

Hyderabad 15 January 2021

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To
The Chief Justice of High Court at Hyderabad
Southern banks of Moosi nadi
Adjacent to heritage city college
Hyderabad

Dear Chief Justice of High Court at Hyderabad, *May peace Be Upon You*

REPRESENTATION TO THE HIGH COURT AT HYDERABAD
REGARDING ILLEGALITY OF CMO TELANGANA THAT IS BLOCKING THE
CONSTITUTING OF APPELLATE AUTHORITY AT TELANGANA STATE
POLLUTION CONTROL BOARD, HYDERABAD, THUS BLOCKING APPEAL
AGAINST THE CONSENT FOR ESTABLISHMENT DATED 9 SEP 2020
FOR 'SECRETARIAT COMPLEX' HYDERABAD

PETITION

Sub: Telangana State Pollution Control Appellate Authority to be constituted under Sec 28 of Water Act 1974 and under Air Act 1981 and blockage by CMO be removed so that appeal against the Consent for Establishment issued by TSPCB for 'Secretariat Complex' can be lodged immediately.

Ref:

- 1- Environment Clearance Order No. SEIAA/TS/OL/HYD-47/2020-297, dt 1sep2020 for proposal no. SIA/TG/MIS/169948/2020 received on 28aug2020 . (enclosed)
- 2- Consent for Establishment(CFE) as per order No. 7/TSPCB/CFE/HYD/RO-HYD/HO/2020-761 dt 9sep2020 (enclosed)
- 3- Amendment to Environment Clearance Order No. SEIAA/TS/OL/HYD-48/2020-367 dt 25sep2020 for proposal no. SIA/TG/MIS/174043/2020 received on 23sep2020. (enclosed)
- 4- CFE if issued for the Amended EC dt 25sep2020 is not available on the TSPCB website as on date.

From the above cited references, It is observed that on 9sep2020 the project 'Secretariat Complex of Telangana state government by R&B department at Saifabad, Near Necklace Road, Khairathabad, Hyderabad' has been granted Consent for Establishment(CFE) as per order No. 7/TSPCB/CFE/HYD/RO-HYD/HO/2020-761 under Sec 25 of Water Act 1974 and under Sec.21 of Air Act 1981.

1) WHERE IS APPELLATE AUTHORITY MENTIONED IN CONSENT FOR ESTABLISHMENT?

At Item no. 29 of the CFE, it is mentioned that any person aggrieved by order made by State Board under Sec 25, Sec. 26, Sec. 27 of Water Act 1974 or Sec. 21 of Air Act 1981 may within 30 days from the date on which the order is communicated to him, prefer an appeal to Appellate Authority under Sec. 28 of Water Act 1974 and Sec. 31 of Air Act 1981.

As we could not find Appellate Authority details on TSPCB website, upon some research we find that as per GO Ms 21 of 21 may 2015 of EFS&T department, Telangana State Pollution Control Appellate Authority was constituted under section-28 of the Water (Prevention and Control of Pollution) Act, 1974 and section-31 of the Air (Prevention and Control of Pollution) Act, 1981 for hearing the cases pertaining to Telangana State with the retired High Court Judge as Chairman and two Technically qualified persons for a term of two years.

It is further observed that the Appellate Authority's members term of two years expired in May 2017 and Appellate Authority has not been re-constituted till date.

This implies that no appeal could be made against the CFEs issued by the TSPCB from May 2017 onwards, thus scope of crucial judicial remedial intervention wherever necessary was deliberately kept defunct by the state government and blocked. This leads to the question of validity of all the CFEs issued after May 2017 as the provision to question the CFEs as mandated under the Water Act 1974 was not fulfilled.

2) APPELLATE AUTHORITY FOR EXPEDITIOUS RESOLVING OF APPEALS AGAINST TSPCB ORDERS:

Sec. 28 of Water Act 1974 as cited below mandates that State government is responsible for constituting the Appellate Authority in the TSPCB. Further it has also been reported in the Times of India in 2018 that matter is pending at the CMO.

