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# NOBLE M PAIKADA VS UNION OF INDIA 2024 SCC

## ONLINE SC 369

AUTHORED BY - RIYANSHI SRIVASTAVA

### I. INTRODUCTION

The idea that environment and development are opposed to each other is long debated. The conventional view suggests that if unrestrained development continues, it harms the environment and for protecting the environment, development needs to stop. The world has come a far distance from this stance when in Rio Declaration, the idea of “sustainable development” as an integrated approach which allowed “development while simultaneously protecting the environment for the current as well as the future generation” was introduced. The conference put things in perspective by stressing that there cannot be two extremes, i.e. no development or unrestrained development. Later in the *Vellore* judgement,<sup>1</sup> the court observed that development and environment are no longer opposed to each other and the answer to which is sustainable development. The approach to environmental regulation in India aligns with the global emphasis on the principles of “polluter pays”, a combination of the “precautionary principle” and “preventive approach” in adherence to *inter-generational equity* and *intra-generational equity* with the goal of achieving “sustainable development.”<sup>2</sup>

Principle 17 of the Declaration mandates the adoption of Environmental Impact Assessment as a national instrument for evaluating potential environmental consequences before approving any project or activity that may cause significant environmental harm.<sup>3</sup> Environmental Impact Assessment (EIA) procedure ends with an environmental clearance which is a permission allowing project to proceed. Certain projects, likely to pollute the environment, require governmental clearance to commence.<sup>4</sup> Environmental Clearance (herein after EC) is the process where projects require prior approval from the appropriate regulating authority to carry on initiatives that pollute the environment. The MoEFCC makes rules and regulations with respect to EC for project in the country.<sup>5</sup> The first such notification was issued in 1992, 1994

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<sup>1</sup> (1996) 5 SCC 647.

<sup>2</sup> S. Divan and A. Rosencr, “*Environmental Law and Policy in India: Cases, Materials and Statutes*”, (OUP, New Delhi, 2002).

<sup>3</sup> U.N. Conference on Environment and Development, “*Rio Declaration on Environment and Development*”, Principle 17, U.N. Doc. A/CONF.151/26 (Vol. I) (June 14, 1992).

<sup>4</sup> 2018) 2 SCC 203.

<sup>5</sup> M.P Ram Mohan, Himanshu Pabretja, “*Public Hearings in Environmental Clearance Process: Review of Judicial Intervention*”, Vol. 51, No. 50, Economic and Political Weekly, pp. 68-75 (Dec. 10, 2016).

then in 2006. These notifications determine as to which projects require EC and also lay out the procedure for such a clearance. The four steps involved in EC are screening, scoping, public consultation and appraisal.

## II. FACTS

In 2016, Appendix IX was introduced to exempt EC for specific projects under certain conditions. In a 2020 notification, Rule 6 was added to the Appendix IX which exempted the requirement of clearance for extracting, sourcing, or borrowing ordinary earth for linear projects such as roads and pipelines. The case *Noble M. Paikada vs. Union of India*<sup>6</sup> dealt with the validity of EC exemption granted under the amended Rule 6 by the 2020 notification. Such an exemption was arbitrary, violated environmental law principles, and was granted without following the due process prescribed under the EP Act, and the Rules. The case was initially heard by the NGT which upheld the validity of the notification while directing the MoEFCC to revisit the exemption and include safeguards. The petitioners then appealed to the Apex Court challenging the legality of the exemption and its impact on the environment.

## III. ISSUES

1. Whether Item 6 of Appendix- IX violates the EP Act, 1986, and the judgement in the *Deepak Kumar* case?
2. Whether the failure to follow the mandatory Public Consultation process as prescribed under Rule 5(3) renders the amendment invalid?
3. Whether Item 6 of Appendix- IX is arbitrary, violative of environmental law principles and Art. 14 and 21 of the Indian Constitution?
4. Whether the exemption under Item-6 violates the principles of “*sustainable development*”, “*polluter pays*”, “*precautionary principle*” and “*non-regression*”?

## IV. RULE

1. Section 3(1), Environment Protection Act, 1986
2. Section 3(2)(v), Environment Protection Act, 1986
3. Section 5, Environment Protection Act, 1986
4. Rule 5(3), Environment Protection Rules, 1986
5. Rule 5(4), Environment Protection Rules, 1986

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<sup>6</sup> 2024 SCC OnLine SC 369.

