2025 INSC 961

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) NO. 166 OF 2025

VANASHAKTI **...APPELLANT**

VERSUS

UNION OF INDIA **...RESPONDENT**

J U D G M E N T

B.R. GAVAI, CJI

1. The present petition challenges the notification dated 29th January, 2025 bearing number S.O. 523(E) issued by the Ministry of Environment, Forest and Climate Change (hereinafter referred to as 'the MoEF&CC') and the Office Memorandum dated 30th January, 2025 issued by the MoEF&CC.

2. We have heard Shri Gopal Sankaranarayanan, learned senior counsel appearing on behalf of the petitioner and Shri P.V. Dinesh, learned senior counsel appearing on behalf of the intervenor(s), supporting the case of the petitioner.

3. We have also heard Ms. Aishwarya Bhati, learned Additional Solicitor General of India appearing for the Union of India (MoEF&CC), Shri Tushar Mehta, learned Solicitor General of India appearing for the State of Maharashtra, Shri Mukul Rohatgi and Shri Atmaram Nadkarni, learned senior counsel appearing for the intervenor(s) and other learned counsel.

4. Shri Gopal Sankaranarayanan, learned senior counsel, submits that the impugned notification dated 29th January, 2025 (hereinafter referred to as 'the impugned notification') totally changes the regime, which was provided by the notification dated 14th September, 2006 issued by the Ministry of Environment and Forests (hereinafter referred to as 'the 2006 notification'). Shri Sankaranarayanan, learned senior counsel, submits that the Union of India has been making consistent efforts to dilute the provisions contained in the 2006 notification by issuing notifications dated 22nd December, 2014 (hereinafter referred to as 'the 2014 notification'), 9th December, 2016 (hereinafter referred to as 'the 2016 notification') and 14th and 15th November, 2018

(hereinafter referred to as 'the 2018 notification'). It is submitted that 2014 notification was quashed and set aside by the High Court of Kerala *vide* judgment and order dated 6th March, 2024. Similarly, it is submitted that the 2016 notification issued by the MoEF&CC was quashed and set aside by the National Green Tribunal, Principal Bench, New Delhi *vide* judgment dated 8th December, 2017. He further submits that the 2018 notification has been stayed by the High Court of Delhi by an order dated 26th November, 2018.

5. It is submitted by the learned senior counsel that the preamble of the 2025 notification does not refer to the judgment of the learned NGT and the order of the Delhi High Court. It is, therefore, submitted that the impugned notification suffers from suppression of material facts.

6. Shri Sankaranarayanan, learned senior counsel, further submits that under the 2006 notification, the General Conditions were applicable to the projects covered under Entry 8(a) and 8(b) of the Schedule. He submits that under the General Conditions, any project or activity within 10 kms. from the boundary of:

(i) Protected areas notified under the Wild Life (Protection) Act, 1972,

(ii) Critically polluted areas as identified by the Central Pollution Control Board from time to time,

(iii) Eco-sensitive areas as notified under Section 3 of the Environment (Protection) Act, 1986, such as Mahabaleshwar Panchgani, Matheran, Panchmarhi, Dahanu, Doon Valley and

(iv) Inter-State boundaries and international boundaries,

are to be examined only by the MoEF&CC and not by the State Environment Impact Assessment Authority (for short, 'SEIAA'). He fairly concedes that the said restriction of 10 kms., has been subsequently brought down to 5 kms., by a subsequent notification.

7. Shri Sankaranarayanan, learned senior counsel, submits that having failed in its repeated attempts to dilute the restrictions as provided in 2006 notification, the MoEF&CC has come with the impugned notification which has the effect of nullifying the judgments passed by the High Court of Kerala and the NGT.

8. Shri Sankaranarayanan, learned senior counsel, further submits that the judgment and order passed by the learned NGT is challenged by way of an appeal before this Court. It is submitted that a coordinate Bench of this Court, after hearing the matter at length, on 23rd April, 2025 has reserved the matter for judgment. He, therefore, submits that as a matter of propriety this Court should refrain from deciding the issue in order to avoid any conflicting judgments.

9. *Per contra*, Ms. Aishwarya Bhati, learned Additional Solicitor General of India, submits that right from inception, the General Conditions were never made applicable to the projects or activities covered by Entry 8 of the Schedule. She submits that the perusal of the Schedule of the 2006 notification would show that wherever it was intended that the General Conditions would apply, it has been specifically mentioned in column 5 thereof that the General Conditions would be applicable. She submits that wherever some other conditions were to be made applicable, column 5 specifically notes as to what are the conditions which would be applicable to such activity/project. She submits that, however, in order

to bring clarity and in view of some of the orders passed by the learned NGT which required the notification to be issued after following the procedure prescribed by law, the impugned notification came to be notified.

