

**ICL 2021 (5) Jha. 633**  
**IN THE HIGH COURT OF JHARKHAND AT RANCHI**  
**CORAM : HON'BLE MR. JUSTICE RAJESH SHANKAR**

W.P.(C) No. 3119 of 2020; 13.05.2021

*Confederation of Real Estate Developers Association of India v. Union of  
India*

For the Petitioner : Mr. Abhishek Manu Singhavi, Sr. Advocate, Mr. Keshav Mohan, Advocate, Mr. N.K.Pasari, Advocate; For the Respondent No. 1 : Mr. Rajiv Sinha, A.S.G.I. For the Respondent Nos. 2 and 3 : Mrs. Surabhi, A.C. to A.A.G.-II For the Respondent No. 4 : Mr. Bhanu Kumar, Advocate

**Rajesh Shankar, J. :**

The judgment is being pronounced today through virtual mode.

2. The present writ petition has been filed for following reliefs:-

i. For issuance of direction upon the Ministry of Environment, Forest and Climate Change (MoEF & CC), Government of India (respondent no.1) to open a window for processing the applications for grant of Environment Clearances (EC) in the cases of violations of Environment (Protection) Act, 1986 (in short, "the Act, 1986") and Environment Impact Assessment (EIA) Notification, 2006.

ii. For issuance of direction upon the respondent no. 1 to issue necessary direction to the respondent no. 4-State Level Environment Impact Assessment Authority (SEIAA), Jharkhand to take up the matters of the members of the petitioner for processing of applications made for Environment Clearance and process the same within a period of one week.

iii. For quashing the notices (Annexure-1 series to the writ petition) issued by the instrumentalities of Urban Development and Housing Department (respondent no.3) on different dates for stoppage of all construction activities in the projects listed therein.

iv. For issuance of direction upon the respondent no. 4 to decide the proposal for grant of Environment Clearance already filed, within a period of one month and for the fresh proposal, within a period of 90 days.

3. The factual background of the case as stated in the writ petition is that the Confederation of Real Estate Developers' Association of India (CREDAI) is the apex body of private real estate developers and the petitioner-CREDAI,

Jharkhand is its member comprising of the real estate developers of the State of Jharkhand. The respondent no.1 vide notification dated 14.09.2006 formulated the Environment Impact Assessment Notification, 2006 (EIA Notification, 2006) which mandates for requirement of obtaining prior Environmental Clearance from the concerned regulatory authority to initiate construction activities for the projects falling under the Schedule of EIA Notification, 2006. On 14.03.2017, the respondent no. 1 issued notification to deal with the cases of alleged violation of the environmental laws by ensuring immediate arrest of environmental damage and bringing the enterprises in compliance regime rather than letting it go unregulated and unchecked. As such by this notification, a process was established by the respondent no. 1 for appraisal of cases of violation as well as for prescribing adequate environmental safeguards so that it would deter violation of provisions of EIA Notification, 2006 and damage to environment may adequately be compensated by restoring the ante-original state. The said notification opened a window for a period of six months for the projects which failed to obtain a prior EC in accordance with the EIA Notification, 2006. A Public Interest Litigation (PIL) challenging the validity of notification dated 14.03.2017 was filed before the High Court of Madras and the implementation of the said notification was stayed and finally vide order dated 13.10.2017, the said stay was vacated by upholding the validity of the notification dated 14.03.2017. Thereafter, the respondent no.1, vide notification dated 08.03.2018, amended the earlier notification dated 14.03.2017 and delegated the power to the States for appraisal of category 'B' proposals which are under violation of EIA Notification, 2006. The respondent no.1 issued another notification dated 15.03.2018 for implementation of the notification dated 08.03.2018. One R.K Singh approached the National Green Tribunal (NGT), Delhi by making an application before it, assailing non-implementation of EIA Notification, 2006 in the State of Jharkhand in respect of building construction and the said application was registered as Original Application No. 45/2019/EZ. The learned Tribunal, vide order dated 09.09.2020, issued several directions to the State of Jharkhand including order to forthwith stop all the ongoing construction activities undertaken without obtaining prior EC. Pursuant to the order of the NGT, the members of the petitioner have been served notices issued by the respondent no.3 directing them to stop the construction activities forthwith. Hence, the present writ petition.

4. Mr. Abhishek Manu Shingvi, the learned Senior Counsel for the petitioner, submits that neither the petitioner nor its members were party in the proceeding before NGT and as such the action of the respondent no.3 in directing the members of the petitioner to stop construction activities without any opportunity of hearing, is in violation of the principles of natural

justice. It is further submitted that various applications of the members of the petitioner were pending for consideration of grant of EC before SEIAA, Jharkhand, which were made immediately upon its reconstitution by the respondent no. 1 vide Gazette Notification dated 3rd November, 2020 and thus the members of the petitioner may not be penalized without their fault. The members of the petitioner have all requisite documents for grant of EC, however the same was not granted due to non-existence of SEIAA in the State of Jharkhand so as to deal with the violation cases. The projects which are subject matter of the present dispute, have been started only after grant of duly approved Building Plans sanctioned by the concerned Municipal Corporations/Nagar Parishads which never raised the issue regarding obtaining of EC prior to issuance of the impugned notices. It is also submitted that the respondent no.1 reconstituted SEIAA vide Gazette Notification dated 03.11.2020 and immediately thereafter the members of the petitioner filed applications for grant of EC for their respective projects in the State, however the SEIAA, Jharkhand returned the applications with observation that the projects were in violations of the Act, 1986 and EIA Notification, 2006 and at the said moment, no mechanism was in existence to deal with the violation cases. It is further submitted that as per the contention of the respondent no. 1 before the NGT, a draft of EIA notification, 2020 was prepared to deal with the cases relating to violation which was yet to be notified and as such no -4- mechanism was available then with the MoEF & CC to deal with such cases which were in violation of the EIA Notification, 2006.

