BEFORE THE NATIONAL GREEN TRIBUNAL, NEW DELHI (PRINCIPAL BENCH)

Monday the 12th day of September 2011

Appeal No. 3 of 2011

Quorum:

1. **Hon'ble Justice C.V. Ramulu** *(Judicial Member)*
2. **Hon'ble Dr. Devendra Kumar Agrawal** *(Expert Member)*

BETWEEN:

1. The Sarpanch,
   Grampanchayat Tiroda,
   Tal. Sawantwadi,
   District Sindhudurg,
   Maharashtra

2. Mr. Ajay Shivajirao Bhonsle,
   Khashewadi, Tiroda,
   Tal. Sawantwadi,
   District Sindhudurg,
   Maharashtra

3. Mr. Surendra Vijayrao Bhonsle,
   Khashewadi, Tiroda,

Tal. Sawantwadi,
District Sindhudurg,
Maharashtra ……Appellants.

AND

1. The Ministry of Environment and Forests,
   Trough its Principal Secretary,
   Government of India,
   CGO Complex, Lodi Road,
   New Delhi – 110 003

2. Maharashtra State Pollution Control Board,
   Through Secretary,
   Kalptaru Point, 3rd & 4th Floor,
   Sion Matunga Scheme, Road No. 8,
   Opp. Ci. Planet Cinema, Near Sion Circle,
   Sion (E), Mumbai – 400 022

3. State of Maharashtra,
   Trough the Chief Secretary,
   Mantralaya, Mumbai, Maharashtra

4. The District Collector,
   Sindhudurg
   Sindhunagri, Oras
   Maharashtra

5. M/s Gogte Minerals,
   Through its Director,
   146, Tilakwadi,

Belgaum – 560 006, Karnataka

6. M/s Infrastructure Logistics Pvt. Ltd.
   Through its Director,
   Cidade de Goa,
   Vainguinim Beach, Donapaula
   Goa – 403 004 ……Respondents.

Advocates:
Shri Nikhil Nayyar and Shri T V S Raghvendra Sreyas, Advocates for the Appellant; Ms Neelam Rathore, Advocate for the Respondent No. 1; Shri Mukesh Verma, Advocate for the Respondent No. 2; Shri Dhruv Mehta, Senior Advocate along with Shri Yashraj Singh Deora, Advocate for the Respondent No. 5; and Shri Saket Sikri, Advocate for the Respondent No. 6.

J U D G M E N T

(Judgment delivered by the Bench)

This appeal is filed, under Section 18(1) read with section 16 of the National Green Tribunal Act 2010, being aggrieved by the grant of Environmental Clearance (for short EC) dated 31.12.2008 by the Ministry of Environment & Forests (for short MoEF), Government of India (for short GoI), New Delhi, in favour of Respondent No. 5, for conducting mining operations, at Tiroda Iron Ore Mine (Mining Lease (for short ML) Area - 31.4812 ha with a production capacity of 0.40 MTPA) at Tiroda

village, Sawantwadi Taluk, Sindhudurg District of Maharashtra State.

Prelude:

2. It appears that the Respondent No. 5 was granted EC, by the Respondent No. 1, through its order dated 31.12.2008, for conducting mining operations at Tiroda Iron Ore Mine (ML area – 31.4812 ha with a Production Capacity of 0.40 MTPA) at Tiroda Village, Sawantwadi Taluk of Sindhudurg District of Maharashtra State. Aggrieved by the same, the appellants herein, had filed appeal, before the then National Environment Appellate Authority (now stood abolished) in FR No. 45 of 2009. However, the said appeal was rejected at the threshold by an order dated 11.09.2009 on the ground that appeal was received after 222 days of the order passed by the MoEF granting EC for the project and as such appeal was time barred. Aggrieved by the said order, the appellants herein approached the Hon'ble High Court, Bombay in Writ Petition No. 7050 of 2010. The said Writ Petition was allowed by an order dated 01.02.2011. The Order reads as under:

> *"25. In the result, the petition is allowed. The impugned communication/order dated 11th September, 2009, of the National Environment Appellate Authority is hereby quashed and set aside and the matter is remitted to the National Green Tribunal established under the National Green Tribunal Act 2010, for hearing the petitioners' appeal on merits, after treating the same filed within the period of limitation. It will be open on the petitioners to move the tribunal for expeditious hearing of the appeal considering the fact that*

respondent No. 5 has already commenced mining activities in June 2009. The National Green Tribunal, we are confident, will consider the petitioners request in proper perspective.

26. It is clarified that we have not gone into the merits of the controversy between the parties and that it is only the question of limitation which has been decided by this Court.

27. The Writ Petition, accordingly, stands disposed of".

3. Since, the National Green Tribunal, though constituted, was non-functional; the appellants approached the Hon'ble Supreme Court by way of filing Special Leave Petition (Civil) No. 7348 of 2011.

Finally, the said SLP (C) was disposed of on 15.05.2011 with a liberty to the appellant herein to approach this Tribunal. The order reads as under:

"In today's proceeding in S.L.P. (C) No. 12065 of 2009, the learned Additional Solicitor General informed the Court that the National Green Tribunal (NGT) has already started functioning and four fresh petitions along with 26 transferred petitions have been entertained by the NGT and notices have been issued to the parties.

In view of the statement made by the learned Additional Solicitor General, this petition is disposed with liberty to the petitioners to file appropriate petition/appeal before the NGT with in a period of seven days along with an application for

appropriate interim relief. The NGT may after hearing the parties pass appropriate order as early as possible but within fifteen days of the filing of the application. Till then, interim order passed by this court on 25th April 2011 shall remain operative.
The contesting respondent shall also be free to file appropriate application before the NGT".

This is how the matter is placed before us.

4. The appellant had filed an application MA No. 1 of 2011 in Appeal No. 3 of 2011 seeking stay of the order passed by the Respondent No. 1 dated 31.12.2008 (I-11015/1026/2007-IA.II(M) and also seeking stay of the mining operations conducted by the Respondent No. 5 & 6 at Tiroda Iron Ore Mine at Tiroda village, Sawantwadi Taluk, Sindhudurg District. The said Miscellaneous Application No. 1 of 2011 after hearing all the parties and considering merits was dismissed by an order dated 25th of May 2011. Thereafter, the matter had come up for final hearing and finally the arguments were concluded on 27th July 2011. The parties also filed their written submissions.

