

Constitution of India and Environmental Governance:

Administrative and Adjudicatory Process

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Lecture No. 21

EIA Notification, 2006-I

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III. EIA NOTIFICATION, 2006



• SALIENT FEATURES:

CATEGORIES AND LEVELS OF EC:

- 9 GROUP OF ACTIVITIES/ PROJECTS REQUIRE PRIOR ENVIRONMENTAL CLEARANCE - LISTED IN THE SCHEDULE- 2 LEVELS OF CLEARANCE : REGULATORY AUTHORITIES- CATEGORY "A" TO GET CENTRAL CLEARANCE (-MoEF) AND CATEGORY "B" ,BY STATE (SEIAA: State Environment Impact Assessment Authority) – DECISIONS OF THE RESPECTIVE BODIES TO BE BASED ON THE RECOMMENDATION OF THE EXPERT APPRAISAL COMMITTEES(EAC), AT THEIR LEVEL - NEW PROJECTS, EXPANSION, MODERNIZATION, CHANGE IN THE PRODUCT ETC., COVERED

- CATEGORIZATION OF PROJECTS, BASED ON THE SPATIAL EXTENT AND POTENTIAL IMPACTS ON HUMAN HEALTH AND NATURAL AND MAN MADE RESOURCES-ABSENCE OF DULY CONSTITUTED SEIAA or SEAC, WOULD MAKE CATEGORY "B" PROJECT CLASSIFIED INTO " A" CATEGORY



So many amendments within a span of about 12 years, of course that displays the dynamism of the law in a way, but in another sense, this actually was an effort and an exercise as one could make having the benefit of hindsight, these 12 years were a period of trial and error. 1994 notification till the year 2006, umpteen amendments came to this law. And by and large, the dilution of the law was more evident than making the law more tight and secure. As a result, there` was a lot of murmur that this law is more industry friendly than environment friendly and as such, it is better to scrap this law.

The government did not keep quiet for well over some 2-3 years, it had appointed a couple of expert committees to look into the marking of this law over time and based on the recommendations and in consultation with several interest groups, including the industry and primarily the industry. It came up with a notification, and that is the law that is in operation now, the EIA notification of the year 2006 and we will elaborately discuss that now. What are its salient features?

The environment Impact Assessment law puts developmental activities under various categories of activities. And it also puts on a rational path that the environmental clearance for these different categories of activities need not necessarily go through a particular process whereby only the central government would take a decision, it was highly centralized earlier. We would like to decentralize that so we decide on levels of decision making on environmental clearance depending on the kind or the nature of the activity and the category in which it is put. As many as 9 groups of activities and projects that require prior environmental clearance were listed out in the schedule.

So, there is a schedule under this notification, I asked the students to have a look at this schedule just to acquaint themselves as to the kind of activities or the projects that require primary environmental clearance and these are in the list that is available in schedule. How do they really decide on the categories or the nature of projects? Well, the categorization of projects is based on the spatial extent, what is the space that this particular project or developmental activity would take?

Is it something which occupies a lot of area covering several kinds of flora and fauna within that having different kinds of topographies coming within its purview, where exactly it is going to be located, based upon which a particular kind of categorization? And much more than that the potential impact of this project on human health and natural and manmade resources factored were in before these were classified as categories that require mandatory environmental clearance at different levels.

That means, environmental clearances are going to take place at two levels, one at the State level and another at the Central level. And those that are put under category A, they require the central clearance or the Ministry of Environment and Forest clearance, and those that are put in Category B are to be cleared by the state governments. The agency which would carry out that impact assessment at the Central level is what is referred to As Environment Appraisal Committee EAC and at the state level, it is called State Environment Impact Assessment Authority SEIAA, these are the ones which will take the call at that level for that particular category of a developmental activity based upon these criteria and then take a decision. Decisions of the respective bodies are to be availed on the recommendation of this particular committee at the central and at the state level. New projects, expansion, modernization changes the product, etc, all get covered under the various categories under

which these appear.

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- SEIAA: - TO BE CONSTITUTED BY CG AFTER CONSULTATION WITH SG- 3 MEMBER BODY (-Chairman, Member and Secretary- last mentioned one , a serving officer of the govt., familiar with environmental laws to be nominated by State Govt.)-- scope for co-option-qualifications--expert or professional# (-appendix.VI)

- EAC: MEMBERSHIP- ONLY EXPERTS& PROFESIONALS#- not to exceed 15 in no. (- Chairman: an outstanding and experienced envtl. Policy expert/ expert in mmt./public administration- he can nominate one of the members as the Vice-Chairman, who would preside meetings in the formers' absence)- a representative of Env. Ministry to assist the Committee, as its secy.

(-# Professionals (MA/MSc; BE/BTech.; Law; CA; IAS/IFS/MBA + Experience in the respective fields) and Experts - a professional with atleast 15 years of experience in the field/ PhD. with 10 years)- should be below 70 years -



What is the State level authority, SEIAA? Interestingly, under this law, the State level appraisal body or the recommendatory body, this is something that has to be constituted by the Central government itself. So, even the State body is set up by the Central government, but while setting it up the central government will consult the state government. It is a very small body, just a three-member body; there is a chairman, there is a member and a secretary. The Secretary is a serving officer of the government, who is familiar with environmental laws to be nominated by the state government.