'28. Appeals:

(1) Any person aggrieved by an order made by the State Board under section 25, section 26 or section 27 may, within thirty days from the date on which the order is communicated to him, prefer an appeal to such authority (hereinafter referred

to as the Appellate Authority) as the State Government may think fit to constitute:

PROVIDED that the Appellate Authority may entertain the appeal after the expiry of the said period of thirty days if such authority is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

[(2) An Appellate Authority shall consist of a single person or three persons as the State Government may think fit, to be appointed by that government.]

(4) On receipt of an appeal preferred under sub-section (1), the Appellate Authority shall, after giving the appellant and the State Board an opportunity of being heard, dispose of the appeal as expeditiously as possible.'

It was imperative on the TSPCB that they could have appealed at the NGT or at the High Court for complying with the Act and constituting the Appellate Authority.

But the TSPCB continued to issue orders without the statutory body in place. How could it issue Consent for Establishment orders with the clause of Appeal to Appellate Authority against the order when it knew that Appellate Authority was not there. This is a deliberate deceitful statement in every CFE since May 2017 issued by the TSPCB.

3) PENALTY FOR CONTRAVENTION OF PROVISIONS OF WATER ACT:

The constitution of the Appellate Authority that was blocked since may 2017 is illegal and liable for punishment and imprisonment as per sec. 45A and sec. 48 of the Water act 1974.

*'[45A. Penalty for contravention of certain provisions of the Act
Whoever contravenes any of the provisions of this Act or fails to comply with any order or direction given under this Act, for which no penalty has been elsewhere provided in this Act, shall be punishable with imprisonment which may extend to three months or with fine which may extend to ten thousand rupees or with both and in the case of a continuing contravention or failure, with an additional fine which may extend to five thousand rupees for every day during which such contravention or failure continues after conviction for the first such contravention or failure.]*

48. Offences by government departments Where an offence under this Act has been committed by any Department of Government, the Head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

PROVIDED that nothing contained in this section shall render such Head of the Department liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.'

TSPCB, CMO and EFS&T ministries and departments all are liable for overriding the provisions of water act and not constituting statutory body as mandated by the act.

Even Supreme court had observed that it is immediate need that state governments constitute the Appellate authority under both water and air acts with sitting or retired high court judge and with team of scientists, environmental engineers, experts, etc.

4) RESPONSIBILITY OF GOVERNMENT AND ITS AGENCIES TO STRENGTHEN DUE PROCEDURE AND STRENGTHEN INSTITUTIONS OF JUSTICE

Under the Constitutional ethos and under good governance practices, distributive, transparent and accountable governance are sine qua non for democracy to be vibrant, dynamic and for last mile connectivity.

When the State Board and Appellate Authority were to be constituted and functional parallelly it is beyond the mandate of the CMO, Ministry of EFS&T and TSPCB that CFEs were issued with a clause that was quite deceitful, in the sense, state pollution control board, asks any person to go for appeal to a non-existent Appellate Authority. A deceit to the citizen of mammoth proportions.

SOS Prayer at the threshold of halls of justice as follows:

1- Cancel the CFE dt 9sep2020 and any subsequent amendment CFEs(not in public domain) issued to project 'Secretariat Complex of Telangana state government by R&B department at Saifabad, Near Necklace Road, Khairathabad, Hyderabad'

2- Proceed against the CMO and EFS&T hyderabad for allowing CFEs to be issued while blocking re-constituting the expired mandatory Appellate Authority for recourse against the CFEs or any order or grievance.

3- Proceed against TSPCB for issuing CFEs with a deceitful clause to approach the non-existent Appellate Authority while TSPCB was in full knowledge that the statutory recourse to appeal was blocked by the government of telangana and not approaching the higher judiciary like NGT or High court for re-constitution of expired Appellate Authority.

4- Cancel/Put on Hold all CFEs issued after May 2017 and handle all the appeals pending if any at TSPCB.

Copied to:

1. The CMO office, Hyderabad
- 2- Principal secretary, EFS & T department., Hyderabad
- 3- The member secretary, TSPCB, Hyderabad
- 4- The Chairman, Central Pollution Control Board, New Delhi