Brief Facts:

5. The first appellant is the Sarpanch of Gram Panchayat Tiroda village, whereas the appellants 2 and 3 are the villagers of Tiroda village, Swantwadi Taluk, Sindhudurg District of Maharashtra. The Gram Panchayat of Tiroda village passed a resolution authorizing the Sarpanch, Gram Panchayat to file this appeal. It is their grievance that the EC was granted by the

MoEF, GoI, for the project of mining at Tiroda Iron Mine, in an extent of 31.4812 ha, with a production capacity of 0.40 MTPA without properly examining the environmental problems, that would be created by the mining operations of iron ore at Tiroda village and no process, known to law, was followed. The project is hazardous to human health and further it is polluting the river joining the sea. The Respondent No. 1 also had not taken into consideration as to the existence of forest and a school located adjacent to the buffer zone of ML area. No scientific data was collected, as to what is the effect of dust on the school children and on the village inhabitants. The project was granted EC flouting all the norms of environmental law and the procedure thereof.

6. Counters were filed on behalf of all the respondents. The first respondent and fifth respondent categorically denied the allegations made by the appellants and asserted that in granting EC, the first respondent has not flouted, any of the procedural requirements under the law, nor there was any illegality in granting the EC for ML area in favour of the Respondent No. 5. The Respondent No. 5 asserted that all the plausible precautions were taken to see that no pollution caused by the project operations would affect either the human habitations, much less the school and the mangroves and creeks nor there was any violation of forest laws and Coastal Zone Regulations (for short CRZ). The Respondent No. 1 or the any other respondents have committed any procedural illegality in grant of the EC. No substantial grounds have been made out calling for interference by this Tribunal.

Submissions (Appellants)

7. The learned counsel for the appellant, Shri Nikhil Nayyar, strenuously contended that the EC under challenge suffers from procedural as well as legal lacunae. The Environmental Impact Assessment (for short EIA) also did not evaluate the impact on environment properly which is the primary obligation on it. The Public Hearing (for short PH) was not properly conducted. Objections raised by the appellants were not taken into consideration. There were many factual errors in the draft EIA report. The Expert Appraisal Committee (for short EAC) had not applied its mind in evaluating the EIA report. The Respondent No. 1 was also misled itself by relying on the recommendation of EAC. Even otherwise, the post EC conditions were violated and the precautionary principles suggested were not adhered to. Though the EC was granted in favour of the Respondent No. 5, the mine is being operated by the Respondent No. 6. The Respondent No. 5 was supposed to publish the EC under the conditions attached to it within seven days from the date of grant of EC. Whereas, it was published 87 days after the clearance was granted. The appellants had access to the EC granted by Respondent No. 1 only on 13.05.2009. Thus there was some delay in approaching the Courts, and in the meanwhile the Respondent No. 1 had commenced the quarry operations which resulted in weakening the case of appellants for grant of interim orders.

8. The learned counsel for the appellants, inter-alia, raised the following important issues for the consideration of this Tribunal:

a) the prior-EC process and PH were not properly conducted;

b) the EAC had not taken note of the various aspects of pollution and did not take into consideration all aspects of the project for the purpose of recommending EC;

c) in the post EC stage also the project was not properly managed and no precautionary measures as suggested by the authorities were adhered to which resulted in the pollution of the entire area.

9. With regard to the first issue, the learned counsel for the appellant stated that as per the EIA Notification 2006, the project proponent prepares a draft EIA Report after receiving the Terms of Reference (for short ToR) in the meeting held on 13.12.2007. Whereas from the record, it is seen that the project proponent mentioned about the ToR in the draft EIA report that was used for the purpose of holding the PH. However, there are several factual errors in the draft EIA report which clearly demonstrates casual approach adopted by the project proponent and EIA consultant. For example, the description of the Taluk was wrongly mentioned as Vengurla Taluk instead of Sawantwadi Taluk, thus misled the people. There was no assessment of creeks and Mangroves which exist. The applicability of CRZ regulations was not examined. Further, Redi Mine which is within a distance of 3.5 km was not mentioned and cumulative impact of the two mines on the environment was not assessed. The area in issue is an ecologically sensitive area, as there is a school, a temple and human habitation in close proximity of the mining pit. However, the same does not find place in the ToR and draft

EIA report, though, there should be a reference to the same on account of disclosing this information in Form I that is submitted at the time of Screening procedure as per EIA notification 2006. Moreover, since the ToR was not annexed to the draft EIA report, the participants in the PH could not make proper appreciation of the facts. The draft EIA report is based on the baseline data of March-April 2006.

The PH was not conducted properly. The PH which was scheduled to be held on 05.08.2008 could not be conducted and it was postponed for want of proper place/space to 28.08.2008. In the PH one Bhushan Bhave gave presentation and the name of the Respondent No. 5 was nowhere to be seen, only the name of Respondent No. 6 i.e. M/s Infrastructure Logistics Private Limited was mentioned. The audio-visual presentation was made in English and not in local vernacular i.e. Marathi language. The PH was presided by a Deputy Collector, who was below the rank of Additional District Magistrate, which is in contravention of the Appendix IV para IV of the EIA Notification 2006, which contemplates that a public hearing shall be supervised by a District Magistrate or his representative who is not below the rank of Additional District Magistrate. Thus, the whole process of PH was vitiated.

10. With regard to the second issue, the learned counsel submitted that the very constitution and composition of the EAC was vitiated by institutional bias. One M.L. Majumdar, who at the relevant time was Director of four mining companies, was appointed as Chairman of EAC. This itself shows the bias towards the project proponent. In this regard, the learned counsel relied upon the Judgment rendered by

Hon'ble High Court of Delhi in Writ Petition No. 9340 of 2009 dated 26.11.2009 and drawn attention of the Tribunal to para No. 44 of the Judgment and stated that the EAC recommendation is liable to be set aside on this ground alone.

Further, the counsel for the appellant vehemently contended that the EAC has not applied its mind and the Respondent No. 1 merely relied upon the revised EIA Report submitted by the Respondent No. 5. In the result it clearly evidences that Respondent No. 1 also did not apply its mind while accepting the facts since it merely relied on the EAC report, while according EC to the Respondent No. 5. Baseline data presented in the EIA report preceded the ToR which is almost 1 year 4 months prior to the grant of ToR. Such information collected of a remote period could not have been taken into consideration. The ToR speaks about the various aspects to be studied and taken into consideration for the purpose of EIA. There was no study conducted as to the existence of the creeks, mangroves and the effect of the mining operations thereon. This sort of EIA could not have been considered at all by the EAC. A bare reading of the minutes also show that evaluation of impact on environment, which is the most important obligation on the part of Respondent No. 1, has not been done at all while granting EC. M/s Redi Mine is mentioned in the minutes, though it is not discussed in the EIA report. Thus looking from any angle, it cannot be said that Respondent No. 1 had applied its mind which resulted in grant of an illegal EC in favour of Respondent No. 5.

