



ENVIRONMENT

No Environmental Clearance, No Construction: NGT Clarifies Limits of Deemed Approval under EIA Framework

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Introduction

The National Green Tribunal, Principal Bench, in *Renu Bala v. MoEF&CC & Ors.*¹, delivered a decisive ruling reinforcing that prior Environmental Clearance (EC) under the EIA Notification, 2006 is a non-negotiable statutory mandate. The Tribunal categorically rejected the invocation of “deemed clearance” in circumstances involving non-compliance, holding that procedural delays cannot be used to legitimise environmental violations, including unauthorized construction and illegal tree felling.

Background

The proceedings arose from allegations that the project proponent undertaking the “Omaxe State” development in Dwarka, New Delhi, had commenced large-scale construction activities and undertaken tree felling without obtaining the requisite statutory approvals. The project, spread over a substantial land parcel with significant built-up area, squarely fell within Category 8(b) (Township and Area Development Projects) under the EIA Notification, 2006, thereby mandating prior Environmental Clearance in terms of Paragraph 2 read with Paragraph 4 of the Notification before initiation of any construction activity.

It was contended that, despite the absence of such clearance, and without securing Consent to Establish under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 and Section 21 of the Air (Prevention and Control of Pollution) Act, 1981, the project proponent had proceeded with development works and allegedly undertaken tree felling in contravention of applicable environmental laws, including the requirement of prior permission under Section 9 of the Delhi Preservation of Trees Act, 1994.

Key Issues

The Tribunal examined:

1. Whether construction without EC can be justified under “deemed clearance”;
2. Whether conditions precedent to invoking Clause 8(iii) were satisfied;
3. Legality of tree felling without forest permissions;
4. Whether construction exceeded permissible temporary activities.

Judicial Reasoning

The Tribunal undertook a detailed examination of the statutory framework governing environmental clearances under the EIA Notification, 2006, with particular focus on the scope and applicability of Clause 8(iii) relating to “deemed environmental clearance”.

At the outset, the Tribunal reaffirmed that prior Environmental Clearance is a mandatory pre-condition for projects falling within the Schedule to the Notification, and no construction activity save limited preparatory work for securing land can be undertaken in its absence. This requirement flows from Paragraph 2 of the Notification and forms the foundational safeguard within the environmental regulatory regime.

On the issue of “deemed clearance”, the Tribunal clarified that Clause 8(iii) does not create an automatic or unconditional right in favour of the project proponent. The provision embodies a limited legal fiction, which can operate only upon strict satisfaction of statutory preconditions, namely: (i) submission of a complete application with all requisite documents; (ii) completion of the appraisal process, including Terms of Reference and final EIA report; and (iii) existence of a clear and unambiguous recommendation by the expert appraisal body. The Tribunal emphasised that strict compliance not substantial compliance is the governing standard for invoking such a deeming provision.

Applying these principles, the Tribunal held that the project proponent could not avail the benefit of deemed clearance. The recommendation of the Expert Appraisal Committee (EAC), though in favour of the project, was expressly conditional, particularly with respect to obtaining prior permission for tree felling from the competent forest authority. Such a conditional recommendation could not be treated as a final or unqualified approval capable of triggering the deeming fiction. Non-compliance with these conditions, therefore, vitiated any claim to deemed EC.

Further, the Tribunal rejected the contention that delay or pendency on the part of the regulatory authority would automatically entitle the project proponent to proceed. It was noted that the application remained pending due to Additional Documents Sought

(ADS) by the Ministry, and not on account of administrative inaction. In such circumstances, the timeline contemplated under Clause 8 could not be invoked to the advantage of a non-compliant applicant.

The Tribunal also reiterated that deeming provisions cannot be used to legitimise illegality. A project proponent who has commenced construction or undertaken environmentally damaging activities in violation of statutory requirements cannot seek refuge under a legal fiction designed to ensure procedural efficiency. In particular, the absence of permission for tree felling under the Delhi Preservation of Trees Act, 1994 and the material indicating actual tree removal were held to be fatal to the defence.

In this backdrop, the Tribunal concluded that the project proponent was under a continuing legal obligation to obtain prior EC and comply with all statutory conditions, and that any construction activity undertaken without such compliance constituted a clear violation of environmental law.

Key Findings of the Tribunal

The National Green Tribunal in this case returned clear and adverse findings against the project proponent on multiple counts:

1. Absence of Environmental Clearance (EC): The Tribunal held that the project had not been granted Environmental Clearance under the EIA Notification, 2006, and the status on the PARIVESH portal remained “ADS Raised”. Accordingly, any construction activity undertaken in the absence of prior EC was held to be in violation of law.