5. Mr. Singhvi also submits that the impugned orders prohibiting construction activities without obtaining prior EC has brought the entire real estate sector to a grinding halt which was just getting back to normalcy post first wave of Covid-19 pandemic and as a result of stoppage of construction activities, the livelihood of around 3 lakhs construction workers and over 15 lakhs dependent members are at stake and over 200 industries in the MSME Sector have been severely affected. Further, lakhs of home buyers falling under affordable housing segment are badly affected. Moreover, due to delay in construction, the loan accounts of both the home buyers and developers are likely to be turned into NPAs.

6. It is further submitted that section 3(1) of the Act, 1986 empowers the Central Government to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of environment. Similarly, in view of section 5 of the Act, 1986, the Central Government is duly empowered to issue direction in exercise of its powers and performance of its functions under the said Act. The petitioner wrote letter dated 07.12.2020 to the respondent no.1 requesting inter alia to open

a window for processing of violation cases by SEIAA in the State of Jharkhand arising out of stoppage of all construction projects in the State of Jharkhand pursuant to the order dated 09.09.2020 passed by the NGT, however no decision has yet been taken on the said application.

7. It is also submitted that the power under Article 226 of the Constitution of India is extraordinary and discretionary in nature and the same may be exercised to see as to whether injustice has resulted on account of any decision of a constitutional or statutory authority, a Tribunal and an authority within the meaning of Article 12 of the Constitution of India. Power of judicial review is designated to prevent cases of abuse of power or neglect of a duty by the public authority. It is a settled position of law that the jurisdiction under Article 226 is exercised for enforcement of various rights of the public or to compel public/statutory authorities to discharge the public functions entrusted on them. The scope of Article 226 is very wide and can be used to remediate injustice wherever it is found. The High Court being a Constitutional Court has been conferred the power of judicial review to protect the fundamental and other rights of the citizens. In the present situation, this Court by exercising power under Article 226 of the Constitution of India, may direct the MoEF & CC, Government of India to provide the necessary window to deal with the violation cases in the State of Jharkhand and further SEIAA, Jharkhand to process and grant EC to the members of the petitioner subject to the measures/compensation as may be imposed by the authority i.e SEIAA, Jharkhand so that the projects of the members of the petitioner may receive ex-post facto environmental clearances.

8. Learned Senior Counsel for the petitioner further submits that respondent-SEIAA has issued EC for the new building of Jharkhand High Court by imposing penalty for initiating of construction work without obtaining prior EC and the issue of not procuring prior EC for the said High Court building was also before the NGT in O.A. No. 45/2019/EZ. Since the case of the petitioner is in complete parity with the issue of granting of EC to the Jharkhand High Court Building, this Court may direct the respondent- SEIAA through MoEF & CC to process and grant EC for the projects of the members of the petitioner in a time bound manner. The balance of convenience is also in favour of the members of the petitioner as all the necessary sanctions, permission and licenses required for construction of the projects have been procured from various authorities, however the prior EC could not be obtained in absence of the respondent- SEIAA in the State of Jharkhand. Since these projects fall under Category "B" as per EIA Notification, 2006 and has standard requirement for obtaining EC which includes Solid Waste Management, Rain Water Harvesting, Sewage Treatment Plant, Ground Water Recharge Energy, Transport etc., most of these requirements arise

post construction of the projects only. In case the EC for the projects of the members of the petitioner members are not processed and the construction work is not resumed, it will have extremely adverse fallback including unemployment, migration of labour work force etc. Moreover, Banks and other financial institutions will also suffer as the developers and most of the buyers have obtained loan, hence, all such accounts may turn into NPAs. Delay in construction would lead to increase in litigation before RERA and Consumer Courts as well. Most of the projects are meant for EWS, LIG and MIG, delay in construction of which would cause apathy and chaos.

9. Learned Senior Counsel for the petitioner further submits that adherence to the principles of the environmental laws and development are sine qua non for the maintenance of symbiotic balance between the rights to proper environment as well as development. The projects of the members of the petitioner have duly complied all the necessary requirements/permissions/sanctions except obtaining prior EC, which could not be procured for the reason that respondent- SEIAA, Jharkhand was not functional from since 09.11.2019 to 03.11.2020 i.e. for about a year and thus the petitioner has approached this Court seeking appropriate solution of the cause. The traditional concept that development and ecology are opposed to each other is no longer acceptable. The petitioner has filed the present writ petition seeking a pragmatic resolution of the precarious situation and hence this Court is supposed to take a balance approach by applying the doctrine of sustainable development between ecology and development.

10. The learned Senior Counsel for the petitioner puts reliance on paragraphs- 374, 375 and 376 of a judgment rendered by the Hon'ble Supreme Court in Transferred Case (Civil) No. 229 of 2020 (Rajiv Suri Vs. Delhi Development Authority & others) and submits that Their Lordships in the said case while holding that every development work is sustainable, have directed that steps should be taken to ensure that projects are developed keeping in mind the mitigating measures. Stopping of the project and/or construction work surely can never be a solution.