11. With regard to the third issue, the learned counsel stated that deliberately the EC was not made available to the public in

time. Instead of publishing the EC in seven days as contemplated by condition No. (xvi) of the grant of EC, it was published in Marathi newspaper – Tarun Bharat on 27.03.2009 i.e. after 87 days from the date of grant of EC. Though, the appellant tried to access the websites of the MoEF, the Respondents No. 1, and the Maharashtra State Pollution Control Board (SPCB) – Respondent No. 2, he could not access the EC letter. This resulted in great prejudice to the trust of the general public and the appellants herein. In pursuance to legal notices got issued by the appellants, an inspection was carried out by the officials of Maharashtra SPCB at the proposed mining site and accordingly a report dated 17.09.2009 was prepared. This report contains the detailed analysis of each and every condition stated in the EC dated 31.12.2008. A perusal of the report would show that the Respondent No. 5 had violated almost all the conditions of the EC. The report in fact suggested the project proponent to comply with violations subsequently. The water quality report shows that the water has been contaminated by the mining activity.

The learned counsel apart from the above also submitted that the EC ignored both the **'precautionary principle'** and the **'polluter pays principle'** which is contrary to the pronouncements of the Hon'ble Supreme Court. The learned counsel in this regard relied upon the following Judgments:

- 1996 5 SCC 547 at para 10 to 20
  Vellore Citizen's Welfare Forum Vs. Union of India
- 1997 2 SCC 87 at para 49, 52
  S. Jaggannath Vs. Union of India

- 2006 6 SCC 371 at para 66, 77, and 94 *Karnataka Industrial Areas Development Board Vs. C. Kenchappa and Ors.*

wherein the following principles were laid down:

- *Environmental measures to be taken by the Government and statutory bodies must anticipate, prevent any attack which causes environmental degradation;*
- *Where there are threats of serious irreversible damage, lack of scientific certainty cannot be used as a reason for postponing measures to prevent such degradation;*
- *The onus is on the developer to show that his actions are environmentally benign.*

The learned counsel also stated that in the environmental matters/disputes, the onus is on the project proponent and this has been recognized by Section 20 of the NGT Act, and it is not fair to put the onus of proof on the persons who are opposing the grant of EC. The environmental aspects in the present case were not even examined by MoEF which is in total violation of precautionary and trusteeship principles. The CRZ regulations were not looked into. As per the CRZ Notification 1991, the land area between high tide line to 100m or width of the creek on the landward side along the tidal influence of water bodies attracts the provisions of CRZ regulations. The presence of tidal influenced water body would mean the presence of creeks. Therefore, if there is creek adjacent to the mining site, then it is clear that it attracted the provisions of CRZ Notifications and the present mining site, falls under CRZ area. A Google map and the report of the Science and Technology Park, Pune

reflected the existence of Forest cover and Mangroves and Kharland attracting applicability of CRZ regulations. It was further noted that the Mangroves are spread over in an area of 3.2 ha and the same was not considered. The ML area is ecologically sensitive, since the area is near a water body, and there are man-made land uses such as school, etc. The Nanos river runs along the ML area and it is also not disputed that there exists a Panchayat School at a distance of 160 m from the ultimate pit head. Therefore, the project proponent has misled the Respondent No. 1 by stating that the area is not ecologically sensitive. Apart from this, as per the EIA report, the forest canopy density is between 60-80%. The High Court of Bombay in Goa Foundation & another Vs. Conservator of Forests and other (1999 (2) Bom CR 695), while analyzing the Forest Conservation Act observed that one of the conditions for declaring an area as forests under section 2 of the Forest Conservation Act, the minimum of canopy density is 40%. Therefore, since the forest canopy density of the mining area is 60-80%, it must be treated that the mining area is a forest area which is privately owned in village Tiroda. Thus, the Respondent No. 1 was misled by Respondent No. 5 and the Respondent No. 1 failed to discharge its duties and obligations under the law and thus granted an illegal EC for the purpose of iron ore mining operations. The illegal grant resulted in the environmental disturbance harming the human habitation, creeks and mangroves, public health particularly the school going children. Therefore, the EC granted under the impugned order is liable to be set aside.

Submissions (Respondents)

12. However, the learned senior counsel, Shri Dhruv Mehta, appearing for the Respondent No. 5 while refuting the arguments made by the learned counsel for the appellant submitted that the Respondent No. 1 or any other authority has not committed any error in following the procedure or law. Absolutely, there are no merits in the grounds raised and the arguments advanced by the learned counsel for the appellant. Therefore, the appeal is devoid of merits and liable to be dismissed.

The learned senior counsel, submitted that the allegation that the draft EIA Report did not refer to the ToR and as such the EIA was contrary to the EIA Notification, 2006 dated 14.09.2006 is factually erroneous and the same is evident from the perusal of the rapid EIA/EMP report, wherein it was categorically mentioned that presentation for ToR was made before EAC/MoEF meeting held on 13.12.2007 and the EIA/EMP was prepared taking into consideration the ToR. The further allegation, that draft EIA does not portray the true and correct information, to say that Tiroda village which is in Sawantwadi Taluk has been stated to be in Vengurla Taluk is not true and correct. It was only a typographical mistake and the same was corrected in the revised EIA report, on the basis of which EC was granted. The existence of Redi Mine was also taken into consideration. A study of 10 km around the core zone was undertaken to prepare EIA report and it shows that the existence of Redi Mine, though not explicitly mentioned, which is located at a distance of 3.5 km from the present one, was taken into consideration for the purpose of environmental

impacts. The statistical Air Quality Data has been given of all the villages in buffer zone including Redi village. Further, data pertaining to noise environment of Redi village is given and it has been mentioned that monitoring stations have been set up at Redi village for the purpose of water and land environment. The revised EIA report has also taken all the factors into consideration. The allegation that mining site in question falls within CRZ and would, therefore, attract CRZ Notification dated 19.02.1991 and since Mangroves are existing, the mining should be prohibited is all false and incorrect. To say that the CRZ Notification applies to river creek, etc. it must be shown that the river and creek, if any, are influenced by tidal action. In this case no such allegations have been made. Even otherwise, the mining zone is beyond 100 m distance and there is no violation of CRZ regulation.

The existence of the school has been duly considered by the respondent while preparing the EIA and due safeguards have been provided for in the EIA report itself. The EAC has also taken note of the same and imposed a special condition thereby 50 m. distance from the school be maintained as no mining zone. Further, the area is thickly vegetated to prevent the noise as well as dust pollution to the area. Adjoining to northern boundaries of ML area, a green belt has been created and measures have been suggested to reduce and/or to eliminate impact. The measures suggested in the EIA as well as the conditions in the EC have been strictly adhered to. Therefore, it cannot be said that the existence of the school and the environmental impact on the children and the school has not been taken into consideration.

