

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH,
KOLKATA**

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**ORIGINAL APPLICATION No.114/2017/EZ
(M.A. No.301/2017/EZ & I.A. No.52/2021/EZ)**

IN THE MATTER OF:

**Takam Xavier
S/o late Takam Taniuam,
Village-Lekhi Happa,
Post Office and Police Station Nahar Lagun,
District Papumpare, Arunachal Pradesh-791110**

....Applicant(s)

Versus

- 1. Union of India
Through the Secretary,
Ministry of Environment, Forests and Climate Change
Indira Paryavaran Bhawan, Jorbag Roady,
New Delhi-110003**
- 2. The State of Arunachal Pradesh,
Through the Secretary,
Department of Environment and Forest
Having its office Paryavaran Bhavan,
Papu Nalah, Yupia Road, Naharlagun-791110**
- 3. State Environment Impact Assessment Authority, Arunachal
Pradesh
Through its Member Secretary,
Its office at Paryavaran Bhavan, Papu Nalah,
Yupia Road, Nahallagun-791110**
- 4. The Arunachal Pradesh State Pollution Control Board
Parayavaran Bhavan, Papu Nalah,
Yupia Road, Naharlagun-791110**
- 5. M/s Satyam Group of Industries
Represented by its Director
Having its office Ispat Complex (First Floor),
N.S. Road, Ambari, Fatashil,
Guwahati-**
- 6. M/s Shree Salasar Industries
A partnership business,
Represented through its Partner,**

**Shri Sandeep Bhagat,
Having its administrative office NBS,
Commercial Building, 1st Floor,
ABC Bhangagarh, G.S. Road,
Guwahati-781005**

**7. M/s SMS Smelters Limited
Represented through its Naresh Keyal,
Director, having its administrative
Office at N.B.S., Commercial Building,
1st Floor, ABC Bhangagarh,
G.S. Road, Guwahati-781005**

....Respondent(s)

COUNSEL FOR APPLICANT:

Ms. Arpita Chowdhury, Amicus Curiae

COUNSEL FOR RESPONDENTS:

**Mr. Gora Chand Roy Choudhury, Advocate for R-1,
Mr. Ashok Prasad, Advocate for R-2,
Mr. Anil Shrivastava, Advocate for R-3,
Mr. Surendra Kumar, Advocate for R-4,
Mr. Mainak Bose, Advocate a/w
Mr. Mitabh Ray, Advocate for R-6 & 7**

JUDGMENT

PRESENT:

**HON'BLE MR. JUSTICE B. AMIT STHALEKAR (JUDICIAL MEMBER)
HON'BLE MR. SAIBAL DASGUPTA (EXPERT MEMBER)**

**Reserved On: - 25th February, 2022
Pronounce On: - 23rd March, 2022**

1. Whether the Judgment is allowed to be published on the net? **Yes**
 2. Whether the Judgment is allowed to be published in the NGT Reporter? **Yes**
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JUSTICE B. AMIT STHALEKAR (JUDICIAL MEMBER)

Heard Ms. Arpita Chowdhury, Amicus Curiae as well as the learned Counsel for the Respondents and perused the documents on record.

2. The Original Application has been filed with the allegations that Respondent Nos.5 to 7 have been running a Ferro Alloy Manufacturing Unit in Village Lakhi Happa in the District of Papumpare in the State of Arunachal Pradesh without obtaining Environmental Clearance as required under EIA Notification, 2006. It is also alleged that the unit discharges untreated effluent into rivers Pachin and Kankar which flow in the vicinity of the unit resulting in those rivers being contaminated. Apart from this, it has also been alleged that the unit being located in a thickly populated area has been a cause of air pollution rendering the inhabitants vulnerable to health hazards.

3. Notices were issued to the respondents and counter-affidavits/responses have been filed by the Respondents.

4. The Tribunal had directed the Respondent No.4, Arunachal Pradesh State Pollution Control Board and Respondent No.3, State Environment Impact Assessment Authority (SEIAA), Arunachal Pradesh to inspect the unit in question and verify as to whether the allegations contained in the original application are correct or not and file a report.