11. It is further submitted that the members of the petitioner are ready and willing to get their projects assessed by the respondent- SEIAA, Jharkhand for any mitigating condition including payment of compensation that may be assessed in true letter and spirit while processing and granting EC for their projects. Thus, this Court may strike a balance and evolve a viable solution so that the construction of the projects affected by the impugned orders resumes immediately and thousands of home buyers do not suffer without any fault on their part. The projects of the members of the petitioner may be granted ex post facto EC within a time bound manner. The assessment of

hitherto damage of environment and the neighborhood as well as formulation of mitigation plan may be permitted to be filed by the members of the petitioner as per the provisions of the EIA Notification, 2006 and the respondent- SEIAA, Jharkhand may be directed to process the applications for grant of EC within a time bound manner. 12. Learned A.C. to A.A.G.-II appearing on behalf of the respondent nos. 2 and 3, submits that the petitioner had never asked for any help or had informed the Urban Local Bodies (ULBs) that its members were facing problem in compliance of the EIA Notification, 2006, moreover they did not even inform the ULBs that they were going to start construction without obtaining prior environmental clearance due to certain reasons. The Urban Development & Housing Department (UDHD), Government of Jharkhand, vide letter no. 69 dated 30.09.2020, has instructed to all the urban local bodies to ensure compliance of the direction of the NGT as contained in the order dated 09.09.2020 passed in in O.A. No. 45/2019/EZ. Ranchi Municipal Corporation and Ramgarh Nagar Parishad have also directed all the concerned promoters/developers that all ongoing constructions undertaken without obtaining prior environmental clearance must be stopped forthwith until the environmental clearance is obtained in order to comply the direction of the NGT. It is further submitted that in view of the specific provision of the EIA Notification, 2006, it was the responsibility of the concerned promoters/developers to obtain EC from the competent authority before starting the construction work but the members of the petitioner failed to do so. The urban local bodies have also provided opportunity to the promoters/developers to produce EC procured from the competent authority before communication of the notices for stoppage of construction, however they have failed to produce the same due to which they have been directed to stop the ongoing construction work till the EC is obtained.

13. Mr. Rajiv Sinha, learned A.S.G.I. appearing on behalf of the respondent no. 1- MOEF & CC, Government of India, submits that the Central Government issued the EIA Notification, 2006 under the Act, 1986 and as per the said notification, prior environmental clearance is required to be obtained if building and construction project is  $\geq 20000$  sq. meters and  $< 1,50,000$  sq. meters of built up area and in the case of Township and Area Development project covering an area  $\geq 50$  hectares and/or built up area  $\geq 1,50,000$  sq. mtrs. The entries of item 8(a) and 8(b) are qualified as category 'B' projects under the EIA Notification, 2006 and the said projects are to be appraised by the State Level Expert Appraisal Committee (SEAC) and to be approved by the SEIAA. The tenure of SEIAA, Jharkhand had expired on 09.11.2019 and as per EIA Notification, 2006, reconstitution of SEIAA and SEAC was required to be notified by the Central Government on the basis of recommendations/nominations received from the concerned State

Government. Nonetheless, SEIAA and SEAC were reconstituted by the respondent no. 1 vide notification dated 03.11.2020. It is further submitted that as per EIA Notification, 2006, in the absence of SEIAA/SEAC in the State/UTs, the proposal was to be appraised by the EAC at central level. Therefore, the plea of the petitioner that the SEIAA, Jharkhand was non-functional from 09.11.2019 to 03.11.2020 due to which many project proponents could not obtain prior EC, is baseless and not tenable in the eye of law. The respondent no. 1, vide notification number S.O. 804(E) dated 14.03.2017 and further vide amendment notification numbers S.O. 1030(E) dated 08.03.2018, opened a window for six months for the projects which had failed to obtain prior EC in accordance with EIA Notification, 2006 wherein a procedure was provided to deal with the cases of violation received during the said window period. It is also submitted that in the light of the judgment dated 13.10.2017 passed by the Madras High Court, the period of the window provided in the said notifications was extended by thirty days. It is the duty of the project proponent to give information about the requirement of getting NOCs before commencing any project and therefore the plea of the petitioner that the concerned authority i.e State Pollution Control Board/Municipal Corporation has not informed regarding obtaining of prior EC for the project, is baseless and cannot be accepted.

14. The learned counsel appearing on behalf of the respondent no. 4- SEIAA submits that the projects mentioned in the writ petition come under the violation category and such the same can be taken up by SEIAA, Jharkhand only after fresh window is provided by MoEF & CC, Government of India with a clear direction and mechanism to deal with such cases under violation category. The members of the petitioner are trying to cover up their lapses pertaining to proceeding with the construction work without obtaining mandatory EC in violation of EIA Notification, 2006 by taking a plea that SEIAA, Jharkhand was not in existence. As a matter of fact, all construction work of petitioners have admittedly commenced prior to expiry of tenure of erstwhile SEIAA, Jharkhand i.e. 09.11.2019. It is further submitted that the members of the petitioner started construction work without obtaining mandatory EC required under EIA Notification, 2006 which comes under violation category and presently there is no mechanism to deal with such violation cases. At present, no project of petitioner's members is pending before SEIAA, Jharkhand for grant of EC. If they were aggrieved with the order dated 09.09.2020 passed by the NGT in O.A. No. 45/2019/EZ, they should have approached the Hon'ble Supreme Court under the relevant provisions of the NGT Act, 2010. The MoEF & CC, Government of India, vide notification dated 14.03.2017, has already provided an opportunity to consider the violation cases by applying within six months which is known as window period, but the members of the petitioner did not apply within the

said stipulated period for grant of EC and at present there is no such mechanism to deal with the violation cases. Thus, the applications for grant of EC were returned with remarks that the projects were related to the violations of Act, 1986 and EIA Notification, 2006 and there was no mechanism to deal with the violation cases at that time.