The appellant for the first time sought to introduce a new contention, never raised at the time of PH or in the appeal filed before the National Environmental Appellate Authority (as it than was), that the lease area in question is allegedly forest land. The leased area contains private land and not forest government land. The respondent is not carrying out any mining activity in forest land.

13. In so far as the allegation of the appellant, that the PH was not properly conducted as per the procedure established by Law, the learned senior counsel for the appellant strenuously contended that the arguments advanced by the appellant are all false and baseless. The PH was conducted in compliance of para 2.2 of the EIA notification, 2006. The said conditions were complied with and the summary of the EIA report was provided in English and local language. Even otherwise, no prejudice has been caused to the appellant.

That the presentation during the PH was done in Marathi and the same is evident from the PH summary. The hearing was supervised by the authority competent to do so i.e. by Deputy Collector, Sindhudurg who as per the affidavit of the Collector, is of the same cadre as that of the Additional District Magistrate. Therefore, it cannot be said that it was supervised/conducted by an un-authorized officer. A perusal of the minutes of PH would show that there was effective participation on the part of the public and the gathering was large and no prejudice has been caused in conducting of PH.

The allegation that there was institutional bias in granting EC in as much as Chairperson of the EAC was allegedly

Director in some mining company is all baseless. A perusal of the minutes of the EAC would disclose that there were, 13 members present in the meeting and it was decided unanimously to grant the clearance to the Respondent No. 5. Absolutely, there was no institutional bias in this case. The EIA notification itself contemplates that an expert to be a Member of the Committee in the concerned sector. It is settled law that a decision is an authority for what it actually decides and not what logically follows from it (2008 (1) SCC 494 para 14-16) and the judgment rendered by the High Court of Delhi in the 9340 0f 2009 dated 26.11.2009 has no application to the facts of the present case.

14. The learned counsel for Respondent No. 5 argued that the allegation that the EC has been granted without considering the public objections is all false and baseless. In terms of EIA Notification dated 14.09.2006, after public consultation, the project proponent is to submit the revised EIA taking into consideration all relevant objection raised during the public consultation. In the present case, the procedure was duly followed and adequate measures were provided in the revised EIA, taking the objections into consideration. A hydrological study had been undertaken to gauge the effect of mining on ground water and it was found that the influence of mining on ground water and at best it would extend only to 156 m around the pit and the ground water development is about 37.03 per cent which is within the safe limits. The EAC imposed specific conditions while recommending grant of EC and provided for annual review of hydro-geological study, rain water harvesting measures and monitoring of ground water quality. In case of adverse effect on the ground water quality and quantity,

mining has to be stopped and can be resumed only after mitigating steps to contain any adverse impact on ground water is implemented. The chance of polluting the local river was also considered and due care has been taken for maintaining adequate distance from the river and providing of trenches so as to avoid siltation. A retention wall was also to be raised and trenches and garland drains were to be constructed to arrest silt, from being carried to water bodies. This has been complied by the respondent. For the dust generated, adequate safeguards have been taken and specific conditions to reduce dust condition was also imposed so as to maintain ambient air quality and to reduce dust emission. A green belt around the mining pit area is also to be maintained to act as dust filter. In so far as school is concerned, adequate safeguards have been taken in the EIA so as to have minimum mining on the school side and EAC/MoEF imposed specific conditions of maintaining 50 m barrier from school as no mining zone on the side facing the government school. No drilling and blasting would be undertaken during the mining which is being adhered to strictly. The dust and noise levels have been kept within the prescribed limits. The respondents has been constantly maintaining air quality and submitting half yearly data to the MOEF. Thus, it cannot be said that the EAC has not properly played its role or the Respondent No. 1 had granted EC illegally.

15. The learned senior counsel for the Respondent No. 5 submitted that in so far as post EC was concerned, the respondent has adhered to the safeguards suggested in the EIA and also the conditions as imposed by the EAC and the MOEF in the EC dated 31.12.2008. In the inspection carried out by the

authorities on 08.09.2009, it was found that the respondent has complied with the conditions and there was substantial compliance of the conditions stipulated in the EC. Therefore, it cannot be said that there is any illegality or irregularity committed by any authority particularly the Respondent No. 1 in grant of the EC. The appeal is devoid of merits and liable to be dismissed.

16. The learned counsel Ms Neelam Rathore appearing for the Respondent no. 1 (MoEF) vehemently argued that absolutely there was no illegality or irregularity in the entire process of grant of EC. Even if there are any such, they were all cured before the commencement of the project. The learned counsel took us to various documents and the conditions imposed in the EC and submitted that the procedural irregularities pointed out by the appellant are either trivial in nature or cannot be called to be substantial in nature calling for interference of this Tribunal. The learned counsel for Respondent No. 2, Shri Mukesh Verma contended that absolutely there was no lapse on the part of Maharashtra SPCB in conducting the PH nor the PH was conducted by a person who is not authorized under the law. In this regard, the learned counsel drawn our attention to the counter filed by the Respondent No. 4. The learned counsel, Shri Saket Sikri, appearing for Respondent No. 6 adopted the arguments advanced by the learned counsel for the Respondent Nos. 5.

17. We have given our earnest consideration to the respective submissions made by the learned counsel on either side and perused the entire documents made available on record and the case law referred thereto.

The following points (issues) arise for consideration:

i) *whether the prior-EC process and PH conducted by the authorities were legal or not;*

ii) *whether EAC had conducted itself as per law and examined all the aspects of pollution while recommending grant of EC;*

iii) *whether post EC measures such as precautionary principles suggested by the authorities were adhered to by the project proponent and non-compliance if any resulted in vitiating the EC granted.*

18. At the outset, we may notice that the grant of EC is substantially a procedural law. The procedural lapses which are substantial in nature such as collection and evaluation of basic data, which results in threats to the environment, cannot be taken easily or ignored, while examining the matter by this Tribunal.

Before going into the merits, we may have to take note of the Preamble of the National Green Tribunal Act, 2010, Section 20 thereof and the procedure prescribed under the EIA notification, 2006 for the purpose of granting EC which in nutshell is as under:

Preamble of NGT Act 2010 – "*An Act to provide for the establishment of a National Green Tribunal for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and*

property and for matters connected therewith or incidental thereto."