5. A reply has been filed by Respondent No.3, State Environment Impact Assessment Authority (SEIAA), Arunachal Pradesh, wherein

it is stated that out of the three industries mentioned in the original application as Respondent No.5, 6 and 7 and alleged to be a polluting industry, only Respondent No.7, M/s SMS Smelters Limited was established prior to Environment Impact Assessment (EIA) Notification, 2006 dated 14.09.2006. This industry was established with a production capacity of 1000 MTA. The Respondent No.5, M/s Satyam Group of Industries and Respondent No.6, M/s Shree Salasar Industries were established after 14.09.2006 i.e. after coming into force of the EIA Notification, 2006. All three industries are Primary Metallurgical Industries and fall under Category 'A' of the Schedule to the EIA Notification, 2006 and therefore, require prior Environmental Clearance (EC) in the case of Respondent No.5, M/s Satyam Group of Industries and Respondent No.6, M/s Shree Salasar Industries and Respondent No.7, M/s SMS Smelters Limited. It is stated that there is no information with SEIAA as to whether the Respondent No.5, 6 & 7 have obtained Environmental Clearance (EC) under the EIA Notification, 2006.

6. The Applicant in his rejoinder affidavit however, has again reiterated that Respondent No.6 & 7 are illegally operating their Metallurgical Units dealing with Ferro Alloy in Village Lekhi Happa, Post Office Naharlagu, District Papumpare, Arunachal Pradesh, without any Environmental Clearance (EC) and are polluting the rivers namely Pachin (also known as Barapani) and Kankar (a tributary of river Pachin) by releasing untreated effluent discharge from their units into the said rivers including hazardous chemical substances.

7. It is stated that after coming into force of the EIA Notification dated 14.09.2006, Consent to Operate (CTO) was issued in favour of the Respondent No.7 on 06.05.2006 by the Arunachal Pradesh State Pollution Control Board which was valid up to 08.03.2007 and was again renewed from 09.03.2007 to 08.03.2008.

8. It is also alleged that the Respondent No.6 has started with a capacity of 1000 MTA in 2014 and thereafter, enhanced the capacity in 2016 to 8800 MTA and therefore, for purpose of the enhancement the Respondent Nos.5 & 6 would fall within the ambit of EIA Notification, 2006 but the same was not obtained.

9. Another rejoinder affidavit has been filed by the Applicant to the same effect and is in reply to the affidavit filed on behalf of the Respondent Nos.6 & 7. The applicant has also submitted rejoinder reply to the affidavit of Respondent No.3 reiterating the averments previously made by him.

10. An affidavit in opposition has been filed by Respondent Nos. 6 & 7 in reply to the affidavit of Respondent No.3 denying the averments made in that affidavit and it is stated that the Respondent No.6, M/s Shree Salasar Industries was granted the Consent to Establish (CTE) on 16.05.2006. It is however, denied that the Respondent No.6, Unit has been established after the EIA Notification, 2006 and that it falls under Category 'A'. It is however stated that the Respondent Unit does not fall under the purview of the EIA Notification, 2006 and it is also stated that the Respondent

No.6, M/s Shree Salasar Industries does not require any Environmental Clearance (EC) and is exempted from obtaining such clearance under the amendment Notification of 2009. It is further stated that in the Lekhi Village, Naharlagu, only two units exists namely, Respondent No.6, M/s Shree Salasar Industries and Respondent No.7, M/s SMS Smelters Limited. It is also stated that the Respondent No.6, M/s Shree Salasar Industries was established prior to the EIA Notification, 2006 with a capacity of 8200 MTA and Respondent No.7, M/s SMS Smelters Limited with a capacity of 7200 MTA.