There is a scope for co-option of any other expert in this as and when occasions arose, as and when a particular kind of developmental activity requiring a particular kind of expertise they could co-opt other people also as experts here. Only experts or professionals can be in this committee. So, to be the chairman, or to be a member, you need have to be an expert or a professional. Who is an expert and a professional? It is a very interesting formulation. I will come to that, but let me just go through the two levels of clearance.

The first level is SEIAA at the state level and the second one at the central level which clears A category projects, the Environment Appraisal Committee, or the approval Committee. The membership, here you just have a look, the qualification is to be a member one can be experts and professionals. At state level experts or professionals, at the national level, only experts and professionals. It is a big body because it is an India significance and so reach and so you need a lot more people than what you have at the state level.

And some major projects that come under Category A, the number of persons who should be there, there should not be more than 15 in number. It will have a chairman, it will have a member secretary and the chairman is an outstanding and experienced environmental policy expert or he may be an expert in management, or he may be an expert in public administration. And in case there is the chairman not being available for indisposition or for any other reason in the meetings, he can nominate one of the remaining members as the vice chairman, who would preside over the meetings in the former's absence.

To be the secretary that person should be a representative of the environment ministry to assist the committee as its secretary. So, the Secretary is nominated by the environment ministry at the central level. At the state level, it could be anybody who can be appointed, but he has to be from the government who is nominated by the State government, who is supposed to be familiar with environmental laws need have to be appointed for that.

Now, who is a professional and who is an expert, who can take the call? Per use all those applications, go through the project reports and come up with a recommendation for the government to act upon? Well, these members are either professionals or experts, and a professional is someone who has an MA or an MSc degree, master's degree in sciences and arts or Bachelor of Engineering or Bachelor of Technology, a lawyer, a Chartered Accountant, an IAS officer, an IFS fellow, Indian Foreign Service, Master of Public Administration.

And not just that, with this qualification, they should have experience in their respective field, respective field of clearance that is required for those environment related environmentally affecting development activities. So, these are referred to as professionals. So, a professional is someone who has academic qualifications along with official experience and that is a professional. And who is an expert, very interesting. An expert is a professional with at least 15 years of experience in the field or with a PhD with 10 years.

So, this is a super professional whereas, a professional does not have these 15 years of experience and a professional did not have a PhD. So, it can be either 15 years of experience PhD it will actually set apart experts and professionals, but the sum and substance of it is the EAC for its membership, you should be an expert, you can be a professional, then only you shall qualify to be in this particular committee. So, a very high-profile body, very well-

informed group of very academically professionally accomplished group in a wide variety of areas of human activity.

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-extendable up to 75 -- scope for considering other "professionals" and other "experts", with "sufficient" experience -Max. 2 terms of three years each- not to be removed before term without Cause and proper enquiry
- EAC & SEAC TO BE RECONSTITUTED EVERY 3 YEARS - TO SCREEN, SCOPE & APPRAISE PROJECTS- MEET ATLEAST ONCE A MONTH- AUTHORISED MEMBERS MAY INSPECT PROJECT SITES/ACTIVITIES, WITH PRIOR NOTICE OF ATLEAST 7 DAYS- FUNCTION ON THE PRINCIPLE OF COLLECTIVE RESPONSIBILITY- DECISION BY MAJORITY
- APPLICATION FOR EC- IN FORM 1 & IA (App.II)+ PRE-FEASIBILITY PROJECT REPORT (- EXCEPTION, CONSTRUCTION PROJECTS: CONCEPTUAL PLAN)



The only requirement is that each of the member should not have crossed 70 years of age, but the government will get the option of extending it up to the age of 75 years on a case by case basis decide depending upon the need and also the level of expertise without which the committee may not be able to function and so there is a need that after 75 years, one can remain a professional expert to be in this particular committee.

There is also a scope for considering other professionals and other experts with sufficient experience. So, here is a very interesting law in one appendix comes up with a very clear guideline as to who would be a professional, who would be an expert, and then later, dilutes the template that the state will have the jurisdiction, the government will exercise the discretionary power to decide whether other professionals who may not have those academic qualifications, other experts who may not have the kind of experience in the government as is required of this law, but sufficient experience as convincing the government to appoint them.

Well, so there may you see a bit of a difficulty of a bit of dilution in the composition of this body in contemplation under this law, maximum of 2 years term of, I mean 2 terms of 3 years each is what is being provided, they cannot be removed before the term without proper inquiry and giving a show cause notice to that effect, and every three years this will be constituted and what is their job, they have to carry out the screening and carrying out the scoping and they have to do the appraisal report.

What is the screening, scoping and appraisal? We will come to that a little while later and we will discuss it in greater detail because these are the stages of year-year process and that requires elaborate analysis. And this is their job to screen, to have the scope and appraise projects and meet at least once a month. And among the members there, the committee need have to authorize one member or a number of members to go and inspect the product sites and activities to get the field experience to know for themselves by themselves physically about the claims that are made and authenticate them with prior notice of at least 7 days and function the principle of collective responsibility.

So, if a member who is authorized, when he comes back and reports, he is supposed to report to the entire committee and the decision that is made it can be a unanimous decision or it can be by a majority, but in case there is a division then the majority will prevail and that will be the decision of the entire committee. The application for the environmental clearance is provided in the appendix and there has to be a pre-feasibility project report, the exceptions, construction projects, conceptual plans, all being given under this subordinate instruments to this particular notification.