

Most Urgent/By speed post

**F. No. 19-58/2010-IA-III
Government of India
Ministry of Environment and Forests**

**Paryavaran Bhavan,
CGO Complex, Lodi Road
New Delhi -110003.**

Dated the 17th January, 2011

ORDER

Final Directions: Show Cause Notice under Section 5 of Environment (Protection) Act, 1986 for violation of the provisions of Environment Impact Assessment Notification 1994, as amended in 2004 and 2006 by M/s Lavasa Corporation Limited, Vikhroli, Mumbai - Regarding.

Whereas, the Government of India issued the Environment Impact Assessment Notification, 1994 vide S.O.No. 60 (E), dated 27th January, 1994 under the Environment (Protection) Act, 1986 to impose restrictions and prohibitions on the expansion and modernisation of any activity or new projects being undertaken in any part of India unless Environmental Clearance has been accorded by the Central Government or the State Government in accordance with the procedure specified in that notification, and

2. Whereas, the EIA Notifications, 1994, entry no. 18 of the Schedule, regulates all developmental activities for all tourism projects between 200 m – 500 meters of High Water Line and at locations with an elevation of more than 1000 meters with investment of more than Rs. 5 crores, and

3. Whereas, EIA Notification, 1994 was amended on 7th July, 2004 wherein entry no. 31 for New construction projects and entry no. 32 for New industrial estates were inserted in the Schedule – I of the Notification, and

4. Whereas, as per the above amendment, after sub-para (f), the following was inserted namely:- “(g) any construction project falling under entry 31 of Schedule – I including new townships, industrial townships, settlement colonies, commercial complexes, hotel complexes, hospitals and office complexes for 1,000 (one thousand) persons or below or discharging sewage of 50,000 (fifty thousand) litres per day or below or with an investment of Rs. 50,00,00,000/- (Rupees fifty crores) or below”, and

5. Whereas, as per the explanation – (i) “New construction projects which were undertaken without obtaining the clearance required under this



notification, and where construction work has not come up to the plinth level, shall require clearance under this notification with effect from the 7th day of July, 2004" from MoEF, and

6. Whereas, vide S.O. 1533(E), dated 14th September, 2006, superseding the Environment Impact Assessment Notification, 1994 as amended in 2004, directing that on and from the date of its publication of this notification, the required construction of new projects or activities or the expansion or modernisation of existing projects of activities listed in the Schedule to this notification and entailing capacity addition with change in process and or technology shall be undertaken in any part of India or after the prior environmental clearance from the Central Government of as the case may be, by the State Level Environment Impact Assessment Authority duly constituted by the Central Government under sub-section (3) of section 3 of the said Act, in accordance with the procedure specified hereinafter in this notification; and

7. Whereas, as per Schedule of list of projects of activities requiring prior environmental clearance, 8 Building/ Construction projects/ Area Development projects and Townships, 8 (a) Building and Construction projects having more than or equal to 20000 sq.mtrs. and less than 1,50000 sq. mtrs. of built up area and 8(b) Townships and Area Development projects covering an area more than or equal to 50 ha and or built up area more than or equal to 1,50000 sq.mtrs. require environmental clearance; and

8. Whereas, based on the complaints from Mr. Shankar Sharma, National Alliance of Peoples' Movement (NAPM) through Ms. Medha Patkar, Mr. Prakash Y. Ambedkar, Dr. K.C. Mohanty of Environmental Medical Association and Shri Anna Hazare, the Ministry of Environment & Forests called for a report from Secretary, Environment Department, Government of Maharashtra on 30.06.2010, and

9. Whereas, Secretary, Environment Department, Government of Maharashtra in her reply dated 04.08.2010 informed that a provisional No Objection Certificate (NOC) was issued to Lake City Corporation on 13.12.2002 by the Department of Environment, Government of Maharashtra to develop the hill station at Taluka Mulshi and Velhe, District Pune. The provisional NOC was converted into final Environmental Clearance on 18.03.2004 and the above clearance was limited to an area of 2000 hectares as permitted by Urban Development department, and

10. Whereas, the Ministry issued the Show Cause Notice under Section 5 of Environment (Protection) Act, 1986 to LCL vide letter No.19-58/2010-IA-III, dated 25th November, 2010, (a copy of the notice is at **Annexure-I** of the Report) in which LCL was directed to show cause within fifteen days of receipt of this notice as to why (i) the unauthorized structures erected without any



Environmental Clearance between 18.03.2004 till 07.07.2004, from 07.07.2004 till 14.09.2006 under EIA Notification, 1994 and further constructions carried out after the EIA Notification, 2006 by M/s Lavasa Corporation Limited in Mulshi and Velhe Talukas, District Pune, Maharashtra be removed forthwith in entirety and (ii) pending decision on the Show Cause Notice the status quo for construction/development as on date should be maintained, and

11. Whereas, LCL filed a writ petition no. 9448 of 2010 in the Hon'ble High Court of Bombay, and

12. Whereas, LCL and other parties in the writ petition were provided an opportunity to present their case before Dr. Nalini Bhat, Adviser, MoEF on 9th December, 2010 at 3.00 PM in Room No.403 of Paryavaran Bhawan, CGO Complex, Lodhi Road, New Delhi at MoEF, and

13. Whereas, LCL and other parties submitted their oral submissions during the hearing and also the written submissions on 10th December, 2010, and

14. Whereas, an interim order was issued by Dr. Nalini Bhat, Adviser, MoEF on 14th December, 2010 wherein the directions issued under Section 5 of the Environment (Protection) Act, 1986 to LCL on 25th November, 2010 to stop project activities going on at the site should continue till the final analysis is undertaken by the Ministry and the same are being reiterated, and

15. Whereas, another opportunity was provided to LCL and other parties to present their case before Dr. Nalini Bhat, Adviser, MoEF on 23rd December, 2010 at 3.00 PM in Room No.403 of Paryavaran Bhawan, CGO Complex, Lodhi Road, New Delhi at MoEF, and

16. Whereas, Hon'ble High Court of Bombay in the writ petition no. 9448 of 2010, directed Respondent No.3 and the State Level Environment Impact Assessment Authority or the Central Level Committee as the case may be, to visit the Petitioners' project and inspect it thoroughly, for at least three days, at the site at Lavasa City and undertake the survey/inspection, either in the last week of December 2010 or in the first week of January 2011, and

17. Whereas, the Central and State Level Expert Appraisal Committee along with officials of MoEF visited the Lavasa City from 5th – 7th January, 2011 and submitted their report to the Ministry, and

18. Whereas, on the request made by LCL, another opportunity was provided to them to present their case before Dr. Nalini Bhat, Adviser, MoEF on 7th January, 2011 at 9.00 AM in the Convention Centre of Lavasa, and

19. Whereas, Dr. Nalini Bhat, Adviser, MoEF submitted her report covering the hearing undertaken on 9th December, 2010, and again on 7th January,



2011, the analysis of the site visit report, analysis the discussions, considerations and reasoning of oral and written submissions made by LCL and other parties and the conclusions (a copy of the report dated 14th January, 2011 is at **Annexure-A**), and

20. Whereas, the Ministry has examined the above report submitted by Dr. Nalini Bhat, Adviser, MoEF along with the site visit report of Shri Naresh Dayal Committee, Chairman, Central Expert Appraisal Committee and accepted the report in its entirety.