6. Section 8B, Mines and Minerals (Development and Regulation) Act, 1957.
7. Article 14, Constitution of India, 1950
8. Article 21, Constitution of India, 1950

## V. RATIO DECIDENDI

The appellants argued that the object of the act is to protect and improve the environmental conditions. The section mandates the government to ensure protection and that the notification failed to meet its requirement. The 2020 amendment granted exclusion without any safeguards. The government failed to establish adequate safeguards to ensure that such extraction of ordinary earth would not result in environmental degradation which defeats the whole object of the act. Such a blanket exemption is unchecked and arbitrary and hence violative of Art 14. The appellants further argued that Rule 5(3) of the EP Rules which requires prior public notification and the opportunity for stakeholders to raise objections, was completely bypassed. Further, the notification contradicted the judgment of Deepak Kumar vs. State of Haryana which mandates EC for minor mineral extraction in cases for granting leases of minor minerals, including their renewal for an area less than 5 hectares.

The respondents contended that owing to the insertion of Section 8B in the MMDR Act, necessary amended had to be made to the 2006 notification in order to align it with Section 8B which grants automatic statutory clearances for two years to new lessees of expired mining leases. They argued that the matter was reviewed by the Expert Appraisal Committee under the Ministry of Environment, Forest and Climate Change, and other relevant authorities and was discussed in a meeting under the chairmanship of the Joint Secretary of the concerned department.<sup>7</sup> It was further submitted that the amendment intended to uphold the principles of sustainable development, and the exemption granted under item 6 of the notification cannot be deemed arbitrary as it remains subject to compliance with the Standard Operating Procedure (SOP) issued from time to time. It was contended that adequate safeguards have been incorporated, and the exemption is not absolute. Moreover, the grant of exemption is a matter of executive policy within the domain of the Central Government and should not be interfered with.

The court invalidated “Item 6 of Appendix-IX of the EIA 2006 notification” on the ground that

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<sup>7</sup> *Supra* note 6.



such a blanket exemption infringes Articles 14 and 21 and is arbitrary. The requirement of Environmental Clearance cannot be waived, when the activity involves extraction of natural resources that lead to environmental degradation. Also, the impugned notification defeats the purpose of the Environmental Protection Act, 1986 and violates the statutory requirement under Rule 5(3) of the EP Rules, 1986. The court also held that the NGT had directed the government to revisit the notification and introduce necessary safeguards within three months. However, instead of conducting a thorough review, the government merely added a requirement to comply with SOPs. The Court found that these SOPs lacked statutory backing and enforceability, making them ineffective in ensuring environmental protection.

## VI. ANALYSIS

### IMPORTANCE OF PUBLIC CONSULTATION IN ENVIRONMENTAL GOVERNANCE

Sec 3 of the Act empowers the Union to adopt measures to conserve the environment. This section is read alongside “Rule 5 of the EP Rules”. Rule 5 was intended to give effect to Section 3(2) (v) of the Act, which authorizes the Central Government to impose “restrictions on the areas in which industries, operations, or processes may not be carried out or must be carried out with specific protections.”<sup>8</sup> Any proposed amendment affecting environmental regulations must be published and undergo a public consultation process where objections are raised as provided under “Rule 5(3) of the EP Rules.” As a part of public consultation, a public hearing provides a "decentralised democratic space" during the clearance process, the public is given the option to engage in the regulatory process.<sup>9</sup> Public consultation has been an ‘Achilles’ heel’ in Indian environmental governance.<sup>10</sup> Principle 10 of the Rio Declaration on Environment and Development<sup>11</sup> obliges that state must confer on individuals the right to access environmental information, contribute to decision-making, and seek judicial and administrative remedies in environmental matters. This principle reinforces the idea that public involvement is essential for achieving sustainable development, as it strengthens the relationship between governments and the people they serve.

It is a platform to raise serious concerns on the environment and other societal impacts of a project, such as land acquisitions, compensation, pollution, health concerns, etc. It may involve

<sup>8</sup> Environment Protection Act, 1986, Section 3(2)(v).

<sup>9</sup> *Utkarsh Mandal v. Union of India*, W.P. (C) No. 9340/2009.

<sup>10</sup> P. Leelakrishnan, *Environmental Law in India* ch. 11 (6th ed. 2021).