10. Shri Mukul Rohatgi, learned senior counsel appearing for the intervenor(s), submits that the 2025 notification was brought by the Union of India, in view of the judgment of this Court in the case of ***In Re: Construction of Park at Noida near Okhla Bird Sanctuary***[1]. It is submitted that though this Court has recorded the submission that for the activity/project in Entry 8(a) and 8(b) general conditions are not applicable, this Court has opined that certain clarity needs to be given to the issues so as to put any controversy at rest.

11. Shri Atmaram Nadkarni, learned senior counsel appearing for the intervenor(s), submits that in Maharashtra alone 700 projects are pending consideration before SEIAA, which, on account of stay order granted by this Court could not be considered.

12. It is submitted by all the counsel for the respondent(s)

[1] (2011) 1 SCC 744

that MoEF&CC is not equipped with the machinery to consider the entire projects from all the State/Union Territories in the country and therefore the 2006 notification itself provides for the projects which could be considered by the SEIAA.

13. It is, therefore, submitted that the stay on impugned notification has caused irreparable damage to the developmental activities throughout the country, inasmuch as all the projects stand stalled on account of non-consideration by SEIAA.

14. For considering the rival submissions, it will be appropriate to refer to the particulars of the schedule to the 2006 Notification, which is extracted hereinbelow.

"**SCHEDULE**

LIST OF PROJECTS OR ACTIVITIES REQUIRING PRIOR ENVIRONMENTAL CLEARANCE

Project or Activity		**Category with threshold limit**		**Conditions if any**
(1)		A	B	
		Mining, extraction of natural resources and power generation (for a specified production capacity)		
(1)	(2)	(3)	(4)	(5)

15. It can thus be seen that the Schedule has five columns. In the first column, serial number of the project or activity is

mentioned. In the second column the details of the activity are mentioned. In the third column the projects which are approved by the MoEF&CC are mentioned. In the fourth column, the projects which are approved by the SEIAA are mentioned and the fifth and the last column deals with the conditions, if any, which would be applicable.

16. The projects with which we are concerned in the present *lis* are at Entry 8 of the Schedule, which reads thus:-

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

17. If we compare column 5 of Entry 8 to Entry 1(a) which deals with mining of minerals and slurry pipelines (coal lignite and other ores) passing through national parks/sanctuaries/coral reefs/ecologically sensitive areas, Entry 1(c) which deals with river-valley projects, Entry 1(d) which deals with the Thermal Power Plants, Entry 2(a) which deals with Coal washeries, Entry 2(b) which deals with Mineral beneficiation, Entry 3(a) which deals with Metallurgical industries (ferrous & non-ferrous), Entry 3(b) which deals with Cement plants, Entry 4(b) which deals with Coke oven plants, Entry 4(d) which deals with Choir-alkali industry, Entry 4(f) which deals with Leather/skin/hide processing industry, Entry 5(d) which deals with manmade fibers manufacturing, Entry 5(e) which deals with petrochemical based processing, Entry 5(f) which deals with synthetic organic chemicals industry, Entry 5(g) which deals with distilleries, Entry 5(h) which deals with integrated paint industry, Entry 5 (i) which deals with pulp & paper industry, Entry 5(j) which deals with sugar industry, Entry 6(b) which deals with isolated storage

and handling of hazardous chemicals, Entry 7(c) which deals with industrial estates/parks, complexes/areas, Export Processing Zones (EPZs), Special Economic Zones (SEZs), Biotech parks, leather complexes, Entry 7(d) which deals with common hazardous waste treatment, storage and disposal facilities, Entry 7(e) which deals with ports, harbours, break waters, dredging, Entry 7(f) which deals with highways, Entry 7(g) which deals with Aerial ropeways, Entry 7(h) which deals with common effluent treatment plants, Entry 7(i) which deals with common municipal solid waste management facility, column 5 specifically provides that General Conditions shall apply.

18. It is thus clear that wherever the delegated legislation required the General Conditions should be applied, the notification specifically provided for the same.

19. It can clearly be seen that Entry 8(a) and 8(b) of the Schedule do not provide for applicability of General Conditions, however, they provide for some other conditions as can be seen from the 2025 notification.