Section 20: "Tribunal to apply certain principles– *The Tribunal shall, while passing any order or decision or award, apply the principles of sustainable development, the precautionary principle and the polluter pay principle."*

Summarized Practice and Procedure as per EIA Notification, 2006

a. ***Categorization of projects*** *- For the purpose of EC the projects are broadly divided into two groups. Category A projects needs to be considered at the Central Government level whereas Category B projects are taken up at State Government level. The project involved herein is Category A project and thus required EC from the Central Government.*

b. ***Requirements of prior EC*** *– On filing application in prescribed format i.e., Form 1/Form 1-A including ToR proposed by the project proponent, the EAC for the concerned sector (in this case – Mining) constituted by the MoEF, GoI examines the proposal and finalizes the ToR including additional ToR, if any for the EIA/EMP studies with specific reference to the project location and nature of proposed activities and their likely impacts on various environmental attributes. It also prescribes the time frame for the purpose of submitting report, etc.*

c. ***Public Consultation*** *– Based on the ToR granted to the project, the proponent through his appointed consultant/s conducts the field studies and gathers the baseline data to prepare a DRAFT EIA report. The draft report is submitted to MoEF and the concerned SSPCB with the request to hold PH. The PH is conducted by the SPCB under the supervision of the concerned District Magistrate or his nominee as required in the EIA notification. The PH is desired to be conducted at the project site or in the close proximity whichever is convenient giving minimum 30 days clear notice. The gathered public is initially briefed about the project followed by detailed presentation on the environmental aspects as provided in the draft EIA report. Subsequently, opportunity is given to all the interested persons to express their views. The views expressed are video-grpahed and recorded as provided in the EIA notification. The project proponent or SPCB officials or DM may clarify any of the doubts expressed by the public. Thereafter, the summary of the proceedings is drawn then and there and is read out in the local language.*

d. ***Appraisal*** *– The project proponent, if required, may revise the DRAFT EIA report based on the inputs of the PH and prepare a brief note on the compliance of the issues raised in the PH. The revised EIA report is submitted to MoEF for being placed before the EAC. In the meantime, the records of the PH along with video-graph are furnished by SPCB to the*

MoEF. The complete EIA report and the data furnished are examined by the MoEF/EAC in detail. The EAC may or may not recommend for grant of EC. Finally, it is for the MoEF to take a decision for grant EC subject to specific conditions keeping in view the precautionary principle and polluter pay principle or it may reject the EC for reasons to be recorded.

e. ***Post EC Monitoring*** *– It is mandatory on the part of the project proponent to submit half-yearly compliance report in respect of the stipulated conditions in the grant of EC in hard and soft copy to the regulatory authority. It is always open for the regulatory authority to cancel the grant of EC, if the stipulations are not adhered to or there is any danger to the human habitation and/or serious threats are posed to ecology and environment of the surrounding which were not apprehended at the time of grant of EC.*

A combined reading of the Preamble and Section 20 of the NGT Act, 2010 would reveal that this Tribunal has got vast jurisdiction to decide the environmental disputes including conservation of all the natural resources, in a given case if it is brought before this Tribunal.

19. In the light of above, we are required to examine the three points formulated above.

i) *whether the prior-EC process and PH conducted by the authorities were legal or not*

Though the defects in the DRAFT EIA report were pointed out, such as wrong mentioning of the name of the Taluk i.e. Vengurla instead of Sawantwadi, the EIA report was not accompanied by ToR, and as such caused prejudice in the PH, as the public were not aware of the ToR; this appears to be not correct. A perusal of the DRAFT EIA report would indicate that reference is made to the ToR. The wrong mention of the name of the Taluk seems to be a typographical error and the same cannot be taken seriously. However, the appellant raised few important issues such as absence of study as to existence of Redi mine though it was admitted that it was located at a distance of 3.5km from the proposed project and the material relied upon for the purpose of EIA was prepared almost two years prior to the application for grant of ToR. There is some truth in this allegation. It appears from the records that the project proponent for the project in question and the Redi mine is one and the same and applications for award of ToR appears to have been made simultaneously. In fact a perusal of the minutes of the meeting of EAC (Mining) held on 12-14th December 2007 reveals that in the same Taluk, 4 mining projects came for award of ToR including the project in question (Source: http://164.100.194.5:8081/ssdn1/getAgendaMettingMinutesSchedule.do?indCode=MIN1Dec%2012,%202007).

The baseline data collected in Redi village in toto relied upon for the purpose of this project; and the same is being argued to be portraying impact of Redi mine whereas from the figures and facts placed before us, it is evident that at the time of baseline data collection i.e. March-April 2006,

the Redi mine and other mines, if any were not in operation. Otherwise, the data could have been altogether different as is evident from the post-project data submitted in six-monthly compliance reports (Annexure 8 of Vol V) where atleast air and water quality data are significantly different, once the mine was in operation.

The baseline data prepared by the proponent also speaks of existence of a school at a distance of 160m from the pithead. The EIA report simply says that the dust emanating from such a close proximity can be avoided by creating a thick green belt. We may not have scientific data, but it is the common knowledge that any dust emanating from such mining activity cannot be said to be controlled by a 50m wide green belt. The dust emanating from such activity may settle at a distance of more than half a km varying from season to season depending upon the wind direction. Admittedly, Tiroda village is a seashore village and the wind from seashore would definitely carry the dust to far off places. Therefore, we are of the opinion that the travel of the fine dust emanating from the mining operations was not taken seriously and without there being any scientific study as to the effect of the dust on the human habitation, particularly the school going children, the EAC could not have recommended for grant of EC and even the first respondent did not take this into consideration. We are of the opinion that this is not only a serious lapse on the part of the authorities but a substantial procedural lacuna.

In so far as the allegation of applicability of CRZ regulations, since Mangroves and Creeks are existing within

the vicinity of the ML area, absolutely no evidence, what so ever is placed before us, except making oral allegations. Neither there is any evidence to demonstrate that rivers and creeks are influenced by the tidal actions attracting the CRZ regulations, nor there is any material to show that the Nanos River, which is flowing near the ML, is influenced by the tidal action. The conditions attached to the EC would clearly indicate that no mining activity is to be undertaken within a distance of 100m from the river Nanos. Even the Maharashtra State Coastal Management Plan approved on 27.09.1996 states that the regulated zone extends only upto 100m or the width of the creek on the landward side. In the present case Nanos River near the mining site is only 18m wide (page 11, Vol IV). This aspect had been confirmed through an Autocad map provided by the Respondent no. 5.

Even though an attempt is made to say that there is a thick forest in the ML area, there is no material placed to say that there is forest recognized either as a private or government forest in the revenue or forest department records. The EIA report categorically states that there is no forest in the ML area. The map and photographs furnished by the parties does not disclose any dense forest worth the name. Therefore, it cannot be said that the land in question is forest area; however a confirmation from the State Forest Department could have resulted in forming a confirmed opinion.