11. The Respondent No.2 in its affidavit has however stated that as per the site Inspection Report dated 19.05.2017, the Respondent No.7, M/s SMS Smelters (Ferro Alloy) located at Lekhi Village is non-functioning, since July, 2013 and only Respondent No.6, M/s Shree Salasar Industry (Ferro Alloy) is functioning at Lekhi Village. Here also the Consent and Authorization granted by Arunachal Pradesh State Pollution Control Board are valid only up to 14.06.2018.

12. Another affidavit has been filed by Respondent No.4, Arunachal Pradesh State Pollution Control Board, wherein it is stated that there is no industry in the name and style of M/s Satyam Group of Industries but M/s Satyam Group of Industries has its registered office at Ispat Complex, Guwahati, Assam and under it many industries are operating in Arunachal Pradesh and

Assam including Respondent Nos.6 & 7, M/s Shree Salasar Industries and M/s SMS Smelters Limited.

13. It is stated that the Respondent No.6, M/s Shree Salasar Industries was granted Consent to Operate (CTO) by the Arunachal Pradesh State Pollution Control Board on 16.05.2006 i.e. prior to coming into force of the EIA Notification, 2006 which came into force on 14.09.2006.

14. A reference has also been made to the EIA Notification of 1994 issued by MoEF&CC dated 27.01.1994 defining Primary Metallurgical Industries in Serial No.13 of its Schedule outlining all projects requiring Environmental Clearance. Serial No.13 which has been quoted in the affidavit of Respondent No.4 (page no.424 of the paper book), reads as under:-

“13(a) Primary metallurgical industries (such as production of iron and steel, Aluminum, Copper, Zinc, Lead and Ferro Alloys). 13 (B) Electric arc furnaces (mini Steel Plants”. So, all the units dealing with production of Iron, Steel Alloy, Copper, Zinc, Lead and Ferrous including Mini Steel Plants operated with Electric Arc Furnace will come under the category of Primary Metallurgical Industries and will require Environmental Clearance.”

15. It is also stated that paragraph 3 of the EIA Notification, 1994 also states that nothing contained in this notification shall apply to (a) any item falling under Nos.3, 18 and 20 of Schedule-I and (b) any item falling under entry Nos.1, 2, 3, 4, 5, 7, 9, 10, 13, 14, 16, 17, 19, 21, 25 and 27 of the Schedule, if the investment is less than

Rs.100 crores for new projects and less than 50 crores for expansion/modernization projects. The EIA Notification S.O. 60 (E) dated 27.01.1994 deals with grant of Environmental Clearance by the Central Government or State Government. Paragraph 3 of the notification however, is in a nature of an exemption and read as under:-

“3) Nothing contained in this Notification shall apply to:

- a. Any item falling under entry Nos. 3, 18 and 20 of the Schedule-I to be located or proposed to be located in the areas covered by the Notifications S.O.No.102 (E) dated 1st February, 1989, S.O. 114 (E) dated 20th February, 1991; S.O. No. 416 (E) dated 20th June, 1991 and S.O. No.319 (E) dated 7th May, 1992.*
- b. Any item falling under entry no. 1, 2, 3, 4, 5, 7, 9, 10, 13, 14, 16, 17, 19, 21, 25, 27 of Schedule-I if the investment is less than Rs.100 crores for new projects and less than Rs.50 crores for expansion/modernization projects.*
- c. Any item reserved for Small Scale Industrial Sector with investment less than Rs.1 crore.*
- d. Defence related road construction projects in border areas.*
- e. Any item falling under entry no.8 of Schedule-I, if that product is covered by the notification G.S.R. 1037 (E) dated 5th December, 1989.*
- f. Modernization projects in irrigation sector if additional command area is less than 10,000 hectares or project cost is less than Rs.100 crores.”*

