Pradesh State Pollution Control Board on 15<sup>th</sup> April, 201, which is valid up to 31<sup>st</sup> March, 2019.

The proposal for re-validation of environmental clearance in accordance with the Ministry's Notification dated 6<sup>th</sup> April, 2018 was considered by the EAC in its meetings held on 31<sup>st</sup> August, 2018. As per observations of the EAC, public Notice for information of the stakeholders about present coal mining operations of capacity 0.585 MTPA in mine lease area of 513.5 ha, was issued on 21<sup>st</sup> September, 2018 inviting comments within one month. As informed, no comments/suggestions were received within the prescribed time frame. Also, all other requirements insisted by the EAC for revalidation of the EC were observed to be complied with.

**41.5.5 The EAC, after detailed deliberations and in exercise of the provisions contained in para 7(10) of the EIA Notification, 2006 and consideration of the parameters mentioned in the Ministry's OM dated 15<sup>th</sup> September, 2017, exempted the project from public hearing, and recommended for grant of environmental clearance to the expansion of Khairaha Underground Coal Mining Project from 0.585 MTPA to 0.819 MTPA in mine lease area of 472.065 ha of M/s South Eastern Coalfields Limited located in tehsil Burhar, District Shahdol (Madhya Pradesh) for a period of one year, subject to revalidation of the existing environmental clearance dated 28<sup>th</sup> July, 2005 and further subject to compliance of the terms & conditions and environmental safeguards mentioned below:**

- **The project proponent shall collect and analyze one season data for environmental parameters and submit for consideration of the EAC before 31<sup>st</sup> December, 2019.**

- *The project proponent shall obtain Consent to establish from the State Pollution Control Board for capacity of 0.819 MTPA prior to commencement of the increased production.*
- *Transportation of coal from face to coal heap shall be carried out by belt conveyor. Further, the coal transportation from coal heap to Coal Handling Plant shall be carried out through covered trucks.*
- *Mitigating measures to be undertaken to control dust and other fugitive emissions all along the roads by providing sufficient numbers of water sprinklers.*
- *Sufficient coal pillars shall be left un-extracted around the air shaft (within the subsidence influence area) to protect from any damage from subsidence, if any.*
- *Solid barrier shall be left below the roads falling within the block to avoid any damage to the roads and no depillaring operation shall be carried out below the township/colony.*
- *Depression due to subsidence resulting in water accumulating within the low lying areas shall be filled up or drained out by cutting drains.*
- *Regular monitoring of subsidence movement on the surface over and around the working area and impact on natural drainage pattern, water bodies, vegetation, structure, roads and surroundings should be continued till movement ceases completely. In case of observation of any high rate of subsidence movement, appropriate effective corrective measures should be taken to avoid loss of life and materials. Cracks should be effectively plugged with ballast and clay soil/suitable materials.*
- *Garland Surface drains (Size, gradient and length) around the safety areas such as mineshaft and low lying areas and sump capacity should be designed keeping 50% safety margin over and above the peak sudden rain fall and maximum discharge in the area adjoining the mine sites. Sump capacity should also provide adequate retention period to allow proper settling of silt material. Sufficient number of pumps of adequate capacity shall be deployed to pump out mine water during peak rain fall.*
- *Sufficient number of pumps of adequate capacity shall be deployed to pump out mine water during peak rain fall.*
- *The company shall obtain approval of CGWA for use of groundwater for mining operations at its enhanced capacity of 0.819 MTPA.*
- *Continuous monitoring of occupational safety and other health hazards, and the corrective actions need to be ensured.*

- ***A third party assessment of EC compliance shall be undertaken once in three years through agency like ICFRI/NEERI/HT or any other expert agency identified by the Ministry.***

3. **Contentions raised on behalf of the Appellant** are that requisite procedure laid down under the EIA Notification dated 14.09.2006 has not been followed, particularly with regard to public hearing. OM dated 15.09.2017 could not have the effect of modifying the EIA Notification dated 14.09.2006. No proper evaluation has been conducted. The data of 2002 was considered while granting original EC on 28.07.2005 which is stale for considering expansion. The Project Proponent has failed to comply with EC conditions of 2005 with regard to preparation of subsidence map and its monitoring on monthly basis which was required to be submitted before expansion which has not been done. Plantation has also not been done as required. Digital monitoring studies of land use have not been submitted. Occupational Health Surveillance Programme of the workers has not been undertaken. The area is energy surplus and thus there is no requirement of energy to be produced from coal as per Central Electricity Authority's Load Generation Balance Report ("LGBR") for 2018-2019. The PP has not shown justification for the project with the evidence of confirmed end user. No Cumulative Impact Assessment and Carrying Capacity studies have been done in respect of the mining area in question.

4. Vide order dated 03.03.2020, the Tribunal issued notice to the respondents including the PP, the MoEF&CC and the State of M.P.

5. Reply has been filed by the MoEF&CC justifying the grant of EC for expansion for capacity for mining. It is stated that EC was originally granted on 28.07.2005 for 0.585 MTPA capacity in project area of 472.065 ha. and public consultation was conducted on 30.10.2003.