15. Heard the learned counsel for the parties and perused the materials available on record. The petitioner has challenged the impugned notices issued to its members which are said to be issued in compliance of the direction of the NGT, Delhi as contained in order dated 09.09.2020 directing them to stop all ongoing construction activities till the EC is obtained.

16. For better appreciation of the contentions of the learned counsel for the parties, it would be appropriate to refer some facts and laws which are relevant in the present case.

17. The respondent no. 2, in exercise of the power conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986, read with clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986, issued notification contained in S.O. 1533 dated 14.09.2006 imposing certain restrictions and prohibitions on new projects or activities, or on the expansion or modernization of existing projects or activities based on their potential environmental impacts as indicated in the Schedule to the notification, being undertaken in any part of India, unless prior environmental clearance has been accorded in accordance with the objectives of National Environment Policy as approved by the Union Cabinet on 18th May, 2006 and the procedure specified in the notification by the Central Government or the State or Union Territory Level Environment Impact Assessment Authority (SEIAA), to be constituted by the Central Government in consultation with the State Government or the Union Territory Administration concerned under sub-section (3) of Section 3 of the Environment (Protection) Act, 1986 for the purpose of the said notification.

18. Clause 2 of the notification dated 14.09.2006 deals with the requirement of getting prior EC which reads as under:-

“2. Requirements of prior Environmental Clearance (EC):- The following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for matters falling under Category ‘A’ in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category ‘B’ in the said Schedule, before any construction work, or



preparation of land by the project management except for securing the land, is started on the project or activity: (i) All new projects or activities listed in the Schedule to this notification; (ii) Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization; (iii) Any change in product – mix in an existing manufacturing unit included in Schedule beyond the specified range.

19. Schedule of the said notification provides list of projects or activities requiring prior environmental clearance wherein under column no. 3, the projects or activities falling under category “A” have been mentioned whereas under column no. 4, the projects or activities falling under category “B” have been described. In the schedule, Sl. No.8 is related to Building/Construction projects and Townships/Area Development projects and items 8(a) and 8(b) are qualified as category “B” projects under the EIA Notification, 2006 and the said projects are to be appraised by the State Level Expert Appraisal Committees and approved by the State Level Environmental Impact Assessment Authorities. The said items of the schedule read as under:-

Project or Category	with threshold limit	Conditions if Activity	A	B	any	1	2	3	4
5	8(a)	Building and	$\geq 20000$ sq.mtrs	and	#(built up area	Construction	$< 1,50,000$ sq. mtrs.	for covered projects of built up area#	construction; in the case of facilities open to the sky, it will be the activity area )
8(b)	Townships and Covering an area	$\geq ++$ All projects	Area	50 ha	and/or built under	Item	Development up area	$\geq 1,50,000$	8(b) shall be projects sq .mtrs ++ appraised as Category B1

20. Admittedly, the projects of the members of the petitioner fall under category “B” and as such they were obliged to get EC from SEIAA, Jharkhand before starting the projects which they failed to do.

21. The learned Senior Counsel for the petitioner has contended that the members of the petitioner could not get EC due to absence of duly constituted SEIAA as per EIA Notification, 2006. The said contention has however been heavily opposed by the learned counsel appearing on behalf of SEIAA, Jharkhand (the respondent no. 4) submitting that all the construction work of petitioners had commenced prior to expiry of tenure of erstwhile SEIAA, Jharkhand i.e., 09.11.2019 and as such the members of the petitioner cannot escape from the responsibility of obtaining prior EC on the ground that at some point of time, the SEIAA, Jharkhand was not functioning.

The learned counsel for the respondent no. 4 has further contended that even if the SEIAA, Jharkhand was not functioning for certain period, the proposal could have been submitted to the EAC at Central level in the absence of SEIAA/SEAC in the State/UTs in view of EIA Notification, 2006. In support of the said contention, the learned counsel for the respondent no. 4 has referred clause- 4 of the EIA Notification, 2006 which reads as under:-

“4. Categorization of projects and activities:- ---

(iii) All projects or activities included as Category ‘B’ in the Schedule, including expansion and modernization of existing projects or activities as specified in sub paragraph

(ii) of paragraph 2, or change in product mix as specified in sub paragraph (iii) of paragraph 2, but excluding those which fulfill the General Conditions (GC) stipulated in the Schedule, will require prior environmental clearance from the State/Union territory Environment Impact Assessment Authority (SEIAA). The SEIAA shall base its decision on the recommendations of a State or Union territory level Expert Appraisal Committee (SEAC) as to be constituted for in this notification. In the absence of a duly constituted SEIAA or SEAC, a Category ‘B’ project shall be treated as a Category ‘A’ project;”

22. In view of the aforesaid stipulation, even if it is assumed that the projects of the members of the petitioner had started during the period when the SEIAA, Jharkhand was not functioning, the petitioner cannot claim the benefit of the said fact, since its members could have applied before the EAC at Central level for grant of EC and thus the contention of the learned Senior Counsel for the petitioner that the EC could not be obtained by the members of the petitioner due to non- functioning of SEIAA, Jharkhand at the relevant time, has no leg to stand.