21. Now, therefore, taking into consideration the report of Dr. Nalini Bhat, Adviser, MoEF dated 14th January, 2011 and in accordance with the provisions of Section 5 of the Environment (Protection) Act, 1986 the Ministry decides that:-

- (a) M/s LCL is in violation of (i) the EIA Notification, 1994; (ii) the EIA Notification, as amended in 2004; and (iii) the EIA Notification of 2006. The site visit Report has also brought out the nature and magnitude of the environmental damage caused by the project. As such, the construction activity is unauthorized, being in violation of the above three Notifications and is also environmentally damaging.
- (b) However, having regard to the above but taking into account all the facts and circumstances of the case, particularly the submissions made with regard to the investments already incurred, third party rights which are accrued, the various steps taken for establishment of a comprehensive hill station development, the employment generated and the claimed upliftment of the area under consideration, the MoEF is prepared to consider the project on merits with the imposition of various Terms and Conditions including the following :
 - (i) The payment of substantial penalty for the violation of environmental laws, which is incontrovertible;
 - (ii) Over and above the penalty, creation of an Environmental Restoration Fund (ERF) by M/s LCL with sufficiently large corpus which would be managed by an independent body with various stake holders under the overall supervision of the MoEF. ;
 - (iii) Imposition of stringent terms and conditions, to ensure that no further environmental degradation takes place and that any degradation that has already occurred would be rectified within a time bound schedule.
- (c) For the purposes of ensuring immediate and proper compliance with the above, LCL is **directed** to do the following :



- (i) Submit the Detailed Project Report (DPT) for this project and the revisions thereof from the inception;
- (ii) Submit information related to all contracts with various contractors for construction and other work;
- (iii) Submit full Plans prepared in relation to the project and all modifications thereto;
- (iv) Submit audited statements for all amounts spent directly or indirectly on the project since inception;
- (v) Submit information related to all contracts entered into for the purchase/acquisition/lease/transfer of lands;
- (vi) Submit full details of future planning with detailed proposal, phase-wise;

Further, based on the LCL response and if LCL gives relevant and credible material to enable MoEF to proceed further, MoEF is prepared to consider the project on merits subject to the imposition of the penalties, the creation of ERF and the formulation of a comprehensive Environmental Impact Assessment (EIA) Report and Management Plan for this project.

- (d) Lastly, having regard to the conclusion as para (a) & (b) above and the directions at para (c) above, that the LCL project is in violation of the EIA Notifications as aforesaid, the construction is unauthorized and there has been environmental degradation and having regard also to the fact that various steps are required to be taken by LCL as set out herein above, in the facts and circumstances of the case, it is further **directed** that the order of status quo be continued and reiterated and no construction activity by LCL be undertaken.


(Bhafat Bhushan)
Director

To,

**M/s Lavasa Corporation Limited
(An HCC Group Company)
Hincon House, 247 Park, LBS Marg
Vikhroli (West), Mumbai - 400 083
Through
M/s Agarwal Law Associates,
Advocates, Supreme Court,
34, Babar Lane, 1st Floor, Bengali Market,
New Delhi - 110001**

Copy to:-

1. Chairman, Maharashtra Coastal Zone Management Authority, Mantralaya, Mumbai.
2. Secretary, Department of Environment, Government of Maharashtra.
3. Principal Secretary, Urban Development Department, Government of Maharashtra, Mantralaya, Mumbai.
4. Principal Secretary, Revenue Department, Government of Maharashtra, Mantralaya, Mumbai.
5. Managing Director, MMRDA, Government of Maharashtra, Mumbai.
6. Managing Director, BMC, Government of Maharashtra, Mumbai.
7. Chief Conservator of Forests, Ministry of Env & Forests, Regional Office (West Zone), E-5, Kendriya Paryavaran Bhawan, E-5, Arera Colony, Link Road-3, Ravishankar Colony, Bhopal - 462 016


(Bharat Bhushan)
Director

Report

Introduction :

The undersigned was authorized to be the competent authority to hold the hearing in case of the show-cause notice (**Annexure I**) issued by Ministry of Environment & Forests (MoEF) to M/s Lavasa Corporation Ltd. (LCL) on 25th November, 2010.

It may be mentioned that LCL approached the Hon'ble High Court of Bombay vide W.P. No. 9448/2010 and after hearing the parties, Hon'ble High Court was pleased to continue the stay order on the construction work contained in the above show-cause notice and also provide guidance about the site visit directed to be undertaken to Lavasa project (relevant extract at **Annexure II**).

Two hearings were given to LCL, National Alliance of People's Movement (NAPM) and other stakeholders on 23rd December, 2010 at New Delhi and 7th January, 2011 at Lavasa site.

In pursuance of the order of the Hon'ble High Court mentioned above, the experts from the State Environment Impact Assessment Authority (SEIAA), Central Environment Appraisal Committee and MoEF visited Lavasa city for three days, i.e. 5th-7th January, 2011. A copy of the site inspection report is at **Annexure III**.

The Report which follows contains the following sections :-

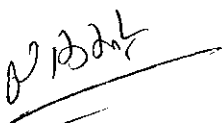
1. Proceedings of the Hearings held on 23rd December, 2010 & 7th January, 2011;
2. Summary of submissions made by various stakeholders;
3. Analysis of site visit report;
4. Oral & Written Submission of Stakeholders : Analysis, Discussion, Consideration & Reasons; and
5. Conclusions

10/1/2011

1. **Proceedings of the hearing given to M/s Lavasa Corporation Limited and other stakeholders**
- 1.1 **Proceedings of the hearing on 23rd December, 2010 at MoEF, New Delhi**
- 1.1.2 The unauthorized structures erected without any Environmental Clearance between 18.03.2004 till 07.07.2004, from 07.07.2004 till 14.09.2006 under EIA Notification, 1994 and further constructions carried out after the EIA Notification, 2006 by M/s Lavasa Corporation Limited in Mulshi and Velhe Talukas, District Pune, Maharashtra be removed forthwith in entirety.
- 1.1.3 Pending decision on the Show Cause Notice the status quo ante for construction/development as on date should be maintained.
- 1.1.4 In pursuance of the order of the Hon'ble High Court of Bombay dated 7th December, 2010 indicating that:
 - a. Para 6: *"The order of status-quo contained in the Show Cause Notice is stayed. The petitioners to appear before respondent No. 3 on 9th December, 2010. Respondent No.3 shall hear the petitioners on the question whether any interim order to operate till final order on the show cause notice is to be made or not. Respondent No.3 shall make final order on the aforesaid question with reasons therefore on or before 16th December, 2010."*
 - b. Para 8: *"Respondent No.3 is also directed to hear the complainant National Alliance of Peoples' Movement along with the petitioners and Shri B.G. Ahuja, Intervenor. Put up with connected matter on 16th December, 2010;"*
- 1.1.5 Dr. Nalini Bhat, Adviser, Impact Assessment Division, Ministry of Environment & Forest, as the authority competent to hold the hearing, heard all the parties namely M/s Lavasa Corporation Limited, National Alliance of Peoples' Movement and Sarpanches of some of the villages who have appeared through their Counsel as Intervener in the above case.

Nalini Bhat

- 1.1.6. It was made clear at the outset by Dr. Nalini Bhat that this was a technical hearing and would be limited to the issues included in the Show Cause Notice issued by the Ministry on 25th November, 2010.
- 1.1.7. The Counsel for M/s Lavasa Corporation Limited submitted that their arguments would be covering the aspect of (i) jurisdiction of MoEF in issuing the Show Cause Notice under Section 5 of the Environment (Protection) Act, 1986 (ii) to ascertain the competency of the officer(s) vis-à-vis. whether the one who is giving hearing is competent to decide and also (iii) applicability of the notifications issued in the year 1994, 2004 & September, 2006. The Counsel referred to the principle that one who is competent to decide must only hear or in other words who hear must be competent to decide.
- 1.1.8. On the aspect of applicability of the notifications, the Counsel argued that entry 31 "new construction projects" as amended vide notification dated 7th July, 2004 was not applicable to them. The Counsel submitted that permission for the Lavasa project had already been given by the State Government, under Hill Station Development Regulation framed by the State Government. Therefore, the Notification of January, 1994 and its amendment of July, 2004 do not apply since it was not a new construction project but a project which had already been commenced.
- 1.1.9. The Counsel explained the Rule of harmonious construction by citing certain judgments of the Supreme Court mentioning the 'dominant purpose test' as evolved in the Noida Park case.
- 1.1.10. The Counsel also sought to distinguish 'entry 18' of Schedule 1 in the 1994 notification providing environment clearance in respect of "All tourism projects between 200 - 500 meters of HTL or at locations with an elevation of more than 1000 meters with investment of more than Rs. 5 crores." and 'entry 8' (a) Building and Construction projects and entry 8(b) Township and Area Development projects mentioned in the September, 2006 Notification. He argued that all the conditions stipulated in entry 18 of the 1994 Notification are to be construed cumulatively and therefore, these conditions are not attracted to the project in question.
- 1.1.11. The counsel submitted that the EIA Notification, 2006 also does not apply to the Lavasa City project as per the para (ii) of the notification,



the project is not a new project and it is not a modernization or expansion of the existing project with change in technology. However, they have already applied to the SEIAA of Maharashtra for obtaining the Environmental Clearance for an area of 5000 ha. which also included the 2000 ha. for which Environmental Clearance was earlier issued by the State Government. They also clarified that the present work is going on only within the 2000 ha.

