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**[Case Brief] Bengaluru Development Authority V/s Mr. Sudhakar Hegde & Ors.**

**Case name:** Bengaluru Development Authority V/s Mr. Sudhakar Hegde & Ors.

**Case number:** Civil Appeal No 2566 of 2019

**Court:** Supreme Court of India

**Bench:** Dr Dhananjaya Y Chandrachud, J  
Hemant Gupta, J

**Decided on:** March 17, 2020

**Relevant Act/Sections:** Bangalore Development Authority Act 1976, National Highways Act 1956, Karnataka Highways Act 1964

➤ **BRIEF FACTS AND PROCEDURAL HISTORY:**

1. The appellant formulated the PRR project scheme in 2005 to connect the Bangalore-Mysore Infrastructure Corridor (NICE road) with more access points. A preliminary notification was issued on 27 May 2005 under Section 17(1) and (3) of the Bangalore Development Authority Act 19766 to acquire certain land for the execution of the project. They stated five fold purpose of said highway.
2. A final notification under Section 19(1) of the BDA Act was issued on 29 June 2007 for the acquisition of the proposed land. The notifications were challenged before the High Court of Karnataka in Writ proceedings on the ground that the appellant had no authority to issue the

notifications. The High Court dismissed the writ petition on the ground that the appellant was authorised under the BDA Act.

3. The appellant, as project proponent, submitted an application to the SEIAA on 10 September 2009 under the EIA Notification 20069 seeking an EC for the PRR.
4. The final EIA report was placed before the SEAC and the SEIAA in October 2014. An EC was granted by the SEIAA on 20 November 2014. The first and second respondents filed an appeal to the NGT challenging the grant of the EC. The NGT, by an interim order dated 15 April 2015 granted an interim stay of the EC. The NGT noted the discrepancy between the submission of the appellant and the existence of a reserved forest through which the proposed road was to pass.
5. The NGT directed the appellant to conduct a rapid EIA. It was further directed that if the project is found to be viable after incorporating abatement measures, “the same can be taken up without delay”. Assailing the order of the NGT, the appellant, as project proponent, is in appeal before this Court.

➤ **ISSUE BEFORE THE COURT:**

1. Whether the PRR project commenced prior to the coming into force of the 2006 Notification;
2. Whether the PRR project falls within the scope of para 7(f) of the Schedule to the 2006 Notification obliging the project proponent to seek a prior EC; and
3. Whether the appellant has complied with the conditions stipulated in the 2006 Notification and the OMs issued by the MoEF-CC (Ministry of Environment and Forests) from time to time?

➤ **RATIO OF THE COURT**

1. The court noted that the basic postulate of the 2006 Notification is that the path which is prescribed for disclosures, studies, gathering data, consultation and appraisal is designed in a manner that would secure decision making which is transparent, responsive and inclusive and the BDA Act was enacted with the purpose of establishing a development authority for the development of the city of Bangalore and adjacent areas, the 2006 Notification embodies the notion that the development agenda of the nation must be carried out in compliance with norms stipulated for the protection of the environment and its complexities.
2. The contention urged by the appellant that the project commenced prior to the coming into force of the 2006 Notification cannot be accepted as the final notification under Section 19(1)

of the BDA Act was issued on 29 June 2007 following the grant of government sanction for the acquisition of the land.

3. The court held that an amending provision which clarifies the position of law which was considered to be implicit, is construed to have retrospective effect. The position of the retrospective application of clarificatory amendments to notifications is analogous to the position under statutory enactments. In the present case, the Committee appointed by the MoEF-CC clarified that the term highways included expressways and suggested that a suitable amendment be issued to that effect.
4. The appellant as project proponent was under an obligation under para 7(f) of the Schedule to the 2006 Notification to seek a prior EC to implement as the PRR project was an expressway.
5. By virtue of the notification, the appellant was required to submit the EIA report within four years from the date of the issuance of the ToR i.e before 21 November 2013. The SEAC was under a corresponding obligation to refuse the consideration of any EIA report prepared after the expiry of the ToR. Thus, the court held that the decision of the SEAC to proceed with the EIA report as well as seek additional information from the project proponent despite the expiry of the ToR suffers from a non-application of mind and is unsustainable.
6. The court held that the admission by the appellant of the contradictions in the EIA report, which sought to substitute the requisite forest clearance with an agreement with the forest department to provide an alternative site for afforestation is not sustainable in law. Compliance with the 2006 Notification and other statutory enactments envisaged in the EIA process cannot be reduced to an ad-hoc mechanism where the project proponent seeks to remedy its abject failure to disclose material information and seek the requisites clearances at a belated stage.
7. The court laid down that the Project proponents are duty bound to disclose the existence of forest land and inform the SEAC of the status of their application for forest clearance at the time of submitting the EIA report for the grant of the EC. Where the competent authority has granted the EC for a project, the project proponent is then duty bound to obtain and submit to the competent authority the requisite stage I forest clearance for the proposed project within 12 months or 18 months, as the case may be. Where the project proponent fails to submit the requisite forest clearance within the prescribed time, the EAC or the SEAC are authorised to reexamine the project.
8. Similarly according to the court the decision of the SEAC to recommend to the SEIAA the grant of the EC, despite the contradictory stand of the appellant as well as its failure to furnish adequate reasons as to why it was exempt from seeking forest clearance, suffers from a non-application of mind.

9. The court settled that the SEAC is under an obligation to record the specific reasons upon which it recommends the grant of an EC. The SEAC, as an expert body, must speak in the manner of an expert. Its remit is to apply itself to every relevant aspect of the project bearing upon the environment and scrutinize the document submitted to it. The SEAC is duty bound to analyse the EIA report.

➤ **DECISION HELD BY COURT:**

1. The order of the NGT directing the appellant to conduct a rapid EIA was upheld.
2. The following directions were given-
  - a) The appellant was directed to conduct a fresh rapid EIA for the proposed PRR project by a sector-specific accredited EIA consultant;
  - b) The appellant shall ensure that the requisite clearances under various enactments have been obtained and submitted to the SEAC prior to the consideration by it of the information submitted by the appellant in accordance with the OMs issued by the MoEF-CC from time to time;
  - c) The SEAC shall thereafter assess the rapid EIA report and other information submitted to it by the appellant in accordance with the role assigned to it under the 2006 Notification.