Project and Activity		**Category with threshold limit**		**Conditions, if any**
		A	B	
(1)	(2)	(3)	(4)	(5)
"8	Building or Construction projects or Area Development Projects and Townships			
8(a)	Building and Construction projects		≥ 20,000 sq.m. and < 1,50,000 sq. m. of built up area	The term "built up area" for the purpose of this notification is defined as the built up or covered area on all floors put together, including its basement and other service areas, which are proposed in the building or construction projects. Note 1. The projects or activities shall not include industrial shed, school, college, hostel for educational institution, but such buildings shall ensure sustainable environmental management, solid and liquid waste management, rain water harvesting and may use recycled materials such as fly ash bricks. Note 2. "General Conditions" shall not apply.
8(b)	Townships and Area Development Projects		Covering an area ≥ 50 ha and/or built up area ≥ 1,50,000 sq. m.	A project of Township and Area Development Projects covered under this item shall require an Environment Impact Assessment report and be appraised as Category 'B1' Project. Note. "General Conditions" shall not apply.

20. Insofar as 2014 notification is concerned, the same, as fairly accepted by Shri Shankaranarayan, learned senior counsel appearing on behalf of the petitioner, was quashed and set aside by the Kerala High Court on 06th March, 2024 in WP(C) No. 3097 of 2016 on a technical ground, since the procedural formalities for publication of the notification was not found in consonance with the final notification.

21. Insofar as the judgment and order of the learned NGT dated 08th December, 2017 is concerned, what has been set aside is (i) clause 14(8) of the 2016 notification which provided for establishment of the Environmental Cell at the level of State Governments or local authorities, (ii) the provisions relating to exclusion of Consent to Operate and Consent to Establish under Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 in clause 14 of 2016 notification and (iii) Appendix-XVI to the said notification relating to constitution and functioning of the said Environmental Cell.

22. It is thus clear that the issue that arises for consideration in the present *lis* was not an issue for consideration before the

learned NGT. In any case, the Environmental Cell at the level of a municipal body cannot be equated with SEIAA, which is a statutory body constituted by the Central Government under a statute namely the Environment (Protection) Act, 1986. The learned NGT was, therefore, justified in holding that an important task of granting environmental clearances cannot be entrusted to a body at the municipal level. However, at the cost of repetition, it is observed that the SEIAA is a statutory body comprising of experts.

23. Insofar as the order dated 26th November, 2018 passed by the Delhi High Court granting stay is concerned, the said order considered the 2018 notifications dated 14th and 15th November, 2018 *vide* which the area of 20,000 sq.mtr., was increased to 50,000 sq.mtr for Building or Construction projects or Area Development projects and Townships and from 20,000 sq.mtr to 1,50,000 sq.mtr for industrial sheds, educational institutions, hospitals and hostels for educational institutions.

24. By the impugned notification, however, there is no variation with regard to the built-up area of 20,000 sq.mtr.

and 1,50,000 sq.mtr for Building and Construction projects and with regard to Townships and Area Development projects having an area of 50 ha. to 1,50,000 sq.mtr which was provided in the 2006 notification.

25. Insofar as the second judgment of the learned NGT dated 9th August, 2024 is concerned, no doubt that the learned members of the NGT have referred to the General Conditions, we, however, find that the learned NGT has not considered the 2006 notification in its correct perspective.

26. It is a settled principle of law that while interpreting any legislation including a subordinate legislation, the first principle that has to be adopted is the literal rule of interpretation. Applying literal interpretation to the 2006 notification, it would be clear that said notification does not provide for applicability of the General Conditions to projects in Entry 8(a) and 8(b) of the Schedule. As already observed hereinabove, wherever the delegated legislation wanted the General Conditions to be made applicable it has been specifically provided in column 5 of the projects/activities.

27. At the cost of repetition, we observe that insofar as the

projects/activities at Entries 8(a) and 8(b) are concerned, General Conditions have not been provided for right from the 2006 notification.

28. It is further to be noted that the judgment dated 09th August, 2024 passed by the learned NGT did not have the benefit of considering the 2025 notification.

29. We, therefore, see no reason to accept the request of the learned senior counsel for the petitioner to keep the present matter pending in order to await the judgment of the coordinate Bench.

30. In any case, the validity of 2025 notification is not being considered by the Coordinate Bench.

31. No doubt that the courts have consistently insisted upon protecting environment and consistently held that the natural resources are held in trust by the present generation for the future generations. However, at the same time, the courts have also consistently taken into consideration the need for developmental activities.