1.1.12. It was summarized that none of the Notifications i.e. 1994, 2004 or 2006 issued by the MoEF under Environment(Protection) Act, 1986 are attracted to this project.

1.1.13. The Counsel for LCL explained that the MoEF had further no jurisdiction to issue the Show Cause Notice, in view of the fact that the Ministry has already delegated its power under Section 5 of the Environment (Protection) Act, 1986 to the State Government. Once the power under section 5 has been delegated by the Ministry to the State Government, the Central Government acquiesces its right to issue the notice under the said provision, applying the "doctrine of acquiescence". Further it was also contended that the Central Government had constituted SEIAA under Section 3 of the E(P) Act, and therefore, if any action is to be taken, the same can be done by the State Government or the said Authority i.e. SEIAA. The Counsel also cited the various provisions of Environment(Protection) Act, the EIA Notifications and various cases to support his arguments.

1.1.14 The Counsel, on the aspect of the power of the Central Government to issue notice to Show Cause, said that once an authority under Section 3 (3) of the Environment (Protection) Act, 1986 has been constituted, the Central Government cannot issue the Show Cause Notice. He submitted that since the State Environment Impact Assessment Authority (SEIAA) has been constituted, it is only the said Authority, which can take any action under the E(P) Act, including the exercise of power to issue Show Cause Notice. The Counsel argued on the legal concept of "deeming fiction" by saying that as per his interpretation the constituted authority i.e. SEIAA "may exercise the powers or perform the functions of the Central Government, to take measures as if such authority or authorities had been empowered by this Act to exercise those powers or perform those functions.

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1.1.15. The Counsel elaborated on the aspect of delegation of power to the State Government under section 5 read with Section 23 of the Environment(Protection) Act and the Notification issued under Section 3 (3) of the Environment (Protection) Act constituting Authority i.e. SEIAA.

1.1.16. The Counsel of LCL also argued on the matter of post facto clearance needed to be given to LCL by the Central Government, in view of huge investment, assuming there had been some irregularity in carrying out the project work and stated that such post facto clearance be given to the project. It was stated that approximately Rs. 3000 crores have been spent or committed and third party rights were also involved. Regarding his request for post facto clearance, the Counsel referred to the office memorandum of MoEF issued on 16th November, 2010 and requested as their application was already pending with the SEIAA, no demolition should be done. They further requested that their development works do not degrade the environment and they should be permitted to continue the construction.

1.1.17. M/s Lavasa Corporation Limited were then requested to give in writing any written submissions they wished to make.

1.1.18. Dr. Vishwambhar Choudhari representing the National Alliance of Peoples' Movement (NAPM) said that the EIA Notification, 1994 is applicable to the project as part of the project is above 1000 mts. He asked whether LCL would surrender the land above 1000 mts. to the State Government. He further said that entry no. 31 of the EIA Notification amended in July 2004 is not a general entry, it is a specific entry and is directly related to LCL project and the LCL constructions are within the ambit of the Notification. It was also indicated that entry no. 32 of this amended Notification is also applicable to this project as the State Government has given a status of "Industry" to this project by categorizing tourism as "Industry". Because of this categorization, the LCL has claimed various benefits. He further stated that no public hearing was conducted for the project as per the EIA Notification, 1994 as amended in July, 2004.

1.1.19. In regard to the jurisdiction of MoEF to issue the Show Cause Notice, Shri Choudhari stated that the SEIAA of Maharashtra has been constituted by MoEF for the appraisal of Category 'B' project and is a

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body under MoEF. Further, the Ministry monitors the project through their Regional Offices.

1.1.20. Reflecting on the investment made by the company, Shri Choudhari said that mere investment cannot be a criteria to consider for continuation of the project work or any post facto environmental clearance to LCL project.

1.1.21. On the preparation of the EIA report of the project, Shri Choudhari expressed that the baseline data cannot now be collected for the project as a great deal of developmental activities have already taken place and that pristine environment has already been seriously disturbed.

1.1.22. NAPM were then requested to give in writing any written submissions they wished to make.

1.1.23. In addition to the above, the Counsels representing the Sarpanches of various villages were given opportunity to make submissions as they are the Intervener in the Bombay High Court case. In their submissions, it was highlighted that out of 18 villages, majority of the work has started only in Dasve village. The infrastructure created for the project has improved the connectivity, road network, health facilities, school etc. which were earlier not available to the villagers. The project has created employment opportunities to local people. Concluding the submissions, it was submitted that they have no objection to the LCL project and the local people are in favour of the development within the frame work of the Law.

1.1.24. The Sarpanches were then requested to give in writing any written submissions they wished to make.

1.1.25. With that the hearing was concluded.

1.2. Proceedings of the hearing on 7th January, 2011 to LCL at Lavasa City

1.2.1 M/s Lavasa Corporation Limited vide their letter of 5th January, 2011 addressed to Shri Bharat Bhushan, Director of MoEF, stated that the hearing held in the Ministry of Environment and Forests on 23rd December, 2010 was inconclusive and that process needed to be completed. Though Ministry had already completed the hearing on 23rd

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December, 2010, because of this request and the need to show natural justice to the promoter company, it was decided to give them a final opportunity to make their submissions on the show cause notice issued by the Ministry on 12th November, 2010.

1.2.2 Dr. Mrs. Nalini Bhat, Adviser, Impact Assessment Division, MoEF assisted by Shri Bharat Bhushan, Director heard M/s Lavasa Corporation Limited.

1.2.3. At the out set the M/s representatives recapitulated their earlier submission in pursuance of the show cause notice issued by Ministry. It was stated that LCL had made submission on 9th December, 10th December, 11th December and 28th December, 2010. These submissions include the queries made by the Ministry, various plans prepared by the company for development of the hill city, the clearances received from the various departments along with supporting documents etc.

1.2.4. During the hearing, the submissions were made under the following four points :

- (a) Compliance with State Laws;
- (b) Compliance with Environmental Parameters;
- (c) Compliances to activities not prescribed in terms of Environmental Parameters; and
- (d) Any suggestions for improvement.

1.2.5. In regard to compliances to State Laws it was indicated that due to increasing number of tourist and existing to hill stations in the State being inadequate to cater to the increasing members, the need to develop new hill station was felt with private partnership. For development of this hill station the company has followed the land acquisition rules, MRTTP Act and other important State and local laws. It was further stated that the project area is outside forest land and that no farming activity is undertaken in atleast 95% of the project area.

1.2.6. LCL has obtained permission under Maharashtra Krishna Valley Development Corporation (MKVDC) for allotment of land for tourism purposes and also for construction of Bhandaras at designated place. The company presently has the license for water sources and that various Bhandaras would not effect the water supply to Pune city. Further these Bhandaras are on the land of Lavasa Corporation and will be interlinked for water conservation. The quarrying activities were undertaken in

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various locations in Mugaon after obtaining necessary clearances/approvals.

- 1.2.7. In regard to compliance to environmental parameters it was submitted that air and water quality parameters are monitored periodically through the recognized environmental laboratories. The analysis results have shown that these parameters are within prescribed standards. Even the noise levels were within the limits.
- 1.2.8. It was submitted that for measurement of Bio Diversity no parameters are prescribed and they have taken expert advice for conservation of bio diversity. The hill cutting required for construction of roads, for undertaking construction activities and for quarrying were undertaken with utmost care and that slope stabilization methods have been incorporated in the management plan. LCL is using crushed stone as a substitute to sand in the construction material. As a precaution, LCL has been incorporating environmental requirements in their tender documents. LCL has made necessary arrangement for solid Waste Management and disposal of bio medical waste as per Rules.
- 1.2.9. As a Corporate Social Responsibility, various activities have been initiated by LCL such as supply of water to the villages, establishment of a school for under privileged people, employment to the locals etc.
- 1.2.10 After highlighting various environmental matters the company observed that they welcome any positive suggestion for further improvement of the project. Concluding the submission it was requested that the show cause notice issued by the Ministry should be withdrawn and work be allowed to continue.
- 1.2.11. With the above submission, the hearing was finally concluded.