2. Rejection of “Deemed Clearance” Plea: The plea of deemed EC under Clause 8(iii) was categorically rejected. The Tribunal found that:

- The recommendation of the Expert Appraisal Committee (EAC) was conditional, particularly with respect to tree-felling permissions;
- The application process was incomplete and pending due to Additional Documents Sought (ADS);
- Deeming fiction cannot be invoked where statutory conditions are unmet. Thus, no right to proceed with the project could arise on the basis of deemed clearance.

3. Illegal Tree Felling Established: On the basis of material on record, including satellite imagery, the Tribunal concluded that tree felling had taken place without requisite permissions, in violation of the Delhi Preservation of Trees Act, 1994 and contrary to EAC conditions. Subsequent approvals were held to be irrelevant in curing prior illegality.

4. Unauthorized Construction Activity: The Tribunal rejected the defence that only temporary structures were erected. Evidence indicated permanent construction (including concrete structures and excavation), which exceeded the limited scope permitted under regulatory guidelines, thereby constituting unauthorized construction without EC.

5. Conditional Recommendations Not Equivalent to Approval: It was held that conditional recommendations of the EAC cannot be treated as final approval, and failure to comply with such conditions disentitles the project proponent from claiming any benefit under the regulatory framework.

6. Regulatory Delay Not a Defence: The Tribunal clarified that pendency due to non-compliance (ADS) cannot be equated with inaction by the authority, and therefore cannot trigger the deeming provision or justify continuation of project activities.

7. Liability for Environmental Violations: The Tribunal found that the project proponent had acted in contravention of environmental norms, warranting:

- Assessment of violations by DPCC;
- Imposition of environmental compensation;
- Inspection and action by Tree Officer/DFO for illegal tree felling.

Directions Issued

In light of the violations established, the Tribunal issued a set of time-bound and enforcement-oriented directions to ensure regulatory compliance and accountability:

The concerned Tree Officer/DFO under the Delhi Preservation of Trees Act, 1994 has been directed to undertake an immediate site inspection, including examination of satellite imagery placed on record, to ascertain the extent of illegal tree felling carried out prior to obtaining requisite approvals. Upon such determination, the authority is required to initiate appropriate remedial and punitive action in accordance with law within a stipulated period.

The Delhi Pollution Control Committee (DPCC) has been directed to conduct an independent site assessment to evaluate violations of environmental norms, including unauthorized construction beyond permissible limits, and to proceed with imposition of environmental compensation and other statutory measures following due process.

Insofar as the grant of Environmental Clearance is concerned, the Ministry of Environment, Forest and Climate Change (MoEF&CC) has been directed to take a final decision on the pending EC application strictly in accordance with law, while duly factoring in the violations recorded by the Tribunal in the course of the proceedings.

Further, both the Tree Officer and DPCC have been directed to submit detailed action taken reports within prescribed timelines, failing which the matter may be listed for further consideration before the Tribunal.

Collectively, these directions highlight a coordinated regulatory response, ensuring that violations are not only investigated but also followed by tangible enforcement action and statutory consequences.

Conclusion

The ruling in *Renu Bala v. MoEF&CC & Ors.* decisively reinforces that prior Environmental Clearance under the EIA Notification, 2006 is an absolute statutory prerequisite, and cannot be diluted through reliance on procedural constructs such as “deemed clearance”. The Tribunal has made it unequivocally clear that such deeming provisions operate within a narrow and strictly conditioned framework, and cannot be invoked in cases marked by non-compliance, conditional approvals, or pending regulatory requirements.

By rejecting the project proponent’s defence, the Tribunal has highlighted that environmental compliance is substantive and not merely procedural, and that any attempt to proceed with construction or undertake activities such as tree felling without requisite permissions particularly under the Delhi Preservation of Trees Act, 1994 will attract regulatory scrutiny and consequences. The decision further clarifies that regulatory delay, especially where attributable to incomplete compliance (such as pending ADS), cannot be leveraged to claim legal entitlement.

From a broader perspective, the judgment strengthens the enforcement architecture of environmental law by affirming that legal fictions cannot be used as a shield for illegality, and that project proponents must adhere strictly to statutory processes before commencing development. The ruling thus serves as a clear cautionary precedent: infrastructure development must remain firmly anchored in environmental compliance, failing which both the project and its proponents are exposed to significant legal and financial risk.

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1. Original Application No. 137/2025 (I.A. Nos. 567/2025, 613/2025 & 716/2025) ??

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