<sup>11</sup> *Ibid.*

face-to-face interactions or invite written responses to the government expressing their concern. Public hearing process is conducted for the locally affected people and is held at the project site or in its close proximity while any concerned person having stake in the impact of the project may submit written responses to appropriate authorities.<sup>12</sup> This stage of EIA is very significant as involvement of people and consideration of their concerns before deciding whether to grant EC or not imparts fairness and gives the whole process a purpose. It promotes the state's commitment towards environmental justice, participatory governance or participatory justice, principles of natural justice<sup>13</sup> and sustainable development. The process ensures transparency, inclusivity and accountability in decision-making. The participatory nature of this process ensures that the citizens have information as well as the government is making an informed decision. The Supreme Court in *Association for Environmental Protection vs. State of Kerala*,<sup>14</sup> held that commencement of a project without obtaining EC is a violation of the Part III rights of the local people as they bear the direct impact.

Public consultation is a mandatory step in the Environmental Impact Assessment, except for exempted categories. The involvement and importance of public consultation through PILs and judicial activism in India, in case like the *Taj Trapezium case*,<sup>15</sup> the *Kanpur Tanneries case*<sup>16</sup>, and *Vellore Citizen's Forum case*,<sup>17</sup> demonstrates the significance of the inclusion of public in the grant of EC. In *Hanuman Laxman Aroskar v. Union of India*<sup>18</sup> reaffirmed the principle of public participation in environmental decision-making. It ruled that failure to involve the public in granting environmental clearances violates fundamental rights and due process. The Court held that public consultation is essential for transparency and accountability in environmental governance. the Impugned Notification violated the principles laid down in this case.

### **PROCEDURAL IRREGULARITIES**

Rule 5(3) of the EP Rules mandates that before issuing a notification prohibiting or restricting industries, a notice must be published in the Gazette and other media, inviting objections from the public. The only exception to Rule 5(3) is Rule 5(4) which provides that the Central Government may bypass public notice of it deems it necessary in the "public interest". While

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<sup>12</sup> *Samarth Trust and Anr vs Union of India*, Writ Petition (Civil) No. 9317 of 2009.

<sup>13</sup> *S Nandkumar v State of Tamil Nadu*, W.P.No.21562 of 2024.

<sup>14</sup> *Supra note 5*.

<sup>15</sup> *M.C. Mehta v. Union of India*, (1997) 2 SCC 353.

<sup>16</sup> *M.C. Mehta v. Union of India*, (1988) 1 SCC 471.

<sup>17</sup> *Supra note 1*.

<sup>18</sup> (2019) 15 SCC 401.

issuing previous EC notifications, the government followed due process by inviting public objections. However, the impugned notification was passed without following the due procedure on ground of public interest under Rule 5(4). No specific reasoning was provided for the same. The Ministry ought to have prepared a document indicating the relevant authority's satisfaction on public interest.<sup>19</sup> Therefore, the court concluded that invocation of the said Rule was without the application of mind and hence vitiating the decision-making process. Also, the impugned notification was issued just two days after the COVID-19 lockdown and the court held that at that time there was no urgency in modifying the EC requirements. The haste in issuing the notification suggested that it was done to benefit private mining companies rather than the public interest. Therefore, the court invalidated the amendment to Appendix-IX as it violates “Rule 5(3) of the EP Rules.”

### **ARBITARINESS**

“Item 6 of Appendix-IX” in the impugned notification grants exemption from Environmental Clearance for of ordinary earth for linear projects. The object of requirement of environmental clearance is to minimize environmental damage. The amendment to the notification has made a broad exemption without specifying any conditions like the quantity of ordinary earth that can be extracted or the area limit for extraction. Moreover, the phrase “linear project” has not been defined as to what project qualify under the exemption. The absence of quantity limits on the extraction of ordinary earth created scope for excessive and unregulated extraction, leading to environmental degradation. Without any safeguards or regulations, the exemption would lead to potential misuse. Such a blanket exemption is arbitrary in nature as the rule is completely unchecked and does not have any reasonable classification. The Supreme Court in Deepak Kumar case<sup>20</sup> ruled that EC is mandatory even for minor mineral extraction to prevent unregulated over extraction. The judgments highlights that no blanket exemption must be granted for extraction activities without proper safeguards. The impugned notification is in direct contradiction to the ruling of this case and undermines the environment protection principles established.

Therefore, addition of Item 6 to the Appendix-IX is in violation of Article 14 of the Constitution and is arbitrary. Moreover, the purpose of the EP Act is to protect the environment and minimize damage and any exemption granted to evade the process ensuring the protection of

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<sup>19</sup> Supra note 6.