2. Summary of submissions made by various stake holders

2.1 National Alliance of Peoples Movements

- (i) National Alliance of Peoples Movements (NAPM) made their written submissions on 10th January, 2010 covering issues such as uncertainty about the total project area under planning for the hill city and inconsistencies in the proposals, the violation of EIA notification, 1994, the violation of EIA notification 1994, as amended on 7th July, 2004 as

NAPM

well as the violation EIA notification 2006. NAPM also submitted that the issue of the "EC" by the State Government in March 2004 is without any proper authority and that massive hill cutting being undertaken for construction material is also in violation of the conditions stipulated in the in principle clearance given to Lavasa city project is 1996/1999, where no hill cutting were permitted. LCL is permitted to construct 10 dams within the Varasgaon, which is illegal and this will also impact upstream of the dam as well as water supply in downstream area. The NAPM submission cover other issues also such as adverse impact on drainage, the Special Planning Authority (SPA) granted to a private company, and the large scale impacts on the ecology of Western Ghats which is one of the world's most eco sensitive zones.

(ii) The submission concludes by indicating that "no amount of damage control works" or the so called corporate social responsibility/development activity by Lavasa for the local people can justify or compensate LCL's illegalities and impacts. The MoEF therefore should take an appropriate legal decision, including measures to compensate the losses/ impacts based on the principal of "Polluter Pays". The answers to the question in the showcause notice issued by MoEF on 25th November, 2010 as to whether the construction till date should be demolished is "YES" according to NAPM.

2.2 Shri B.G. Ahuja

In his submission of 7th January, 2011, Shri B.G. Ahuja substantiated the damage caused to the Environment and Forest at Lavasa by attaching some relevant photographs which indicate the degradations of the area. He highlighted that the quality of water has been degraded due heavy urbanization of the Davase Valley and that LCL have not taken any steps to improve the water quality. He also indicated that the project at Lavasa is basically not a viable project and that the farmers on the downstream side would not get any water at all by the year 2021, and at present they are getting 60% of their needs. He also indicated about the illegalities committed by LCL by taking from MKVDC about 20 km length of river for its private use. Finally, he said that the Bhandaras constructed by LCL were illegal and that there would be reduction in water supply from the lake due to its use by LCL.

2.3 LCL

- (i) LCL through their counsel Shri Ravi Agarwal vide letter dated 8th January, 2011 has given their submissions after the visit of the Committee between 5th to 7th January, 2011. It is indicated in the submissions that LCL are carrying out the Hill Station Development in accordance with provisions of Hill Station Regulations, as amended upto date and other relevant provisions. Under the title air quality, the details of the provisions of rules framed for air quality, the latest national ambient air quality standards as notified on 16th November, 2009, the consent received by LCL in the year 2002 and the consent to operate received on 5th January, 2005 by the company are detailed.
- (ii) The counsel has further covered the "environmental clearance" dated 18th March, 2004 for an area of 2000 ha from the Maharashtra State Government's Environment Department said to be under the provisions of Hill Station Regulation, 1996. This "clearance" was granted on the EIA report prepared by NEERI, Nagpur. The monitoring has been done by the recognized laboratories by the Central Government for testing of samples and these samples actually indicate that the air quality has not suffered any environmental degradation.
- (iii) In regard to noise pollution, it is indicated that the standards prescribed for noise pollution have been complied with noise levels at 55 db in daytime and 45 db at night. The compliance of noise standard is also as per the consent to establish given by MPCB. The afforestation undertaken for improving the vegetative cover has also helped in reduction of noise to some extent.
- (iv) In regard to stone crusher, LCL are following the location criteria for the stone crushers as well as are complying with the standards. For dust containment cum suppression a system of water sprinklers on the stone crushers has been installed.
- (v) LCL are also regularly monitoring air quality around the crushers and DG sets and are getting the samples tested by the Government approved laboratories and the results have shown that these emissions have not violated the standards prescribed under various rules.
- (vi) In regard to water quality, it is submitted that these have been regularly tested for raw water in the reservoir and found to be within prescribed

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norms. The water quality of Warasgaon dam and the Dasave reservoir is similar. It is concluded after testing of water quality that there is no adverse impact on any of the water bodies nearby and surrounding the project due to developmental activities carried out by LCL.

- (vii) For treating effluents and sewage, LCL have installed a state of the art sewage treatment plant and packaged STP in the interim period during construction. This was also indicated in LCL submissions in December, 2010. The MPCB in its consent to establish and operate have prescribed the parameters to be measured after sewage treatment and the same are being tested for last five years and are within the norms.
- (viii) In Dasave, there is one hospital i.e. Apollo Hospital and LCL are handling the bio-medical waste as per the rules and appropriate measures would be taken prior to commencement of other facilities such as the operation theatre, intensive care unit and in patient ward, etc.
- (ix) For bio-diversity, it was submitted that there are no specified norms prescribed under the category of bio-diversity. The State Government while notifying the Hill Station Area has taken care to exclude any forest area from the purview of the Hill Station Development. Hence, the objection regarding development of hill station in forest area is misplaced and denied. It is further confirmed that LCL are not carrying out any operations in the forests and forest like areas in respect of 18 revenue villages. Thus the bio-diversity is not affected at all. Referring to the cutting of millions of trees, it has been submitted that LCL have taken up development only in the first phase of 2000 ha and even out of that 2000 ha, the construction is mostly going on only in the layout prepared for 1825 acres. The actual footprint of construction activities of building is only to the extent of 40 acres. The other areas of development such as roads and infrastructure would be around 320 acres. The perception, therefore, about cutting of millions of trees is not correct. However, LCL have cut the trees to the extent of 3247 in number with valid permission from appropriate authority. LCL have consulted the experts in the field i.e. Dr. Marselin Almeda, renowned taxonomist, in regard to type of plantations to be carried out. The selection of plant species has been done through four season data collected at Lavasa listing the native plants for selection.

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- (x) To substantiate the point, LCL have indicated the findings of report of NEERI about the improved vegetative cover, improved bio-diversity as calculated through Simpsons Bio-diversity Index method.
- (xi) For the land management, a detailed submission has been made highlighting the hydro seeding undertaken by LCL for integrated watershed management, use of bio-degradable geomat for slow protection, etc. The soil samples have also been tested and as per NEERI report, the chemical properties of the soil have been covered. The soil in the project area is lateritic wherein heavy metals as observed in the soil along with iron gets entrapped with other legands. These metals are in the bound form and cannot mix in aquatic system. As such they are not reflected in any of the reports of the water analysis in the reservoir.
- (xii) The consultation with best technical experts / organizations from various fields related to environment have been consulted and the Master Plan has been prepared by the best Master Plan awardee, by American Society of Land Architects (ASLA). While preparing the landscape Master Plan, the ecological performance standards recommended by bio-mimicry guide are taken into account. The ecological performance standards recommended by this guide are covered in the Master Plan of the project.
- (xiii) LCL have further submitted that they have carried out development in accordance with the permissions granted by the statutory authorities under the provisions of Maharashtra Regional & Town Planning Act and the rules framed thereunder. The building plans indicated during the visit of the Committee on 5th January, 2011 have been submitted on 6th January, 2011. After describing the various clearances obtained for the project, LCL have concluded that the activities were carried out in accordance with the provisions of the local planning law.
- (xiv) The issue of the Special Planning Authority (SPA) for Lavasa has also been covered in the submissions. This Authority was appointed under Section 40 of the Maharashtra Regional & Town Planning Act and is entitled to grant the permissions for construction. It is further added that the permissions are required to be forwarded to the Assistant Director, Town Planning of State of Maharashtra who functions under the Director, Town Planning. It is clarified that as an SPA, LCL has not been conferred with any special concession from the Hill Station

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Regulations or the building bye-laws. The building construction around the lake is at a distance of 50 meters from the main lake and 15 meters within Dasave Bhandara as per orders of the Government of Maharashtra.