In so far as baseline data on air, noise, water, flora and fauna collected for Redi village, it is observed that the data pertains to the year 2006 (p 671 to 683 of Vol VI) when the

Redi mine was not in operation. Therefore, such a baseline data cannot be said to be reflecting the true and correct information regarding impact of Redi mine in the surrounding area. Further, in a case of iron mining operations; the emission of dust is huge. Apart from this, the plant and machinery used in the quarrying operations also cause noise pollution. Therefore, when two mines are located at a distance of 3.5kms, the dust and noise pollution is likely to be more. This aspect has been completely ignored and/or lost sight of the authorities especially considering the fact that both the applications were submitted simultaneously. We have also noticed that a total of four iron ore mines were considered for grant of ToR by the EAC on 12-14th December 2007 (Source: http://164.100.194.5:8081/ssdn1/getAgendaMettingMinutesSchedule.do?indCode=MIN1Dec%2012,%202007).

Unfortunately, the cumulative effect of these four proposed projects was not considered to be of significant in causing environmental pollution in a small area. It appears an impression is sought to be created that there was only one application of Tiroda mine and at that time the Redi mine was not in operation. When number of mines are sought to be considered in a small area of Sawantwadi Taluk, the EAC was expected to examine various aspects such as the cumulative impact of Air, Water, Noise Flora, Fauna and Socio-economic aspects in view of large number of transport vehicles, plants and machinery, etc. that would be operating in the area. It would have been appropriate, if a cumulative impact study was undertaken to take care of all existing/proposed mines within 10 km of the present project

site apart from Redi mine, if any. Therefore, we are of the opinion that these aspects were not properly assessed and examined scientifically and therefore, the EIA report requires to be re-examined afresh. Thus, the EIA report suffers from incorrect and insufficient data which pertains to a period much prior to grant of ToR, therefore, the EIA report cannot be said to be sufficient for the purpose of recommending grant of EC.

It is very surprising to notice that the EIA report is prepared by the project proponent through his own consultants at his own expenditure. In such case, there is every possibility of concealing certain intrinsic information, which may go against the proponent, if it is revealed. This is the area, the proponents take advantage. Here comes, the great role to be played by the EAC in making proper evaluation of the EIA report.

It is alleged that the PH was not properly conducted. The PH which was scheduled to be held on 05.08.2008 was postponed for want of proper place/space to 28.08.2008. It appears there was not enough space to accommodate likely large gathering at the PH venue on 05.08.2008, accordingly it was postponed. No motives can be attributed to this act of the authorities nor there is any motive alleged by the appellant.

It is alleged that the proper authority to conduct the PH was the District Magistrate or his nominee not below the rank of Additional District Magistrate, whereas, the PH was conducted by the Deputy Collector. In the affidavit filed by

the Collector, it is stated that the Deputy Collector who was entrusted with the duty of conducting PH was holding the post equivalent to an Additional District Magistrate. Even otherwise, no perceptible prejudice has been caused to the appellant when other aspects of PH were conducted as per procedure. The EIA report summary was provided in English as well as Marathi language. Therefore, we are of the opinion that the PH was conducted properly and as per procedure envisaged in the EIA notification, 2006.

In view of our findings noticed above, we are of the considered opinion that the EIA report cannot be said have been properly prepared since sufficient and appropriate data was not collected and presented as per the awarded ToR as elaborated infra. But, it cannot be said that the PH was vitiated or invalid as substantial compliance was made in this regards. However, the very purpose of the PH got defeated since the EIA report was defective.

20. ii) *whether EAC had conducted itself as per law and examined all the aspects of pollution while recommending grant of EC*

It is alleged that the constitution and composition of the EAC (Mining) suffered from institutional bias. One M L Majumdar, who was Director of 4 mining companies at the relevant point of time, was appointed as a Chairman of the EAC. This itself shows the bias towards the project proponent. In this regards, reliance is placed upon the judgment of the High Court of Delhi in WP No. 9340 of 2009

dated 26.11.2009 and drawn attention of the Tribunal to para 44 which reads as under:

> *"44. As regards the EAC (Mines), it is surprising that 12 member EAC was chaired by a person who happened to be Director of four mining companies. It matters little that the said four mining companies were not in Goa. Appointing a person who has a direct interest in the promotion of the mining industry as the Chairperson of the EAC (Mines) is in our view, an unhealthy practice that will rob the EAC of its credibility since there is an obvious and direct conflict of interest. It is another matter Mr Majumdar is no longer the Chairman of the EAC (Mines) and therefore, the fresh decision in the present case will be taken by the present EAC under a new Chairman."*

Whereas, while relying upon the judgment of the Apex Court reported in 2008(1) SCC page 494 (paras 14 to 16), the learned senior counsel for Respondent no. 5 stated that "*the ratio of any decision must be understood in the background of that case and that a case is only an authority for what it actually decides and not what logically follows from it*" and as such the above judgment has no application for the facts of the present case. We are afraid; we may not be able to agree with the submissions made by the learned senior counsel for the Respondent No. 5. The facts and circumstances decided in the High Court of Delhi case are similar to that of the present case and even the Chairman named therein was the Chairman in this case. Even, if we were to consider as to the

prejudice aspect, caused to the appellant, our hands are tied by the observations of the High Court of Delhi saying "*in our view, an unhealthy practice that will rob the EAC of its credibility since there is an obvious and direct conflict of interest*".

For the reasons recorded at para no. 19; we are in full agreement with the submissions made by the learned counsel for the appellant that the EIA report which was prepared at the behest of project proponent, does not disclose proper and sufficient facts and information. For example, the entire baseline data pertains to a period much prior to award of ToR. More important issue relates to the fact that at the time of award of ToR, as many as 16 additional ToR were prescribed (p 5, Vol V, Annexure 29). Out of which, condition no. iv, v, vii, ix, x, and xii were not complied with at the time of EIA report which are crucial for taking a final decision regarding recommending the project for grant of EC, which reads as under:

iv. Details of fauna / flora duly authenticated separately for core and buffer zone shall be furnished based on field survey clearly indicating the schedule of fauna present. In case of any scheduled I fauna found in the study area, the necessary plan for their conservation shall be prepared in consultation with State Forests and Wildlife Dept. and details furnished. Necessary allocation of funds for implementation of the same shall be made as part of the project cost.

v. Need based assessment for the nearby villages shall be conducted to study economic measures which can help in upliftment of poor section of society. Income generating projects/tools such as development of

fodder farm, fruit orchards, vocational training etc. can form a part of such programme. Company shall provide separate budget for community development activities and income generating programmes. This will be in addition to vocational training for individuals imparted to take up self-employment and jobs.