23. One of the contentions of the learned Senior Counsel for the petitioner is that the projects of the members of the petitioner are similar to that of the High Court of Jharkhand building for which EC has been granted by SEIAA, Jharkhand and as such on the same terms and conditions, the cases of the members of the petitioner may also be considered. The learned counsel appearing on behalf of the respondent no. 4 has refuted the said contention of the learned Senior Counsel for the petitioner by submitting that the case of High Court of Jharkhand building is not similar to the present case as its proposal for grant of EC was submitted under the violation category within the window period opened in view of S.O. 804(E) dated 14.03.2017 which was subsequently granted on the terms and conditions as well as by following the procedure specified in the said notification. Admittedly, the

members of the petitioner failed to move any application within the window period and as such they cannot claim similar treatment.

24. Learned Senior Counsel for the petitioner assailing the impugned notices, has assiduously argued that the same have been issued without giving any opportunity of hearing to the members of the petitioner and as such those suffer from violation of the principles of natural justice.

25. To appreciate the aforesaid contention of the learned Senior Counsel for the petitioner, I have gone through the contents of the impugned notices which inter alia mention that the National Green Tribunal, vide order dated 09.09.2020 passed in O.A No.45/2019/EZ, directed that all ongoing constructions undertaken without obtaining prior EC shall be stopped forthwith until the Environmental Clearance is obtained and in this regard, instruction of Urban Development and Housing Department vide letter no. 1089 dated 31.08.2020 has been obtained. Some of the impugned notices refer the direction of Town Commissioner, Ranchi Municipal Corporation according to which if the noticees have not obtained environmental clearance, they must stop the construction activities immediately and submit the environmental clearance, failing which action will be initiated under the provisions of the Jharkhand Municipal Act, 2011.

26. In view of the aforesaid fact, it is evident that the impugned notices have been issued to the members of the petitioner by the Town Planner, Ranchi Municipal Corporation, Ranchi/Executive Officer, Municipal Council, Ramgarh just to comply the order of the NGT dated 09.09.2020. The members of the petitioner were informed by the said notices that if they were carrying on construction activities without obtaining EC, the same must be stopped in view of the said direction of NGT. It is the admitted case of the petitioner that its members have not obtained EC in terms of EIA Notification, 2006 before commencing the construction activities. In view of the specific direction of the NGT as contained in the order dated 09.09.2020, the Town Planner, Ranchi Municipal Corporation, Ranchi/Executive Officer, Municipal Council, Ramgarh had no option but to comply the same. If the petitioner or any of its members found itself aggrieved by the order of the NGT, it could have filed appeal against the said order for getting appropriate relief, however it did not choose to challenge the same. As such, challenge to the impugned notices on the ground of violation of the principles of natural justice, is not sustainable in the eye of law.

27. In the case of Punjab National Bank & Others Vs. Manjeet Singh and Another reported in (2006) 8 SCC 647, the Hon'ble Supreme Court has held as under:-

"17 [Ed.: Para 17 corrected vide letter dated 28-11-2006.] . In an industrial dispute referred by the Central Government which has an all-India implication, individual workmen cannot be made party to a reference. All of them are not expected to be heard. The unions representing them were impleaded as parties. They were heard. Not only were the said unions heard before the High Court, as noticed hereinbefore from a part of the judgment of the High Court, they had preferred appeals before this Court. Their contentions had been noticed by this Court. As the award was made in the presence of the unions, in our opinion, the contention of the respondents that the award was not binding on them cannot be accepted. The principles of natural justice were also not required to be complied with as the same would have been an empty formality. The court will not insist on compliance with the principles of natural justice in view of the binding nature of the award. Their application would be limited to a situation where the factual position or legal implication arising thereunder is disputed and not where it is not in dispute or cannot be disputed. If only one conclusion is possible, a writ would not issue only because there was a violation of the principles of natural justice."

28. In the case of Dharampal Satyapal Ltd. Vs. Deputy Commissioner of Central Excise and Others reported in (2015) 8 SCC 519, the Hon'ble Supreme Court has held thus:-

"38. But that is not the end of the matter. While the law on the principle of audi alteram partem has progressed in the manner mentioned above, at the same time, the courts have also repeatedly remarked that the principles of natural justice are very flexible principles. They cannot be applied in any straitjacket formula. It all depends upon the kind of functions performed and to the extent to which a person is likely to be affected. For this reason, certain exceptions to the aforesaid principles have been invoked under certain circumstances. For example, the courts have held that it would be sufficient to allow a person to make a representation and oral hearing may not be necessary in all cases, though in some matters, depending upon the nature of the case, not only full-fledged oral hearing but even cross-examination of witnesses is treated as a necessary concomitant of the principles of natural justice. Likewise, in service matters relating to major punishment by way of disciplinary action, the requirement is very strict and full-fledged opportunity is envisaged under the statutory rules as well. On the other hand, in those cases where there is an admission of charge, even when no such formal inquiry is held, the punishment based on such admission is upheld. It is for this reason, in certain circumstances, even post- decisional hearing is held to be permissible. Further, the courts have held that under certain circumstances principles of natural justice may even be excluded by reason of diverse factors like time, place, the apprehended danger and so on.