- (xv) A special reference has been made to hill cutting. LCL have denied that any hill cutting is resulting into danger to environment. The road infrastructure was required to develop the area and in absence of such road network the plight of the locals and villagers was unimaginable. The quarrying for the project for the purpose of developing hill station is carried out at a safe distance and with permission of the competent authority. This quarrying is environmentally friendlier than procuring the material from outside, as the project is at about 60 kms from Pune in a hilly region. If LCL procured the stone and sand from outside, the same would increase the heavy traffic movement in the entire region adding to the air pollution. It was flagged that there are no measurable norms prescribed by MoEF in regard to hill cutting.
- (xvi) The solid waste management has been undertaken by LCL as per the provisions of the Municipal Solid Waste (Management & Handling) Rules, 2000. The bio-medical waste is also being handled as per the prescribed norms. The waste oil from DG sets is also disposed off as per law.
- (xvii) Details have also been submitted on the storm water drain, which has been designed as per guidelines. The surface runoff on the hill slope flows down and the same is being channeled through these drains. The construction undertaken in and around the water body has not impacted its quality and because as silt traps are provided, the siltation is also not an issue.
- (xviii) LCL has submitted that they had undertaken a detailed traffic study and its impact on the hill station development. As per the study, maximum use of Zilla Parishad road was emphasized by improving them and also augmentation of transport network. The parking studies have also been carried out and the LCL proposes to follow the same.
- (xix) The development carried out by LCL has resulted in benefits to local people and villagers for creating job opportunities, and LCL have given open offer for all villagers.

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- (xx) In conclusion, it has been submitted by LCL that the development undertaken by them is environmental friendly with local people being benefitted and that if it is a must that LCL required environmental clearance, they may be granted such clearance on such terms and conditions and in accordance with the policies.

3. Analysis of Site Visit Report/Observations

3.1 A site visit to Lavasa City project has been undertaken by the Central and State Expert Committee (the Committee) during 5th -7th January, 2011. The Report covers the constitution of the Committee in pursuance of the directions of the Hon'ble High Court of Bombay dated 23rd December, 2010, in Writ Petition No. 9448 of 2010, the details of site inspection, interaction with various groups, the observations of the Committee covering key elements like town planning, environmental issues, analysis of EIA Report, constitution of Special Planning Authority (SPA).

3.2 The conclusions bring out the factual matrix based on discussions with State Government officials, representatives of stake holders and M/s Lavasa Corporation Limited (LCL). The Report has recommended various aspects for consideration of Maharashtra State Government and Ministry of Environment and Forests (MoEF).

3.3 "*Environmental Clearance*" issued by Government of Maharashtra

3.3.1. In regard to the "*environmental clearance*" issued in March, 2004 by the Environment Department, Government of Maharashtra (GoM) for the Hill City Project of LCL, it has been indicated in the Report that no documents were made available to the Committee regarding the powers of the State Government for issuing such an environmental clearance, the process specified and the process adopted for appraisal of Lavasa project, details of site inspection, public hearing etc. The Committee has also noted that this "*environmental clearance*" does not specified essential details of the project such as number of buildings, types of buildings with their usage, built up area and the general and specific conditions for mitigating environmental impacts.

3.3.2. As per the EIA Notification of January, 1994, the project proponents were required to submit an Application Form, EIA/EMP Reports, Disaster Management Plan etc. to MoEF. After the introduction of the public hearing in 1997, as mandatory requirement, the documents regarding the

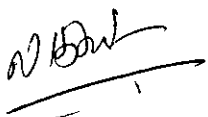
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public hearing were also required for appraisal. The projects were then appraised by a Multi-Disciplinary Expert Appraisal Committees for recommendations to the Ministry. Based on the recommendations of the Committee, projects were then processed for final decision in the Ministry. The environmental clearance letters issued by MoEF clearly indicated always the project profile, the details of public hearing, if held, elaborate environmental mitigation measures etc. The copies of the clearance letters were, thereafter, made available to the various concerned authorities and State/Central Governments for information and further action.

3.3.3. In the project of LCL, the above referred procedure does not appear to have been undertaken while according clearance in March, 2004 by GoM. In fact, the powers for according environmental clearance were not available to the State Governments in March, 2004 since no such delegation of power existed under the EIA Notification, 1994. Had the Lavasa project come to MoEF for clearance, the procedure as required under EIA Notification, 1994 would have been followed for assessing the Environment impacts consulting the affected people and appraising the places for minimizing the environmental impacts.

3.3.4. A re-engineered EIA Notification was gazetted in September, 2006 with important features like scoping, screening, public consultation, appraisal etc. The developmental projects have been categorized into category 'A' and category 'B' requiring appraisal at MoEF at Central level and the State level Environmental Impact Assessment Authorities (SEIAAs) respectively. The building construction projects are covered under category 'B' to be appraised at State level. However, till the SEIAAs were constituted, the projects were to be considered at MoEF. The SEIAA for Maharashtra was constituted in April, 2008 and till such time all the projects had to be MoEF level. The project of LCL, therefore, should have been considered at MoEF till April, 2008. The MoEF would naturally have appraised the project as per procedure laid down in the EIA Notification, 2006 ie. scrutiny of the application form, the appraisal of Environmental Impact Assessment(EIA) Reports along with Environmental Management Plan (EMP) by Multi-Disciplinary Expert Appraisal Committee etc.

3.3.5. Even otherwise the Committee in its Report, after careful analysis of 'EIA' and 'EMP' prepared by NEERI, Nagpur has brought out various short comings and has observed that the EIA Report is inadequate for



assessing the Lavasa Project for such magnitude, which is located in Eco-sensitive area of Western Ghats. On analysis of the Committee Report, it is evident that the soil samples have not been properly analysed where the presence of heavy metals such as Cadmium, Lead, Nickel, Chromium have been observed. As the excavated material is used for various developmental activities at the project site, there is certainly a need for soil analysis for its various usage.

3.3.6. It is clear from above that the "*environmental clearance*" issued by the Maharashtra Government is not in conformity with the requirements of the EIA Notification, 1994 or its amendment in July, 2004. LCL has submitted the application for environmental clearance to SEIAA, Maharashtra on 5th August, 2009 for an area of 5000 ha. and indicated that even though they have obtained "*environmental clearance*" in the past for 2000 ha., LCL are submitting the proposal for the entire project area of 5000 ha. for grant of environmental clearance. In fact, the application was too late and also when the damage to the environment in its first phase has already taken place.

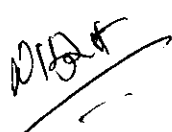
3.4 Master Plan

3.4.1 The Layout plan of Lavasa city for an area of 585 ha. was approved by the Collector, Pune in August, 2006 for various land uses. The Committee has observed that the Master Plan of Lavasa City covering 18 villages is primarily a layout plan and has not followed a set procedure as laid down in MRTP Act, 1966 which includes inviting objections/suggestions from the public before final plan is prepared, which has to be approved by the State Government.

3.4.2. The procedure for the Master Plan again is not in line with the existing Rules and Regulations and in particular the public consultation required in such projects. The need for public consultation cannot be over emphasized. The resentment to the project by local people is an indication of the need for such prior consultation before initiating a project of the size of Lavasa city.

3.5 Environmental Issues

3.5.1. The Report of the Committee extensively covers the environmental impacts of the project due to change in land use, hill cutting and quarrying, water supply and Rehabilitation Plan. The Committee has observed large scale hill cutting for obtaining building material for the



project and its impact on hill slopes, erosion and silting of water bodies etc. The Committee has also noted impact of construction of Bandharas on water supply of downstream areas for drinking water as well as for the irrigation.

3.5.2. The activities such as hill cutting and quarrying need very careful planning and its execution in line with the technical and Scientific Environmental Management Plans. The haphazard way in which the hill cutting has taken place in the project area is expected to result in the landslides, high erosion and consequent siltation of water bodies.