32. A country cannot progress unless the development takes place. As such, this Court in a catena of decisions has adopted

the principle of sustainable development. Some of the notable decisions of this Court are ***Vellore Citizens' Welfare Forum v. Union of India and Others***[2], ***Jagannath v. Union of India and Others***[3], ***Consumer Education & Research Society v. Union of India and Others***[4], ***Intellectuals Forum, Tirupathi v. State of A.P. and Others***[5], ***Tata Housing Development Company Limited v. Aalok Jagga and Others***[6] and ***State of Uttar Pradesh and Others v. Uday Education and Welfare Trust and Others***[7].

33. A reference in this respect can also be made to the recent judgment of this Court rendered ***In Re: Zudpi Jungle Lands***[8], wherein all the earlier judgments of this Court have been considered by a coordinate bench, to which one of us (B.R. Gavai, CJI.) was a party. It would be apposite to refer to paragraphs 117, 118 and 119 of the said judgment:

> "**117.** Another aspect that needs to be considered is the balance between environmental protection and the need for

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2 (1996) 5 SCC 647 : 1996 INSC 952
3 (1997) 2 SCC 87 : 1996 INSC 1466
4 (2000) 2 SCC 599 : 2000 INSC 81
5 (2006) 3 SCC 549 : 2006 INSC 101
6 (2020) 15 SCC 784 : 2019 INSC 1203
7 (2022) SCC OnLine SC 1469 : 2022 INSC 1129
8 2025 INSC 754

sustainable development. It will be apt to refer to paras 87-88 of the judgment of this Court in the case of *State of Uttar Pradesh* v. *Uday Education and Welfare Trust* (*2022 SCC OnLine SC 1469)*, which read thus:

> "87. It cannot be disputed that Section 20 of the NGT Act itself directs the learned Tribunal to apply the principles of sustainable development, the precautionary principle and the polluter pays principle. Undisputedly, it is the duty of the State as well as its citizens to safeguard the forest of the country. The resources of the present are to be preserved for the future generations. However, one principle cannot be applied in isolation of the other.
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> 88. It is necessary that, while protecting the environment, the need for sustainable development has also to be taken into consideration and a proper balance between the two has to be struck."

118. Much prior to that, this Court, in the case of *Vellore Citizens' Welfare Forum* v. *Union of India and others (1996) 5 SCC 647 : 1996 INSC 952,* had an occasion to consider the conflict between the development and ecology. This Court observed thus:

> "10. The traditional concept that development and ecology are opposed to each other is no longer

acceptable. "Sustainable Development" is the answer. In the international sphere, "Sustainable Development" as a concept came to be known for the first time in the Stockholm Declaration of 1972. Thereafter, in 1987 the concept was given a definite shape by the World Commission on Environment and Development in its report called "Our Common Future". The Commission was chaired by the then Prime Minister of Norway, Ms G.H. Brundtland and as such the report is popularly known as "Brundtland Report". In 1991 the World Conservation Union, United Nations Environment Programme and Worldwide Fund for Nature, jointly came out with a document called "Caring for the Earth" which is a strategy for sustainable living. Finally, came the Earth Summit held in June 1992 at Rio which saw the largest gathering of world leaders ever in the history — deliberating and chalking out a blueprint for the survival of the planet. Among the tangible achievements of the Rio Conference was the signing of two conventions, one on biological diversity and another on climate change. These conventions were signed by 153 nations. The delegates also approved by consensus three non-binding documents namely, a Statement

> on Forestry Principles, a declaration of principles on environmental policy and development initiatives and Agenda 21, a programme of action into the next century in areas like poverty, population and pollution. During the two decades from Stockholm to Rio "Sustainable Development" has come to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting ecosystems. "Sustainable Development" as defined by the Brundtland Report means "Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs". We have no hesitation in holding that "Sustainable Development" as a balancing concept between ecology and development has been accepted as a part of the customary international law though its salient features have yet to be finalised by the international law jurists."

119. The principle of *Sustainable Development* as a balancing concept between ecology and development has been accepted as a part of the Customary International Law by this Court in various judgments including *S. Jagannath* v. *Union of India (1997) 2 SCC 87 : 1996 INSC 1466*, *Consumer*

Education & Research Society v. *Union of India and Others (2000) 2 SCC 599 : 2000 INSC 81*, *Intellectuals Forum, Tirupathi* v. *State of A.P. (2006) 3 SCC 549: 2006 INSC 101* and *Tata Housing Development Company Limited* v. *Aalok Jagga (2020) 15 SCC 784 : 2019 INSC 1203.*"

34. It is thus clear that the courts have taken a view that while development is permitted to be undertaken, it is also required that a precaution is needed to be taken so that the least damage is caused to the environment and ecology. The courts have also insisted upon the mitigation and compensatory measures so as to compensate the loss which is caused to the environment and ecology on account of the damage that would be caused by the developmental activities.