16. It is stated that since the capital investment of Respondent No.6, M/s Shree Salasar Industires, is only Rs. 24.47 crores which is less than 50 crores therefore, such unit was granted consent by the Arunachal Pradesh State Pollution Control Board on 16.05.2006 when the EIA Notification of 1994 was enforced and the

same was renewed from time to time. It is also stated that the consent granted by the Board was renewed from time to time but Respondent No.6, M/s Shree Salasar Industries could be established and become functional only in 2010 by which time the Environmental Clearance regime had already come into force in view of the EIA Notification, 2006 and its subsequent amendment by EIA Notification, 2009. The EIA Notification, 2009 envisaged that *(ii) In the case of secondary metallurgical processing industrial units, those projects involving operation of furnace only such as induction and electric arc furnace, submerged arc furnace, and cupola with capacity more than 30,000 tonnes per annum (TPA) would require Environmental Clearance.* It is further stated that the Respondent No.6, M/s Shree Salasar Industries got a waiver from the requirement of Environmental Clearance under the EIA Notification, 2009 in view of the provisions of paragraph (ii) referred to herein above.

17. So far as the Respondent No.7, M/s SMS Smelter Limited is concerned, it is stated that the said respondent started its business in 2003 with a capital investment of Rs.17.20 crores and production capacity of 1000 MTM of Ferro Alloy. It is also stated that the Respondent No.7, M/s SMS Smelter Limited was a secondary metallurgical processing industry falling under Category-B of the projects under Schedule-I of the EIA Notification, 2006 and ordinarily should have required Environmental Clearance from State Environment Impact Assessment Authority (SEIAA) but because its production capacity was less than 30,000 MTA

therefore, it became entitled for wavier from the requirement of Environmental Clearance under the EIA Notification, 2009. It is however, stated that the Respondent No.7, M/s SMS Smelter Limited failed to renew its consent order with the Arunachal Pradesh State Pollution Control Board after 2015 despite repeated reminders to renew, therefore, the industry has now been issued a closure order dated 12.07.2021 (Annexure-M, page No. 594 of the paper book).

18. The stand of the Respondent Nos.6 & 7 as well as of the Arunachal Pradesh State Pollution Control Board clearly is that the Respondent No.6 was established with the capital investment of Rs.24.47 Crores which was less than Rs.50 crores and therefore, it was entitled to exemption from Environmental Clearance under the EIA Notification, 1994 being less than 30,000 MT.

19. The Board has also stated that by an order dated 21.09.2020 M/s Salasar Industries has been closed with disconnection of electricity for failing to reduce fugitive emission from the unit, document in this regard has been filed as Annexure-D. However, vide order of the Member Secretary, Arunachal Pradesh State Pollution Control Board (Annexure-F, page No.483 of the paper book), wherein it is stated that as per the Inspection Report by Central Pollution Control Board dated 30.12.2020 wherein it was observed that Ambient Air Quality data/fugitive emission/stack monitoring from the unit is within the permissible limit of standards as per CPCB guidelines. Accordingly, the Arunachal

Pradesh State Pollution Control Board had revoked the closure order of M/s Shree Salasar Industries, Lekhi Village Naharlagun with effect from 14.07.2021.

20. Likewise the Respondent No.7, M/s SMS Smelters Limited established with a capital of Rs.17.20 crores and production capacity of 1000 MTA and the same being under 30,000 MTA was also entitled to exemption from obtaining Environmental Clearance in view of the provisions of the EIA Notification, 2009. Since M/s SMS Smelters failed to renew the Consent order from Arunachal Pradesh State Pollution Control Board, despite several reminders to renew the same, the unit was closed down vide closure order dated 12.07.2021(Annexure-M, page no. 594 of the paper book).