3.5.3. The manner in which quarrying is undertaken, therefore, needs to be reviewed for evolving scientific way of undertaking such operations, particularly in ecological sensitive areas of Western Ghats. The compliance of the quarrying with the approvals granted the Competent Authority needs be examined and corrective action taken with due priority.

3.5.4. The Committee have observed non-compliances of the consent order given by the Maharashtra Pollution Control Board to LCL, such as use of sewage treated water, management of bio-medical waste, DG sets. etc. These non-compliance need to immediately be addressed after quantitative assessment as per law.

3.6 Special Planning Authority (SPA)

3.6.1. The Committee in its Report had made observations regarding various aspects of constitution of SPA in June, 2008 and the construction activities undertaken after its constitution including encroachments and construction of building, prima facie on 12.36 ha. of land leased from Maharashtra Krishna Valley Development Corporation (MKVDC). In fact, it is indeed remarkable as to how the land acquired for public purposes had been leased out by the MKVDC for private use by LCL.

3.7. Summary & Recommendations

3.7.1. The Committee in its Report has endeavored to bring out the factual matrix after consultation with various stake holders, LCL, and perusal of the documents made available to it. The recommendations are for consideration of GoM as well as MoEF.

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- 3.7.2. It has been recommended that the GoM may review the Hill Station Development Policy(HSDP), particularly in view of the eco-sensitive nature of Western Ghats, review of projects approved or in pipeline under HSDP, constitution of High Level Multi-Disciplinary Monitoring Committee with inclusion of stake holders to ensure compliance to Rules, Regulations and Environmental mitigation measures on a regular basis.
- 3.7.3. In our analysis, the recommendation of the Committee on the consideration of the future projects under HSDP is important as large number of such project may come up in future without proper planning, assessment of the environmental impacts of projects of such large magnitude and also without taking into view the opinion of local residents to whom such developments are detrimental to their life styles. The preparation of comprehensive EIA, for the entire project area, therefore, should be a rule rather than exception.
- 3.7.4. A special reference has been made in the recommendation to the SPA which has been constituted for LCL with various powers vested in it. The Committee in its Report has clearly brought out that the way in which SPA is functioning with majority of its members from the parent company ie HCC and the CEO, who is the employee of LCL. The issue of perceived conflict of interest needs to be flagged as the decisions could be biased. By using the "flexibility", SPA continues to work in the manner presently being undertaken with no or little emphasis on environmental mitigation aspects.
- 3.7.5. The recommendation of the Committee, therefore, for the State Government to review the provision for constitution of SPA is well justified and needs to be immediately conveyed to Government of Maharashtra to avoid constitution of any more SPAs for development of various projects including hill city projects like Lavasa.
- 3.7.6. The recommendation of the Committee on development of Comprehensive Master Plan under HSDP covering infrastructure plan, traffic and transport projections, road network etc. and also that no development/construction activity should start unless statutory clearances including prior environmental clearance have been obtained.
- 3.7.7. In our analysis of the above recommendation on seeking prior clearances in compliance to various statutory and regulatory clearances is always a pre-requisite before initiating any activity. The project authorities have

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also to be sensitive to the views of the local people while developing such projects. There is only need to reiterate this requirement of prior clearances including environmental clearance by all State Authorities to be proactive and vigilant.

3.7.8. In so far as the MoEF is concerned, there is a need to review the categorization of projects covered in the EIA Notification, 2006 for bringing in projects of the type of hill station development, which are, generally, spread over large areas with potential for high environmental degradation as category 'A'.

3.7.9. Finally, in our analysis, the Committee has given the facts as on the ground after its site inspection to Lavasa city project. The recommendations given are not only for the case under consideration but has given the policy guidelines, which the Government may accept for ensuring environmentally sustainable development.

4. Oral & Written Submission of Stakeholders : Analysis, Discussion, Consideration & Reasons

4.1 Applicability of EIA Notifications

4.1.1 It was submitted during the hearing as well as in written submissions by LCL that the EIA Notifications are not applicable to the Hill City Project of Lavasa. The applicability of EIA Notification is analysed in the following:-

4.2. EIA Notification, 1994

4.2.1. The EIA Notification 1994 was issued under the Environment (Protection) Act, 1986 (EPA) stipulating the requirement of environmental clearance for projects indicated in Schedule 1 to the Notification. Entry No.18 reads as follows:-

18. All tourism projects between 200 - 500 m of higher water lines and at locations with an elevation of more than 1000 m with investment of more than Rs.5 crores."

4.2.2. In the project of LCL, about 58 ha of the project area is above 1000 m which has been considered as no development zone. However, as the areas forms the part of the project and the project is required to be

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seen in its totality, the Notification of January 1994 was applicable to the project of LCL and they should have obtained the environmental clearance for the project.

4.3. EIA Notification as amended in July 2004

4.3.1. The EIA Notification of 1994 was amended in July, 2004 with addition of 2 new entries to Schedule 1 viz.

"31. New construction projects including new townships, industrial townships, settlement colonies, commercial complexes, hotel complexes, hospitals and office complexes for 1,000 (one thousand) persons or below or discharging sewage of 50,000 (fifty thousand) litres per day or below or with an investment of Rs.50,00,00,000/- (Rupees fifty crores) or below.

32. New Industrial projects"

4.3.2. For consideration of the ongoing projects an explanation has been provided in the Notification i.e.

"1. New construction projects which were undertaken without obtaining the clearance required under this Notification and where construction work has not come up to the plinth level, shall require clearance under this Notification w.e.f. 7th July, 2004.

2. In the case of new Industrial Estates which were undertaken without obtaining the clearance required under this Notification and where the construction work has not commenced or the expenditure does not exceed 25% of the total sanctioned cost, shall require clearance under this Notification w.e.f. 7th July, 2004."

4.3.3. It has been noted that the non-agricultural permission and the sanction of layout for an area of 585 ha was issued by Collector, Pune only in August, 2006 and the first permission for construction of lodge and hotel building on a plot area of 10,000 sq.mt on Survey No.8/1 at Padhalghar Village for a built up area of 1725.42 sq.mt was given only on 30th August, 2007. It is, therefore, clear that any building construction activity initiated before 30th August, 2007 are unauthorized and also in violation

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of the EIA Notification of July, 2004 keeping in mind the investment proposed, population envisaged and consequent sewage generated.

4.4 EIA Notification of September, 2006

4.4.1. The re-engineered EIA Notification was gazetted on 14th September, 2006 superseding the earlier notifications of 1994 & its various amendments. Under this Notification, all the projects and activities have been categorized into category 'A' & 'B' for appraisal by the Ministry at Central level and at the State level by the State Environment Impact Assessment Authority (SEIAA) respectively. Further, the Environmental Clearance process under this Notification comprises of four stages i.e.

- (i) Stage I - Screening (only for category 'B' projects and activities)
- (ii) Stage II - Scoping
- (iii) Stage III - Public Consultation
- (iv) Stage IV - Appraisal

4.4.2. The building and construction projects fall under category 'B' which are as under:-

(1)	(2)	(3)	(4)	(5)
8		Building/Construction projects/Area Development projects and Townships		
8(a)	Building and Construction projects		≥ 20000 sqm.mt. and ≤1,50,000 sq.mt. of built-up area#	#(built up area for covered construction; in the case of facilities open to the sky, it will be the activity area)
8(b)	Townships and Area Development projects.		Covering an area ≥ 50 ha and or built up area ≥ 1,50,000 sq.mt. ++	++All projects under Item 8(b) shall be appraised as Category B1

4.4.3. The Lavasa project is spread over an area of 685 ha. with built up area being above 20,000 sq.mt. would need environmental clearance from the Maharashtra SEIAA. Since SEIAA for Maharashtra was constituted in

April, 2008, and till this time all the projects had to be appraised at MoEF level.

4.4.4. LCL should have in fact taken clearance under EIA Notification of July, 2004 in the first instance. Even for the expansion project they should have applied to the MoEF till the SEIAA for Maharashtra was constituted in 2008. LCL have now applied for EC to SEIAA in August, 2009 over an area of 5000 ha. This application made is too late and the environmental damage had already taken place.