Ministry of Coal requested to dispense with public hearing for expansion on which EAC granted exemption from public hearing, since the expansion was upto 40% of the production capacity in 2-3 phases. The exemption from public hearing has been granted subject to fulfillment of following conditions:-

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- i. *Predicted air quality parameters are within the prescribed norms.*
- ii. *Coal transportation is through conveyor system up to the silo and then loading to railway wagons, involving no transportation through roads.*
- iii. *Coal mining is done through deployment of surface miners, replacing three dust generating operations of the conventional mining system namely drilling, blasting and crushing in one go.*
- iv. *Public hearing already conducted for the total mine lease area involved and no more area is required for the proposed expansion.*
- v. *Compliance status of EC conditions monitored by the concerned Regional Office of this Ministry is found to be satisfactory.*
- vi. *Other statutory requirements like Consent to Establish/Operate, Clearance from CGWA, approval of Mining Plan and the Mine Closure Plan, Mine Closure Status Report as applicable, Forest Clearance, etc. are satisfactorily fulfilled.”*

6. Proposal was deferred by the Expert Appraisal Committee (EAC) of the Ministry for Thermal & Coal Mining Sector in its 36<sup>th</sup> Meeting held on 31.08.2018 and thereafter in its 41<sup>st</sup> Meeting held on 13-14<sup>th</sup> December, 2018, considering the information provided, EC for expansion was recommended, subject to the following conditions:-

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- a. *Underground work place environmental conditions shall be rendered ergonomic and air breathable with adequate illumination in conformance with DGMS standards. (Refer Para No. 4.1, clause (a), condition no. (iv) in the EC Letter dated 11.01.2019).*
- b. *Transportation of coal, to the extent permitted by road, shall be carried out by covered trucks/conveyors. Effective control measures such as regular water/mist sprinkling/rain gun etc. shall be carried out in critical areas prone to air pollution (with higher values of PM 10/ PM2.5) such as haul road, loading/unloading and transfer points. Fugitive dust*

*emissions from all sources shall be controlled regularly. It shall be ensured that the Ambient Air Quality parameters conform to the norms prescribed by the Central/State Pollution Control Board. (Refer Para No. 4.1, clause (h), condition no. N in the IX' Letter dated 11.01.2019).*

*c. The transportation of coal shall be carried out as per the provisions and route proposed in the approved Mining Plan. Transportation of coal through the existing road passing through any village shall be avoided. In case, it is proposed to construct a 'bypass' road, it should be so constructed so that the impact of sound, dust and accidents could be appropriately mitigated. (Refer Pam No. 4.1, clause (b), condition no. (iii) in the EC Letter dated 11.01.2019).*

*d. Vehicular emissions shall be kept under control and regularly monitored. All the vehicles engaged in mining and allied activities shall operate only after obtaining 'PUC' Certificate form the authorized pollution testing centres. (Refer Para No. 4.1, clause (b), condition no. (iv) in the EC Letter dated 11.01.2019)."*

7. The Regional Officer, MoEF&CC had submitted compliance status report dated 18.06.2018 to the effect that Project Proponent has installed 4 monitoring stations in core zone and 4 ambient air quality stations in buffer zone as well. Monitoring of Air, Water & Noise was being done fortnightly and that of Heavy metals, once in six months.

8. We have heard learned Counsel for the parties and considered the matter.

#### **Consideration of the issue**

9. First point to be considered is the validity of exemption from public hearing for expansion of the project, as permissible as per OM dated 15.09.2017. Similar issue was considered vide order dated 25.08.2020 in *Appeal no. 78/2018, Laxmi Chuhan vs. Union of India & Ors.* It was held that since public hearing had been earlier conducted, there was no prejudice by exemption from public hearing, public of the area was benefitted by expansion of the project, exempting public hearing in terms of OM dated 15.9.2017 could not be held to be illegal nor against EIA



notification dated 14.9.2006. In the present case, we have already noted the basis for exemption in terms of 36<sup>th</sup> and 41<sup>st</sup> Meetings on 31.08.2018 and 13-14.12.2018 of the EAC and conditions subject to which EC for expansion was granted. In absence of any prejudice to the environment or interest of the inhabitants, exemption from public hearing per se cannot be held illegal. However, whether prejudice has been caused or not needs to be looked into.

10. Further question is compliance of conditions for expansion and of impact of expansion. The PP has not filed any response. Relevant documents have also not been filed inspite of opportunity to do so. Burden of showing that activity of expansion is benign is on the PP.

11. In these circumstances, even if exemption from public hearing is held to be legally permissible, an independent investigation of impact of expansion and status of compliance of conditions for expansion has to be undertaken.

12. Accordingly, we constitute a joint Committee comprising CPCB, State PCB and District Magistrate to ascertain status of compliance of conditions for expansion and impact of the project on the environment and people in the area by undertaking site visit and considering the view point of all stakeholders, including the inhabitants of the area. State PCB will be the nodal agency for compliance and coordination. We permit any stakeholder to represent to the Committee through the State PCB within one month from today.

13. The Committee may furnish its report within three months by e-mail at [judicial-ngt@gov.in](mailto:judicial-ngt@gov.in) preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF.

List for further consideration on 25.07.2022.

A copy of this order be forwarded to CPCB, State PCB and District Magistrate, Shahdol by e-mail for compliance.

Adarsh Kumar Goel, CP

S.K. Singh, JM

Sudhir Agarwal, JM

Arun Kumar Tyagi, JM

Dr. Arun Kumar Verma, EM

Prof. A. Senthil Vel, EM

March 28, 2022  
Appeal No.06/2019 (CZ)  
(I.A. No. 24/2019)  
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