21. The EIA Notification, 2009 has been considered by National Green Tribunal, Principal Bench, New Delhi in *Original Application No.421/2018, Takam Tayam Versus Union of India & Ors.*, wherein the same Respondent No.5 was also impleaded as Respondent No.6 and the Tribunal considered the matter and held that in view of the EIA Notification, 2009, the production capacity being less than 30,000 MTA, the said unit would be exempted from the requirement of prior Environmental Clearance. The said original application was dismissed. Paragraph 41 to 50 of the said judgment read as under:-

“41. By virtue of this amendment Column 5 of Schedule I was amended and a note was also added where it has been mentioned that in case of Secondary Metallurgical Processing Industrial unit only for those project involving operation of furnaces only such as Induction and Electric Arc Furnace,

Submerged Arc furnace and Cupola with capacity more than 30,000 tonnes per annum would require Environment Clearance. So it is clear from this that prior Environment Clearance is required only for those units involving the operation of furnaces only such as Induction and Electric Arc Furnace and Submerged Arc Furnace and Cupola with production capacity more than 30,000 tonnes per annum. So units using such furnaces having production capacity less than 30,000 tonnes per annum does not require prior Environment Clearance.

42. Admittedly, Respondent No.5 unit is having only production capacity of 8,800 MTA which is much less than 30,000 MTA as mentioned in the amended Notification. So there is no necessity for them to get prior environment clearance for commencement of their unit.

43. Further it will be seen from the Consent to Operate issued to the Respondent No.5 that they are manufacturing Ferro Alloy using Furnace Induction and Electric Arc.

44. So, they will be squarely falling under the exempted categories which do not require prior Environment Clearance as per EIA Notification of 2009.

45. So, the submission made by the counsel for the applicant that the prior Environment Clearance is required for establishment of this unit and without obtaining the same running of the unit is illegal is without any substance and the same is liable to be rejected.

46. As regards the other contention is concerned, i.e., the production has been increased from 1000 MTA to 8,800 MTA is also without any substance. When such a contention was raised, we have as per order dated 29.01.2019 directed the SPCB to produce the entire file relating to issuance of Consent to Operate/Authorisation for the Respondent No,5 and it was

produced and on verification, it was revealed that when they originally applied, it was issued for a capacity of 1000 MTM as requested by them in their application and in subsequent application also the applicant had applied for 1000 MTM but by mistake it was mentioned as 1000 MTA when the order was issued. The same was repeated till 2016 and only then it was correctly mentioned production capacity as 8800 per MTA which is the production capacity of the Respondent No.5 unit. So they have increased the production capacity is also without any merit.

47. As regards the contention that it creates pollution causing health hazards, there is no material data produced to prove that fact. Even if there is any slight variation in maintaining the pollution standards prescribed, the Pollution Control Board will be taken appropriate action in this regard and the unit will be taking all steps to control the pollution within the prescribed limit issued by the Pollution Control Board.

48. In view of the discussion made above, since the applicant has failed to establish any of the grounds to interfere with the Consent to Operate granted to the Respondent No.5, though the remedy of the applicant to file an appeal against the same under the Air Act and the Water Act before the Appellate Authority constituted therein and since it was pending from 2017 onwards, we are not going into the aspect regarding the maintainability. Even as per the materials available on record, there is nothing to interfere with the Consent to Operate/Authorisation granted by the Respondent No.4, State Pollution Control Board to the Respondent No.5 dated 18.06.2018 or the prior Consent to Operate granted to the Respondent No.5 on any of the grounds mentioned by the applicant.

49. So, the petition is devoid of any merit and the same is liable to be dismissed.

50. *In a result, the application is dismissed. Considering the circumstances, there is no order as to costs.”*

22. Since one of the prayer in the Original Application deals with discharging of untreated effluent into the river Pachin and Kankar, the Tribunal on the basis of documents on record found that the last inspection of the site regarding M/s Shree Salasar Industries was carried out by the Central Pollution Control Board, Regional Office, Shillong and Arunachal Pradesh State Pollution Control Board on 18.12.2020 and 19.12.2020 but thereafter, no fresh inspection was placed on record before this Tribunal. The relevant recommendations made therein reads as under:-