4.4.5. On the applicability of EIA Notifications, it is concluded that LCL should have obtained prior environmental clearance under the provisions of EIA Notifications of 1994, July, 2004 and September, 2006. The construction activities undertaken, therefore, are in violation of the said Notifications.

4.5. Powers to issue Notice under Section 5 of the Environment (Protection) Act, 1986

4.5.1. It has been submitted that MoEF does not have jurisdiction to issue show-cause notice as the powers have been delegated to the SEIAA. It may be mentioned that the State SEIAA is the body of MoEF constituted under section sub-section (3) of Section 3 of the EPA, 1986 (29 of 1986) and no powers u/s 5 have been delegated to the SEIAA. The mandate of the SEIAA has been clearly specified under para 3 of the Notification 21.4.2008 and it pertains only to the EIA Notification, 2006. The issuance of show-cause notice is in the jurisdiction of MoEF and hence the show-cause notice issued to LCL in November, 2010 is fully in order.

4.6. "Environmental Clearance (EC)" from the State Government

4.6.1. LCL have submitted that the hill station project has received EC in March, 2004 from the State Government of Maharashtra. It is to be noted that in 2004 the ECs were issued by MoEF for the projects covered in the Schedule to the Notification of 1994 and its amendments. The State Government was not empowered or authorized to issue such clearances. The power for issue of EC to category 'B' projects has been covered only after the EIA Notification of September, 2006 and there too the power has been delegated to the SEIAA and not to any State Government. The EC obtained by LCL is, therefore, is not in order.

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4.7. Other Issues

- 4.7.1 The inspection report of the Committee has brought out the details on the environmental damage that has taken place due to various activities initiated by LCL. The noticeable ones amongst them includes hill cutting, non-compliance to environmental conditions, encroachment on the water body created due to Bhandharas near Dasave village, etc. Even though it is submitted by LCL that they have undertaken environmental restoration work through slopes stabilization, hydro seeding, bio-mimicry, etc., these are not adequate to address the issues on environmental restoration as well as conservation. The fact that the EIA report prepared by NEERI is itself inadequate to cover the required Environmental Management Plans for this project. Presently, there is no comprehensive approach to the project formulation and its implementation with emphasis on environmental management.
- 4.7.2. On the environmental matters, therefore, the action taken by LCL at this stage is inadequate.
- 4.7.3. It is relevant to mention that due to the project, the road network has been created with improved connectivity. But these roads have not been planned keeping in view the projected traffic and population which is likely to touch 2 lakh by 2020. The width of the road proposed is only 9 mt. which is grossly inadequate.
- 4.7.4. In regard to water quality, the tests carried out indicate the water quality within the prescribed norms as per the monitoring results. The adequacy of such monitoring stations and their locations has to be re-examined to ascertain the correctness of data collected and its analysis.
- 4.7.5. The submissions by NAPM primarily indicates the non-compliance to EIA Notifications and the environmental damage done. The Committee during its visit on 5-7th January, 2011 has taken note of the environmental damages caused due to the project implementation and the details have been dealt with in the analysis of the report submitted by the Committee.
- 4.7.6. The submissions made by various Sarpanches about the good work done by LCL in terms of road network, health facilities, etc., which were earlier not available to the villagers. The employment created by the project has also been highlighted by these groups of people. During inspection the Committee had also noted these views.

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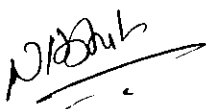
4.7.7. In conclusion, ideally results of such activities (buildings, roads, etc.) as have degraded the environment and as have been undertaken without proper study and clearances could be allowed to continue only if there is recompense by the project proponent through imposition of a salutary penalty and putting in place modalities to restore the environment and ensure that such actions would not be repeated. Deterrent effect of such recompense actions on the perpetrator concerned or other project proponents similarly placed would need to be factored in during such an exercise.

4.7.8. LCL in their submissions to the MoEF have raised various arguments with the intention of questioning the jurisdiction of the MoEF to hear the instant matter. These relate to the issue of whether the MoEF enjoys sufficient authority of law to conduct a hearing and to pass orders on the same. In addition to these issues, they have gone on to impute *mala fide* intentions to the MoEF stating that the show cause notice is "arbitrary" and in breach of principles of natural justice. There no merit in these arguments put forward by LCL in this regard. All rules of procedure have been adequately discharged and are without any personal bias or prejudice to the concerned individuals. There has been no arbitrariness in the manner in which they have been dealt with. Furthermore the very fact that LCL have been asked to 'show cause' followed by hearings before the officials concerned demonstrates that they have been given a meaningful opportunity to be heard. The Hon'ble High Court of Bombay has subsequently continued the status quo order passed by the Ministry thereby illustrating the validity of the same.

5. Conclusions :

5.1 The discussions and analysis clearly brings out the fact that M/s LCL is in violation of (i) the EIA Notification, 1994; (ii) the EIA Notification, as amended in 2004; and (iii) the EIA Notification of 2006. The site visit Report has also brought out the nature and magnitude of the environmental damage caused by the project. As such, the construction activity is unauthorized, being in violation of the above three Notifications and is also environmentally damaging.

5.2 Having regard to the above but taking into account all the facts and circumstances of the case, particularly the submissions made with regard to the investments already incurred, third party rights which are accrued, the various steps taken for establishment of a comprehensive hill station development, the



employment generated and the claimed upliftment of the area under consideration, the MoEF is prepared to consider the project on merits with the imposition of various Terms and Conditions including the following :

(i) The payment of substantial penalty for the violation of environmental laws, which is incontrovertible;

(ii) Over and above the penalty, creation of an Environmental Restoration Fund (ERF) by M/s LCL with sufficiently large corpus which would be managed by an independent body with various stake holders under the overall supervision of the MoEF.;

(iii) Imposition of stringent terms and conditions, to ensure that no further environmental degradation takes place and that any degradation that has already occurred would be rectified within a time bound schedule.

5.3 For the purposes of ensuring immediate and proper compliance with the above, LCL is directed to do the following :

(i) Submit the Detailed Project Report (DPT) for this project and the revisions thereof from the inception;

(ii) Submit information related to all contracts with various contractors for construction and other work;

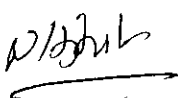
(iii) Submit full Plans prepared in relation to the project and all modifications thereto;

(iv) Submit audited statements for all amounts spent directly or indirectly on the project since inception;

(v) Submit information related to all contracts entered into for the purchase/acquisition/lease/transfer of lands;

(vi) Submit full details of future planning with detailed proposal, phase-wise;

5.4 Based on the LCL response and if LCL gives relevant and credible material to enable MoEF to proceed further, MoEF is prepared to consider the project on merits subject to the imposition of the penalties, the creation of



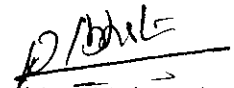
ERF and the formulation of a comprehensive Environmental Impact Assessment (EIA) Report and Management Plan for this project.

5.5 Meanwhile, and pending further consideration, the Government of Maharashtra may be requested to :

(i) Review the State Hill Station Policy, projects approved or in pipeline, development of comprehensive Master Plan and required statutory clearances;

(ii) Review the constitution of the Special Planning Authority (SPA) notified for LCL;

5.6 Having regard to the conclusion that the LCL project is in violation of the EIA Notifications as aforesaid, the construction is unauthorized and there has been environmental degradation and having regard also to the fact that various steps are required to be taken by LCL as set out herein above, in the facts and circumstances of the case, it is absolutely necessary that order of status quo be continued and no construction activity by LCL be allowed.



(Dr. Nalini Bhat)

Advisor (Impact Assessment Division)

14th January, 2011

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Most Urgent
By speed post

No.19-58/2010-IA-III
Government of India
Ministry of Environment and Forests

Paryavaran Bhavan,
CGO Complex, Lodi Road
New Delhi - 110003.

Dated the 25th November, 2010

To,
M/s Lavasa Corporation Limited
(An HCC Group Company)
Hincon House, 247 Park, LBS Marg
Vikhroli (West), Mumbai - 400 083

Sub: Show Cause Notice under Section 5 of Environment (Protection) Act, 1986 for violation of the provisions of Environment Impact Assessment Notification 1994, as amended in 2004 and 2006 by M/s Lavasa Corporation Limited, Vikhroli, Mumbai - Regarding.