vi. ---------

vii. *Conservation plan for wildlife shall be prepared in consultation with the Chief Wild Life Warden and duly vetted by the office of the CWLW for implementation. Necessary fund for implementation of the same shall be separately allocated and undertaking provided.*

viii. ----------

ix. ----------

x. *Land-use pattern of the nearby villages shall be studied and action plan for abatement and compensation for damage to agricultural land/ common property land (if any) in the nearby villages, due to mining activity shall be prepared. Annual status of implementation of the plan and expenditure thereon shall be reported to the Ministry.*

xi. ----------

xii. *Rain water harvesting shall be undertaken to recharge the ground water table. Road map for implementation shall be prepared.*

This was, however, seems to have not been objected to by the MoEF/EAC at the time of appraisal, on the other hand, it had repeated the same at the time of recommending grant of EC by stipulating as specific conditions to be

adhered to after the grant of EC (condition no. v, vi, xiv, xv, and xvii of EC letter). The matter assumes greater significance in view of the fact that as per the procedure laid in EIA notification 2006, Appendix V, para 2, it was the duty of Respondent No. 1 to scrutinize the documents strictly with reference to the ToR and take a note of the inadequacies in the Final EIA report and communicate to the EAC. Compliance of these ToR cannot be postponed to be complied with, after the grant of EC. There are conditions and conditions. The conditions (ToR) which are mandatory cannot be ignored at the time of appraisal of EIA by EAC. In this case, as noticed above, the crucial and mandatory conditions (ToR) were not complied with by the project proponent at the time of EIA report. If ToR are not in the nature of pre-EC compliance, there was no necessity of additional ToR fixed by EAC. Even a bare look would show that almost all the additional ToR conditions are mandatory and when such conditions are not complied with, it must be deemed that the whole decision-making process was vitiated. Therefore, the submission made by the learned senior counsel for the Respondent No. 5 that even if there is any lapse in the EIA and EAC appraisal, the same cannot be said to be substantial lapses requiring setting aside of EC granted by Respondent no. 1 cannot be accepted. However, the learned senior counsel brought to our notice that all the specific conditions imposed in the EC were complied with before the commencement of the mining operations i.e. in the month of November 2009. The EC itself speaks that these conditions must be complied within 6 months from the date of EC and almost all the specific conditions attached to the EC were complied with before the commencement of mining

operations. The plan for flora and fauna along with the plan for conservation of wildlife was prepared in consultation with the DFO and submitted on 04.08.2009. The plan for wildlife preservation was submitted to the Chief Wildlife Warden through the local DFO and a budget of Rs 20 lakhs was allocated and Rs. 8 lakhs was spent on environmental issues. The said information was also provided to the Additional Director, MoEF during the site inspection on 08.09.2009. Even the conditions which are complained of non-compliance by the appellant appear to have been complied as per the latest six-monthly compliance report dated 05.06.2011 (Annexure 9 of Vol VI). If this is taken into consideration, there is substantial compliance of the conditions attached to the EC as of date. In this regard the learned senior counsel relied on the judgment reported in 2004 (9) SCC 362 and drawn our attention to para 80 and 81.

Here, we are constrained to record that the act of EAC/MoEF in completely ignoring the non-compliance of the awarded ToR for EIA studies at the time of appraisal and/or grant of EC is totally unreasonable. This approach made by the EAC/MoEF requires to be avoided.

Though the PH was conducted mostly in accordance with the procedure, the various objections raised in the PH, as reflected in the PH minutes placed on record (p 584 to 597 of Annexure 11, Vol VI), were not properly evaluated and addressed in the EIA report. As many as 42 issues were raised in the PH and it was noted against many that the objections/views have been noted and will be sent to MoEF. The tragedy is, even the EAC (Mining), held on December 1-

2, 2008 disposed of these objections/views casually by stating that:

> *"the Committee also took note of the issues raised in the public hearing and the environmental management plan submitted by the proponent. The issues raised were regarding bad conditions of the roads; ground water contamination and depletion due to mining; adverse impacts on agricultural crops; dust generation due to mining and transportation of ore; impact on salt production at Tiroda; CRZ regulations; impact on medicinal plants, etc. The proponent submitted that the issues raised in the public hearing shall be addressed as agreed."*

Except this, no other discussion was made. Therefore, it cannot be said the EAC had conducted itself in the manner it requires in recommending the grant of EC to the project.

It is baffling to notice that the EIA consultant, who is supposed to be an expert in the field, has no accountability what so ever, even if he furnishes wrong information or insufficient information, which leads to wrong conclusions that may be arrived at by the EAC as well as MoEF. The proponent generally is not an expert; he goes by the report prepared by the EIA consultant. It is always better to fix the responsibilities on the EIA consultant and made liable for taking suitable action (both civil and criminal) for furnishing any wrong information. The EC must take into consideration the present and the future of environment and ecology of the surroundings for the benefit of posterity. No procedure can be said to be not mandatory. Once a wrong decision is taken,

it harms the generations to come. The natural heritage cannot be allowed to be destroyed at the cost of environment, ecology and the future generation. The principle of sustainable development is always subject to these precautions. In this regard it may be apt to notice the definition of sustainable development adopted by UN which reads as under:

> ***"Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs. It contains within it two key concepts - the concept of 'needs', in particular the essential needs of the world's poor, to which overriding priority should be given; and the idea of limitations imposed by the state of technology and social organization on the environment's ability to meet present and future needs."***

It may not be out of place to mention a recent judgment delivered by Pretoria High Court, South Africa, where in the matter of EIA study of Pan Africa Parliament building done by M/s Mpfofu Environmental Solutions was examined and on finding that the EIA consultant was guilty of providing misleading or incorrect information to authorities, it was indicated that the consultant faces a sentence of R40k and up to two years in jail. The judgment is seen as a "wake-up call" for consultants who produce so called "sweetheart" reports that favour the developers (Source: http://www.legalbrief.co.za/article.php?story=20110419092516371).

21. iii) *whether post EC measures such as precautionary principles suggested by the authorities were adhered to by the project proponent and non-compliance if any resulted in vitiating the EC granted.*

The post EC position also appears to be not encouraging. The prejudice expressed by the appellant that since the EC was not published in the local newspapers and was not available on the website of MoEF and the Maharashtra SPCB also did not display a copy of the EC in the regional offices and other places as required under law, nor a copy of the EC letter was marked to the Appellant no. 1 i.e. Gram Panchayat, Tiroda, and he was not able to approach the Courts in time to challenge and seek interim orders, cannot be said to be out of place. The judgment of the Bombay High Court between the parties herein in WP 7050 of 2010 dated 01.02.2011 may be necessary to notice here.