35. As already submitted by the learned Additional Solicitor General of India, it is not possible for the MOEF&CC to consider the projects from all the states of the country. We are in agreement with the same. In any case, we are of the considered opinion that the SEIAA is a body of experts constituted/appointed by the Central Government itself and it is better equipped to undertake study *qua* environmental impact of proposed projects in the respective state/union

territory.

36. We, therefore, see no reason as to why the SEIAA should not be permitted to consider the proposal pertaining to the respective States/Union Territories, if it is a properly constituted body in accordance with the statute.

37. As a matter of fact, the 2006 notification itself provides for the constitution and appointment of members of SEIAA. From paragraph 3 of the said notification it can be seen that the SEIAA consists of three members out of which one shall be the Member Secretary, who is required to be a serving officer of the concerned State Government or Union Territory administration familiar with environmental laws and other two members shall either be a professional or expert fulfilling the eligibility criteria given in Appendix VI to the notification; one of them who is an expert in the Environmental Impact Assessment process, shall be the Chairman of the SEIAA. The procedure as to how the SEIAA shall conduct impact assessment and arrive at a decision is also prescribed under the said notification.

38. Another reason that is given for issuance of 2025

notification is that the 2006 notification was somewhat ambiguous with regard to the built up area as was observed by this Court in the case of ***In Re: Construction of Park at Noida near Okhla Bird Sanctuary.***

39. Accordingly, in the 2025 notification, the "built up area" has been specifically defined to be the built up or covered area on all floors put together including the basement and other service areas, which are proposed in the building or construction project.

40. While we are inclined to uphold the impugned notification, we are of the considered view that the exemption of applicability of 2006 notification, by way of Note 1 in column 5 of Entry 8(a) of the impugned notification, to the projects or activities for industrial shed, school, college and hostel for educational institution does not appear to be in tune with the purpose for which the Environment Protection Act has been enacted.

41. Ms. Bhati, learned Additional Solicitor of India, submits that the detailed guidelines have been provided so as to ensure that the industrial shed, school, college and hostel for

educational institution shall adhere to the environmental aspects. Moreover, we find that no mechanism like the impact assessment to be done by an expert body like SEIAA has been provided in the said guidelines.

42. It cannot be gainsaid that if any construction activity for an area of more than 20,000 sq. mtr. is to be carried out, it will naturally have an effect on the environment and ecology, even if the building is for industrial shed or for educational purpose, including hostels etc. There is neither any rational nexus with the object to be achieved by excluding such buildings from the rigors of the notification. We, therefore, see no reason to discriminate the other buildings with the buildings constructed for industrial or educational purposes.

43. It is by now common knowledge that education is no more exclusively a service oriented activity and that it has in fact become a flourishing and thriving industry. We, therefore, see no reason behind the exemption of 2006 notification to the industrial or educational buildings by way of Note 1 in Column 5 of the 2025 notification.

44. Insofar as the clarification by O.M. dated 30th January,

2025, is concerned, it only clarifies that the 2025 notification would also be applicable to the State of Kerala.

45. It can thus be seen that the clarificatory O.M. dated 30th January, 2025, which has also been impugned in the present petition, rather than being adverse to the environmental interest is conducive to the environmental interest, inasmuch as it also makes the conditions applicable to the State of Kerala.

46. Therefore, while upholding the impugned notification dated 29th January, 2025, we hold that Note 1 to Entry 8(a) is arbitrary and liable to be quashed and set aside.

47. In the result, we pass the following order:

i. The Writ Petition is partly allowed;

ii. The notification dated 29th January, 2025 excluding Note 1 to Entry 8(a) is upheld;

iii. Note 1 to Entry 8(a) of the notification dated 29th January, 2025 is quashed and set aside;

iv. The O.M. dated 30th January, 2025 issued by the MoEF&CC is also upheld; and

v. In the facts and circumstances, no orders as to costs.

48. We express our deep appreciation for the valuable assistance provided by Shri Gopal Sankarnarayanan ably assisted by Shri Vanshdeep Dalmia, Ms. Aishwarya Bhati, learned Additional Solicitor General, Shri Tushar Mehta, learned Solicitor General of India, Shri Mukul Rohtagi and Shri Atmaram Nadkarni, learned senior counsel.

49. All the applications for impleadment/intervention are disposed of.

50. Pending application(s), if any, shall stand disposed of.

.....CJI
(B.R. GAVAI)

.....J
(K. VINOD CHANDRAN)

NEW DELHI;
AUGUST 05, 2025