39. We are not concerned with these aspects in the present case as the issue relates to giving of notice before taking action. While emphasising that the principles of natural justice cannot be applied in straitjacket formula, the aforesaid instances are given. We have highlighted the jurisprudential basis of adhering to the principles of natural justice which are grounded on the doctrine of procedural fairness, accuracy of outcome leading to general social goals, etc. Nevertheless, there may be situations wherein for some reason—perhaps because the evidence against the individual is thought to be utterly compelling—it is felt that a fair hearing “would make no difference”—meaning that a hearing would not change the ultimate conclusion reached by the decision-maker—then no legal duty to supply a hearing arises. Such an approach was endorsed by Lord Wilberforce in *Malloch v. Aberdeen Corpn.* [(1971) 1 WLR 1578 : (1971) 2 All ER 1278 (HL)] , who said that: (WLR p. 1595 : All ER p. 1294) “... A breach of procedure ... cannot give [rise to] a remedy in the courts, unless behind it there is something of substance which has been lost by the failure. The court does not act in vain.” Relying on these comments, Brandon L.J. opined in *Cinnamond v. British Airports Authority* [(1980) 1 WLR 582 : (1980) 2 All ER 368 (CA)] that: (WLR p. 593 : All ER p. 377) “... no one can complain of not being given an opportunity to make representations if such an opportunity would have availed him nothing.” In such situations, fair procedures appear to serve no purpose since the “right” result can be secured without according such treatment to the individual.

40. In this behalf, we need to notice one other exception which has been carved out to the aforesaid principle by the courts. Even if it is found by the court that there is a violation of principles of natural justice, the courts have held that it may not be necessary to strike down the action and refer the matter back to the authorities to take fresh decision after complying with the procedural requirement in those cases where non-grant of hearing has not caused any prejudice to the person against whom the action is taken. Therefore, every violation of a facet of natural justice may not lead to the conclusion that the order passed is always null and void. The validity of the order has to be decided on the touchstone of “prejudice”. The ultimate test is always the same viz. the test of prejudice or the test of fair hearing.

29. It is a trite law that a writ cannot be issued on the ground of violation of principles of natural justice if only one conclusion is possible in a given situation. Every violation of a facet of natural justice may not lead to a conclusion that the order passed is always null and void. The validity of the order has to be decided on the touchstone of “prejudice”.

The principles of natural justice cannot be applied in a straitjacket formula, rather it is quite flexible to be tested on case to case basis.

30. The learned Senior Counsel for the petitioner has also submitted that even though it is accepted that the projects in question were started without getting prior EC from SEIAA, Jharkhand or from the central authority in absence of SEIAA, Jharkhand and thereby the members of the petitioner violated the provisions of EIA Notification, 2006 as well as failed to apply for grant of EC under the violation category in view of Notification, 2017 and Notification 2018, this Court in exercise of the powers conferred under Article 226 of the Constitution of India, may issue necessary directions to the respondent no.1 to open a window to deal with violation cases falling under Category "B" in the State of Jharkhand and to direct the state authorities to comply the directions of the NGT, Delhi including completion of Environment Impact Assessment as per EIA Notification, 2006, preparation of Environment Management Plan, calculating mitigation measures/Environmental Compensation in respect of all structures raised without obtaining prior EC. It has further been contended that this Court should take a balanced approach by applying the doctrine of sustainable development between ecology and development.

31. The learned Senior Counsel for the petitioner while putting reliance on the judgment of the Hon'ble Supreme Court in the case of Alembic Pharmaceuticals Limited vs. Rohit Prajapati and Others reported in 2020 SCC OnLine SC 347 has submitted that in the said case, Their Lordships applied the doctrine of proportionality and quashed the order of the NGT and directed the defaulters to pay compensation as a facet of preserving the environment in accordance with the precautionary principles. In the present case, the members of the petitioner are the similarly situated entities and they are ready and willing to comply any mitigating measures/to pay compensation and as such this Court may grant relief to the petitioner applying the doctrine of proportionality. It has further been submitted that this Court also, in the case of Hindustan Copper Limited Vs. Union of India [W.P.(C) No. 2364 of 2014] relying on the judgment of Alembic Pharmaceuticals (supra.), has held that violation cases must be considered on merits and proposal for EC must be processed regardless of alleged violation for which independent action can be initiated.

32. Before coming to the merit of the said submission of the learned Senior Counsel for the petitioner, relevant paragraphs of the order dated 09.09.2020 passed in O.A No.45/2019/EZ by the National Green Tribunal, Principal Bench, New Delhi are reproduced hereinbelow:-

“8. Admittedly, the violation notification dated 14.03.2017 has ceased to have effect and it is admitted by the MoEF that at present no mechanism is in existence to deal with the situation as prevailing in the present case except that a draft EIA Notification, 2020 has been published under paragraph 22 in which procedure has been laid down to deal with the situation. The notification is yet to be published leaving a vacuum in the procedure to deal with such matters.