<sup>20</sup> (2012) 4 SCC 629.

the environment must be rational and reasonable. The exemption under Item 6 lacks any safeguard, regulation or rationality defeating the whole purpose of the Act. The court in *Subhash Kumar v. State of Bihar* held that the “right to live in a pollution-free environment is a fundamental right under Article 21”.<sup>21</sup> An arbitrary environmental clearance or exemption that leads to environmental degradation violates right to life, health and healthy environment. The Supreme Court struck down Item 6, declaring it unconstitutional.

### **VIOLATION OF ENVIRONMENTAL LAW PRINCIPLES**

The *Sustainable Development, Precautionary Principle, Polluter Pays and the Non-Regression* are fundamental to environmental governance. The principle of “*Sustainable Development*” mandates that the economic development must not come at the cost of the environmental protection. There must be a balance between both. The Stockholm Declaration held in 1972 first discussed the concept of sustainability and later the Brundtland Commission Report and the Rio Declaration (1992) defined the term “sustainable development.” In *M.C. Mehta v. Union of India*<sup>22</sup>, the court recognized that economic growth cannot come at the cost of environmental degradation. In *N.D Jayal v. Union of India*, the Supreme Court declared that “the adherence to sustainable development is a sine qua non for the maintenance of symbiotic balance between the right to development and development.”<sup>23</sup> The unregulated extraction of ordinary earth threatens ecological balance, violating sustainable development principles. The failure to impose restrictions on extraction enables potential misuse.

The “Precautionary Principle” mandates that if an activity poses a risk of environmental harm, scientific uncertainty cannot be used as a reason to delay preventive measures. The principle was recognized through judicial activism in the *Vellore Citizens’ case*<sup>24</sup>, and it was held that burden is on the industries to show that their activities are environment friendly. Thereafter, in *A.P. Pollution Control Board v. M.V. Nayudu*<sup>25</sup> and *Narmada Bachao Andolan v. Union of India*<sup>26</sup>, this principle was upheld by the SC.

The “Polluter Pays principle” places the liability on those who pollute the environment to

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<sup>21</sup> 1991 (1) SCC 598.

<sup>22</sup> AIR 1987 SC 1086.

<sup>23</sup> (2004) 9 SCC 362

<sup>24</sup> *Supra note 1.*

<sup>25</sup> AIR 2000 SC 3751.

<sup>26</sup> *Narmada Bachao Andolan v. Union of India*, AIR 2000 SC 3751.

compensate as well as bear the costs of restoration. The *Indian Council for Enviro-Legal Action v. Union of India*<sup>27</sup> judgment held that polluters must pay for both damage and restoration. The impugned notification gives industries complete freedom to exploit the natural resource without any regulations and no accountability. This clearly violates the “polluter pays principle” as there is no mechanism for the compensating the environment degradation that will be caused by the unrestricted excavation of ordinary earth.

The principle of “non- regression” mandates that the standards of environmental conservation cannot be weakened once established.<sup>28</sup> The laws and policies related to environmental protection only improve over time and do not regress. This principle is crucial in preventing governments and industries from diluting environmental safeguards under economic or political pressure. Item 6 removes the requirement for prior environmental clearance (EC) for earth extraction in linear projects, weakening an already existing safeguard. Hence, the notification is in violation of all four aforementioned environmental law principles.

## VII. CONCLUSION

The impugned notification by granting an unchecked and arbitrary exclusion for the extraction of ordinary earth in linear projects directly infringes the environmental law principles and the Constitution. The SC rightly struck down “Item-6 of the Appendix-IX” recognizing that such an exemption violates Articles 14 and 21, sub-rule 3 of Rule 5 of the EP Rules and EP Act, 1986. The court through this judgement highlighted that environment clearance (EC) is not a mere procedural requirement but a critical safeguard to prevent natural resources from unrestricted exploitation. The ruling reinforces the state’s obligation to uphold environmental justice and participatory governance, ensuring that development is pursued without compromising ecological integrity and the right to a clean and healthy environment. This decision underscores the necessity of ensuring that economic development does not come at the cost of environmental degradation. Also, policymakers must prioritize sustainability, transparency, and inclusivity in decision-making, with the importance public participation as fundamental pillars of environmental governance.

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<sup>27</sup> AIR 1996 SC 1446.

<sup>28</sup> Mitchell, Andrew D, and James Munro. “AN INTERNATIONAL LAW PRINCIPLE OF NON-REGRESSION FROM ENVIRONMENTAL PROTECTIONS.” *International and Comparative Law Quarterly* 72.1 (2023): 35–71.