> *"It is submitted on behalf of the petitioners that the environmental clearance was granted, subject to various specific and general conditions, including the following general conditions :-*
> *(xiv) A copy of clearance letter will be marked to concerned Panchayat/local NGO, if any, from whom suggestion/ representation has been received while processing the proposal.*
> *(xv) State Pollution Control Board shall display a copy of the clearance letter at the Regional Office, District Industry Centre and Collector's office/Tehsildar's office for 30 days.*
> *(xvi) The project authorities shall advertise at least in two local newspapers widely circulated, one of which shall be in the vernacular language of the*

locality concerned, within 7 days of the issue of the clearance letter informing that the project has been accorded environmental clearance and a copy of the clearance letter is available with the state Pollution Control Board and also at web site of the Ministry of Environment and Forests at ***http://envfor.nic.in*** *and a copy of the same shall be forwarded to the Regional Office of the Ministry located in Bangalore."*

6. It is submitted that the above three conditions are cumulative and non-compliance of any of these conditions would not only be a sufficient ground for explaining the delay in filing the appeal, but would also make the environmental clearance itself not operative. In any case, the period of limitation begins to run upon compliance of the above conditions.

7. As far as condition no.(xiv) is concerned, it is submitted that the copy of the clearance letter was not marked by the Ministry of Environment & Forests to Tiroda Grampanchayat. Although respondent No. 5 has alleged that a representative of respondent No. 5 had approached petitioner No. 1 - Sarpanch of village Tiroda to hand over a copy of the clearance letter and that petitioner No. 1 had refused to accept the same, for the first time affidavit to that effect is filed only on 26th October, 2010. Even according to respondent No. 5, a copy of the clearance letter along with a copy of the covering letter was sent on 10th September, 2009, by registered post A/D.

8. As far as condition no.(xv) is concerned, Maharashtra State Pollution Control Board has not

filed any affidavit indicating compliance with condition No.(xv). On the contrary, in the affidavit filed on behalf of Maharashtra State Pollution Control Board, no averment is made about compliance of condition no.(xv).

9. Coming to condition no.(xvi), learned counsel for the petitioners states that even according to the respondents, the advertisement in the local newspapers about the environmental clearance accorded to respondent No.5 was published in the newspaper dated 27th March, 2009, which only stated that a copy of the clearance letter was available with the Maharashtra State Pollution Control Board and also on the website of the Ministry of Environment & Forests. However, when the petitioners approached a computer literate person for the purpose of accessing the clearance letter on the website of the Ministry of Environment & Forests at http://envfor.nic.in and the State Pollution Control Board, the clearance letter was not accessible on the website. In fact, the State Pollution Control Board has admitted that the clearance letter was not displayed on the website. The petitioners could access the clearance letter on the website of the Ministry of Environment & Forests only on or about 13th May, 2009. This statement was specifically made in the application for condonation of delay made before the Appellate Tribunal. However, through inadvertence, in the Appeal Memo it was stated that the clearance letter was accessed on the website in the second week of April, 2009."

Further, it is interesting to notice, the Appellant no. 1 appears to have got issued a legal notice dated 18.05.2009 to the Respondent No. 5, while marking a copy to the Maharashtra SPCB authorities and others, and a similar notice was sent to the MoEF on 27.05.2009, alleging that mining activity was commenced without complying the conditions precedent, attached to the EC granted by the first respondent dated 31.12.2008 in respect of Tiroda Iron Ore Mine. Ultimately, the first respondent directed the Maharashtra SPCB to inspect the project (Tiroda Iron Ore Mine) of Respondent No. 5 at Tiroda village and submit a detailed report. It appears from the report based on inspection carried out on 08.09.2009 submitted by the Maharashtra SPCB dated 17.09.2009 that actual extraction of mining of ore has not commenced and no pits were created except preparing an approach road at the mining site and leveling the land at the top of the hill. However, survey data of flora and fauna and conservation for wildlife not submitted within six months. The ground water quality was not monitored in the core zone area and not submitted to the Ministry. No permission from the competent authority was obtained for extraction of ground water and copy of the EC was not marked to the local panchayat and not published in the local newspaper. As we have noticed above, as of today, there is a substantial compliance, may be it was not complied with as on the date of the Appeal.

From all the above, it is evident that there was substantial deviation from the standard practice and procedure, for the purpose of grant of EC dated 31.12.2008. Though it has been

rectified thereafter, it requires to be reconsidered by the MoEF, GoI; the first respondent.

The learned counsel on either side relied on many judgments in support of their submissions. There is no necessity to go into all the details, in view of our categorical finding that the EAC was chaired by Majumdar, which practice has been deprecated by the High Court of Delhi and the insufficient data collected as to air and water particularly keeping in view the proximity of Panchayat School; the EC requires to be set aside. However, considering the fact that the Respondent No. 5 has substantially complied with the conditions attached to the EC, before commencing the mining operations and thereafter and it is now almost two years, therefore, we restrain ourselves from quashing the EC. Thus, the Appeal is disposed of with the following directions keeping in view the balance to be maintained between the environment and development and the precautionary principle:

1. The EC dated 31.12.2008 granted in favour of the fifth respondent shall be kept in abeyance with immediate effect, till a fresh decision is taken by the Respondent No. 1 either way. However, the fifth Respondent may be allowed to lift and transport the iron ore already mined and stacked on the site, as per law.

2. The Respondent no. 1 shall place the matter before the new EAC (Mining) to which Majumdar is not a party and seek a fresh consideration of the matter taking all the material as available as on date as to compliances. If the EAC considers it necessary to impose additional

conditions, it may direct the proponent to comply with the same including fresh EIA based on prescribed ToR before taking a decision for revival of the EC. However, we make it clear that the EAC is at liberty to reject or accept the proposal for recommending revival of EC in favour of the project proponent.

3. The EAC, however, shall call for fresh report in so far as causing air, noise and water pollution keeping in view the proximity of the school as observed in this judgment and may recommend for relocating the school by constructing a new building at a safe location within Tiroda revenue village with similar accommodation and suitable playground around, along with all modern basic amenities as required by the local Education Department.

4. The EAC also shall call for a fresh report as to existence of number of iron ore mines in Sawantwadi Taluk and their cumulative effect on the environment and ecology of the area particularly the Tiroda village.

5. This entire process shall be completed within a period of 6 months from the date of receipt of this judgment.

With the above directions, the Appeal stands disposed of.

(Dr Devendra Kumar Agrawal) **(Justice C V Ramulu)**
Expert Member ***Judicial Member***