9. In the above circumstance the Tribunal is faced with the serious dilemma as regards the course of action to be taken. Mr. Sourabh Sharma, learned Counsel for the Applicant has suggested that Environmental Compensation ought to be recovered from those violating the EIA Notification and to direct institution of prosecution under section 19 of the Environmental protection Act, 1986 against those responsible for the violation. It is further submitted that in the meanwhile the ongoing construction of structures being undertaken without EC be directed to be stopped until it is obtained by the project proponents.

10. We have considered the various affidavits filed by the parties, considered the oral submissions of the learned Counsel for the parties and we are of the view that it would be necessary to take action to remedy the situation keeping in view that principle of sustainable development and the precautionary principle.

11. We, therefore, direct as follows:-

(i) The State Government through the Urban Development Department shall ensure that Environment Impact Assessment is undertaken in respect of all the structures which have been raised in the municipal areas expeditiously in accordance with the procedure laid down in the EIA Notification 2006. Accordingly, the Environmental Management Plan be prepared and mitigation measures proposed therein be implemented so as to be address the environmental issues arising on account of such constructions without EC.

(ii) Similar action shall be taken in respect of the structures falling within notified Nagarpalika area and Gram Panchayats, if there be any.

(iii) Environmental Compensation shall be assessed in respect of all the structures which have been raised without EC and shall be recovered from the appropriate authorities/ persons/ builders/ project proponent (as the case may be) within a period of three months from hence. Environmental

compensation in respect of those which have already been assessed shall also be recovered within the said period.

(iv) All ongoing constructions undertaken without obtaining prior EC shall be stopped forthwith until the environmental clearance is obtained.

(v) Action shall be initiated under section 19 of the Environmental (Protection) Act, 1986 by the State Pollution Control Board forthwith against those who are responsible for the violations.

(vi) Since the violations were being committed under the gaze of the concerned authorities, we direct initiation of disciplinary proceedings against the concerned officers, the Municipal Commissioners and the State Pollution Control Board at the earliest.

33. It would transpire from the aforesaid order passed by the NGT, Delhi that the learned Tribunal having taken into consideration the attending circumstance of the case as well as the suggestions of the counsel for the applicant, while applying the principle of sustainable development and the precautionary principle, has directed the Government of Jharkhand through Urban Development and Housing Department to ensure that EIA is undertaken for all the structures in accordance with the Notification, 2006 and therefore Environmental Management Plan be prepared and mitigation measures proposed therein be implemented so as to address the environmental issues arising on account of such construction done without taking prior EC and thereafter to assess the environmental compensation as well as to recover the same from the violators within a period of three months. In the meantime, the ongoing construction undertaken without taking prior EC has been ordered to be stopped until the EC is obtained. It has further been directed that an action under Section 19 of the Act, 1986 be initiated against those who are responsible for violation as also for initiating disciplinary proceedings against the concerned officers, municipal commissioners and the State Pollution Control Board at the earliest.

34. It is evident from the order of the NGT that the Government of Jharkhand has been directed to ensure that EIA is undertaken, management plan is prepared for the projects which were started in violation of EIA Notification, 2006, compensation is duly assessed and recovery of the same is made from the defaulter as well as in the meantime the ongoing construction has been directed to be stopped. Similar measures were suggested under the window opened vide notification dated 14.03.2017. Further, the State of Jharkhand and Jharkhand State Pollution Control Board have been directed to file their action taken reports within six months from the date of order. It



thus appears that even after passing the final order dated 09.09.2020 in O.A. No. 45/2019/EZ, the NGT, Delhi is still monitoring the cases of violation of EIA Notification 2006 by the project proponents within the State of Jharkhand.

35. The National Green Tribunal Act, 2010 (in short "the Act, 2010") has been enacted for the establishment of National Green Tribunal for effective and expeditious disposal of cases relating to environmental protection and conservation of forest 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.

36. Since the NGT is a specialized body to look into the environmental affairs which has passed the order to deal with the present issue applying the principle of sustainable development and the precautionary principle having been empowered in view of Section 22 of the Act, 2010, this Court after taking into consideration all the facts and circumstance, does not wish to add anything more on the subject.

37. In the case of Cicily Kallarackal Vs. Vehicle Factory reported in (2012) 8 SCC 524, the Hon'ble Supreme Court has held as under:-

"4. Despite this, we cannot help but state in absolute terms that it is not appropriate for the High Courts to entertain writ petitions under Article 226 of the Constitution of India against the orders passed by the Commission, as a statutory appeal is provided and lies to this Court under the provisions of the Consumer Protection Act, 1986. Once the legislature has provided for a statutory appeal to a higher court, it cannot be proper exercise of jurisdiction to permit the parties to bypass the statutory appeal to such higher court and entertain petitions in exercise of its powers under Article 226 of the Constitution of India. Even in the present case, the High Court has not exercised its jurisdiction in accordance with law. The case is one of improper exercise of jurisdiction. It is not expected of us to deal with this issue at any greater length as we are dismissing this petition on other grounds.