“12.0 Recommendations in respect of Specific Actions to be taken by Pollution Control Authorities against the unit in regard to the Pollution Control Measures mentioned under item 5,6,7,8,9,10&11 above:

- *The unit shall commission the fume extraction system for control of fugitive emission generated during tapping process by December 21, 2020.*
- *The room for storage of silica dust shall be made air tight to prevent any fugitive emission.*
- *The ETP shall be developed further to incorporate oil and grease trap as well. Furthermore, all drains discharging storm water from the unit shall be connected to ETP.*
- *Mask and gloves shall be made compulsory for all workers to protect them from silicosis.*
- *The unit shall submit the emergency plan to Arunachal Pradesh SPCB at the earliest.*

- *The roads within the unit shall be made metallic at the earliest. Furthermore, it is also recommended that possibilities of plastic wastes for road laying shall be explored.*
- *The progress on the upgradation/repair and maintenance works shall be submitted to Arunachal Pradesh SPCB on monthly basis.”*

23. The Tribunal vide its order dated 20.12.2021 had further directed the Arunachal Pradesh State Pollution Control Board to conduct a fresh inspection and submit its report on affidavit. Accordingly, the Arunachal Pradesh State Pollution Control Board has conducted a fresh inspection on 17.02.2022, the observations made in this inspection is reproduced below:-

I. Specific Actions to be taken by Unit:- *The unit shall commission the fume extraction system for control of fugitive emission generated during tapping process by 10th January 2021.*

Status/Remark:- *Complied. The unit installed fume extraction system for control of fugitive emission generated.*

II. Specific Actions to be taken by Unit:- *The room for storage of silica dust shall be made air tight to prevent any fugitive emission.*

Status/Remark:- *Complied. The unit had made air tight room for storage of silica dust.*

Further, the silica dust is supplied to M/s Veega Ventures, Guwahati, Assam. Copy of supply of silica dust for last 2 months is submitted.

III. Specific Actions to be taken by Unit:- *The ETP shall be developed further to incorporate oil and grease trap as well.*

Furthermore, all drains discharging storm water from the unit shall be connected to ETP.

Status/Remark:- Complied. Oil and grease trap by gravitational settling is incorporated in the ETP. Dimension of the Oil and grease trap tank of dimension (8 x 2.5 x 2) feet. Provision is made for reuse of the treated water from ETP for gardening and washing floor by using motor pump.

IV. Specific Actions to be taken by Unit:- Mask and gloves shall be made compulsory for all workers to protect them from silicosis.

Status/Remark:- Complied. Mask and gloves are used by all workers.

V. Specific Actions to be taken by Unit:- the unit shall submit the emergency plan to Arunachal Pradesh State Pollution Control Board (APSPCB) at the earliest.

Status/Remark:- Complied. Emergency Plan submitted.

VI. Specific Actions to be taken by Unit:- the roads within the unit shall be made metallic at the earliest. Furthermore, it is also recommended that possibilities of plastic wastes for road laying shall be explored.

Status/Remark:- Complied. The road within the unit is paved with C.C. blocks.

VII. Specific Actions to be taken by Unit:- The progress on the upgradation/repair and maintenance works shall be submitted to APSPCB on monthly basis.

Status/Remark:- Complied. Copy of progress report submitted.”

24. Thus, in view of the foregoing paragraphs wherein the directions of the Arunachal Pradesh Pollution Control Board has been complied with by M/s Shree Salasar Industries and the Environmental Clearance is not required for units with production

capacity of less than 30,000 MTA, we find that nothing further remains for adjudication in this Original Application and the same is accordingly dismissed.

25. M.A. No.301/2017/EZ & I.A. No.52/2021/EZ also stands disposed of accordingly.

26. There shall be no order as to costs.

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B. AMIT STHALEKAR, JM

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SAIBAL DASGUPTA, EM

**Kolkata,
March 23, 2022,
Original Application No. 114/2017/EZ
(M.A. No.301/2017/EZ & I.A. No.52/2021/EZ)
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