38. In the case of Union of India Vs. Shri Kant Sharma reported in (2015) 6 SCC 773, the question before the Hon'ble Supreme Court was as to whether the High Court could have entertained the writ petition against the final order or decision passed by the Armed Forces Tribunal under Section 30 of the Armed Forces Tribunal Act, 2007 (in short, "the Act, 2007"), bypassing statutory redressal mechanism. Their Lordships quashed the order of the

Delhi High Court which had entertained the writ petition holding that if High Court entertains such writ petitions, it is likely to lead to anomalous situation. It was also held as under:

“43.....if any person aggrieved by the order of the tribunal, moves the High Court under Article 226 and the High Court entertains the petition and passes and judgment or order, the person who may be aggrieved against both the orders passed by the Armed Forces Tribunal and the High Court, cannot challenge both the orders in one joint appeal. The aggrieved person may file leave to appeal under Article 136 of the Constitution of India against the judgment passed by the High Court but in view of the bar of jurisdiction by clause (2) of Article 136, this Court cannot entertain appeal against the order of the Armed Forces Tribunal. Once, the High Court entertains a petition under Article 226 of the Constitution of India against the order of the Armed Forces Tribunal and decides the matter, the person, who thus approached the High Court, will also be precluded from filing an appeal under Section 30 with leave to appeal under Section 31 of the Act, 2007 against the order of the Armed Forces Tribunal as he cannot challenge the order passed by the High Court under Article 226 of the Constitution under Section 30 read with Section 31 of the Act, 2007. Thereby, there is a chance of anomalous situation. ....”

39. Coming back to the present case, if the petitioner felt itself aggrieved with the order of the NGT, it could have preferred appeal to the Hon'ble Supreme Court even if it was not the party before the NGT. However, it neither availed the said remedy nor moved before the NGT for any modification/clarification of the order dated 09.09.2020. Curiously enough, the petitioner has also not approached to the State Government asking it to comply the order of the NGT in entirety, rather it rushed to this Court seeking direction to the respondent no. 1 to open a window to deal with the violation cases of its members which is not entertainable by this Court as opening a window for such cases is a policy decision of the government towards which the court should be slow to interfere. Moreover, the NGT has already framed the mechanisms to deal with the cases of the members of the petitioner and thus the said prayer of the petitioner cannot be entertained.

40. Undoubtedly, the power of judicial review under Article 226 of the Constitution of India is a basic feature of the constitution and no legislation can override or curtail its jurisdiction, however the Hon'ble Supreme Court in catena of decisions has held that the High Courts should give due regard to the legislative intent evidenced in various statutes and exercise jurisdiction consistent therewith. In the case of Alembic Pharmaceuticals (supra.) as relied upon by the learned Senior Counsel for the petitioner, the Hon'ble

Supreme Court has exercised the power under Article 142 of the Constitution of India and has quashed the order of NGT revoking ECs of the industries involved in the said case by applying the principle of proportionality directing the violators to pay compensation amount of Rs.10 crores each. The said order has been passed looking to the peculiar facts and circumstances of that case to do complete justice which does not constitute a binding precedent similar to the law laid down by the Hon'ble Supreme Court under Article 141 of the Constitution of India. Moreover, the petitioner has moved this Court bypassing the statutory remedy of appeal to the Hon'ble Supreme Court against the order of the NGT provided under Section 22 of the National Green Tribunal Act, 2010 (in short, "the NGT Act, 2010").

41. It may be observed that whatever relief has been sought by the petitioner from this Court, has already been taken into consideration by the NGT and a detailed direction has been issued for remedying the situation and as such this Court does not feel it appropriate either to add anything to the said order or to modify the same under extraordinary writ jurisdiction particularly when neither of the parties has challenged the order of the NGT in appeal before the Hon'ble Supreme Court under Section 22 of the NGT Act, 2010. Even if it is assumed that the said exercise is time consuming, this Court does not intend to modify the order of the NGT merely on the said ground so as to provide a shortcut method of dealing with the violation cases of the members of the petitioner.

42. Before parting with the case, I would like to add that the Government of Jharkhand seems to have complied only the part order of the NGT and has stopped the ongoing constructions of the members of the petitioner. No averment has been made in the counter affidavit filed on behalf of the respondent nos. 2 and 3 as to what steps have been taken by them for complying the other part of the order i.e ensuring the EIA of the violation cases and preparation of Environmental Management Plan, assessment and recovery of compensation, disciplinary actions against the erring officers and penal action against the defaulters. This Court has also not been apprised of the fact as to whether any report has been submitted by the State Government before the NGT in compliance of the order dated 09.09.2020 as the period of six months have already elapsed. It seems that since the NGT, vide order dated 09.09.2020, has not issued any direction to SEIAA, Jharkhand, it has not entertained the EC applications of the members of the petitioner and has returned the same stating that these projects belong to the violation of Environment (Protection) Act, 1986 and EIA Notification, 2006 and there is no mechanism in existence to deal with the violation cases at present. The Government of Jharkhand should have complied the order

of the NGT, Delhi in entirety and if it felt any difficulty in complying the entire order, it should have approached the NGT for clarification/modification of the said order. Nonetheless, it cannot sit idle by only complying the part order leading to a situation that the projects of the members of the petitioner for grant of EC have not been processed despite they being ready to comply all the conditions that may be imposed upon them for grant of EC.

43. In view of the aforesaid discussions, this Court is not inclined to grant relief to the petitioner as prayed in the present writ petition. The petitioner may however move before the NGT, Delhi for clarification/modification of the order dated 09.09.2020 passed in Original Application No. 45/2019/EZ or to take appropriate recourse against the said order as permissible under the law.

44. The writ petition is, accordingly, dismissed with aforesaid observation.