1. Whereas, the Government of India issued the Environment Impact Assessment Notification, 1994 vide S.O.No. 60 (E), dated 27th January, 1994 under the Environment (Protection) Act, 1986 to impose restrictions and prohibitions on the expansion and modernisation of any activity or new projects being undertaken in any part of India unless Environmental Clearance has been accorded by the Central Government or the State Government in accordance with the procedure specified in that notification; and

2. Whereas, the Ministry of Environment and Forests (MoEF) vide S.O. 801(E) made certain amendments to the notification of 27th January, 1994, namely " 31.New construction projects." The explanation given in the notification says that " (i) New construction projects which were undertaken without obtaining the clearance required under this notification and where construction work has not come up to the plinth level, shall require clearance under this notification with effect from the 7th day of July 2004 (ii) In case of new Industrial Estates which were undertaken without obtaining



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the clearance required under this notification, and where the construction work has not commenced or the expenditure does not exceed 25% of the total sanctioned cost shall required clearance under this notification with effect from the day of July 2004; and

3. Whereas, vide S.O. 1533(E), dated 14th September, 2006, superseding the Environment Impact Assessment Notification, 1994 as amended in 2004, directing that on and from the date of its publication of this notification, the required construction of new projects or activities or the expansion or modernisation of existing projects of activities listed in the Schedule to this notification and entailing capacity addition with change in process and or technology shall be undertaken in any part of India or after the prior environmental clearance from the Central Government of as the case may be, by the State Level Environment Impact Assessment Authority duly constituted by the Central Government under sub-section (3) of section 3 of the said Act, in accordance with the procedure specified hereinafter in this notification; and

4. Whereas, as per Schedule of list of projects of activities requiring prior environmental clearance, 8 Building/Construction projects/Area Development projects and Townships, 8 (a) Building and Construction projects having more than or equal to 20000 sq.mtrs. and less than 1,50000 sq. mtrs. of built up area and 8(b) Townships and Area Development projects covering an area more than or equal to 50 ha and or built up area more than or equal to 1,50000 sq.mtrs. require environmental clearance; and

5. Whereas, based on a complaint of National Alliance of People Movement, the Ministry of Environment & Forests asked Secretary, Environment Department, Government of Maharashtra on 30.06.2010 to send the complete details about the project; and



6. Whereas, Secretary, Environment Department, Government of Maharashtra in her reply dated 04.08.2010 informed that a provisional No Objection Certificate (NOC) was issued to Lake City Corporation on 13.12.2002 by the Department of Environment, Government of Maharashtra to develop the hill station at Taluka Mulshi and Velhe, District Pune. The provisional NOC was converted into final Environmental Clearance on 18.03.2004 and the above clearance was limited to an area of 2000 hectares as permitted by Urban Development department. It was also mentioned that the EIA Notification issued on 27.01.1994 do not mandate Environmental Clearance to this project by MoEF but to be by State Government as the height of the Lake City project was in the range of 640 m to 900 m (less than 1000 m). The MoEF Notification of 1994 was amended by the EIA Notification dated 07.07.2004 and at that time, the project proponent had incurred an expenditure of Rs. 115.20 crores out of total project cost of Rs. 2153.00 crores which amount to about 5.33% of the total cost and such requires Environmental Clearance from MoEF; and

7. Whereas, Ministry of Environment & Forests vide letter dated 20.09.2010 directed the Secretary, Environment Department, Government of Maharashtra: (1). that all the facts and details of this case should be re-examined and verified including the present status of the project in the light of NOC/Clearances issued and an action should be taken against the violation, if any. (2) that pending this re-examination and verification, Environmental Clearance to the project shall not be issued by SEIAA of Maharashtra to the project submitted by M/s Lavasa Corporation. (3) that the action taken/proposed shall be communicated to this Ministry immediately ; and

8. Whereas, from the reply submitted by M/s Lavasa Corporation Limited to the Secretary, Department of Environment, Government of Maharashtra that some constructions have been made on the hills having a



height more than 1000 mtrs which is against the clearance issued by the Government of Maharashtra vide letter dated 18.03.2004; and

9. Whereas, Ministry of Environment and Forests has written a letter to Secretary (Environment), Government of Maharashtra vide letter no. J.12011/3/2005/IA(CIE) dated 04.07.2005 informing them that the proposal would attract the provision of Environment Impact Assessment Notification, 1994 as amended on 07.07.2004 and asked him to ensure that the environmental clearance process is followed before the project can be taken up for implementation; and

10. Whereas, as per the letter of Secretary, Department of Environment, Government of Maharashtra dated 04.08.2010, the total investment made at that time was only 115.20 cores out of the total cost of 2153.00 crores which amount to about 5.33% of the total cost and as per the amendment of Environment Impact Assessment Notification, 1994 as amended on 07.07.2004 and "(i) New construction projects which were undertaken without obtaining the clearance required under this notification and where construction work has not come up to the plinth level, shall require clearance under this notification with effect from the 7th day of July 2004 (ii) In case of new Industrial Estates which were undertaken without obtaining the clearance required under this notification, and where the construction work has not commenced or the expenditure does not exceed 25% of the total sanctioned cost shall required clearance under this notification with effect from the day of July 2004; and

11. Whereas, Environment Impact Assessment Notification, 1994 as amended in 2004 was superseded with the notification no S.O. 1533(E) dated 14.09.2006, the Building/Construction projects/Area Development projects and Townships require prior environmental clearance under the said notification; and

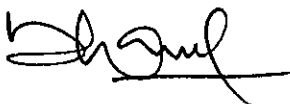


12. Whereas, issues involved relating to the clearances obtained and prima facie violations of the EIA Notifications of 1994 and 2006 are as follows:

- (i) the construction have been made above 1000 mtrs and as per the Collector's report, 47.30 ha of land area is above 1000 mtrs.
- (ii) the applicability of EIA Notification 1994 as amended in July, 2004, mandated clearance and the total investment made was only 5.33% of the total cost of the project and no details were available as to how many buildings were under construction and what was the status at that time (above plinth level).
- (iii) changes may have been made in the project during the first phase of the development starting from 18.03.2004 onwards and also the construction made after notification of EIA Notification, 2006.

13. Now, therefore, under the Section 5 of the Environment (Protection) Act, 1986, you are hereby directed to show cause within fifteen days of the receipt of this notice as to why the following directions may not be made final.

- (i) The unauthorized structures erected without any Environmental Clearance between 18.03.2004 till 07.07.2004, from 07.07.2004 till 14.09.2006 under EIA Notification, 1994 and further constructions carried out after the EIA Notification, 2006 by M/s Lavasa Corporation Limited in Mulshi and Velhe Talukas, District Pune, Maharashtra be removed forthwith in entirety.
- (ii) Pending decision on the Show Cause Notice the status quo ante for construction/development as on date should be maintained.




Please note that in your response to the Show Cause Notice interalia the details of the project, clearances obtained, status of the project with photo graphs/satellite google maps indicating the constructions as on 18.03.2004, 07.07.2004, 14.09.2006 and upto-date should be submitted.

Please note also that in case you desire to be heard in person, this should be explicitly indicated in your reply and that such a hearing will be held within one week of the receipt of this reply.

Please note further that in case no response is received within the time frame of fifteen days indicated above, final directions may be passed without any further reference to you and formal action in terms of E(P) Act, 1986 may also be initiated.

These directions issue with the approval of the Competent Authority.


(Bharat Bhushan)
Director
24.11.2010

Copy for information to:-

The Secretary, Department of Environment, Government of Maharashtra,
Mantralaya, Mumbai.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9448 OF 2010

Lavasa Corporation Limited & Anr. ...Petitioners.
Vs.
Union of India & Ors. ...Respondents.

WITH
WRIT PETITION NO. 2 OF 2009

Shamsundar Haribhau Potare. ...Petitioner.
Vs.
The State of Maharashtra & Ors. ...Respondents.

WITH
WRIT PETITION NO. 122 OF 2008

Bhagatraj G. Ahuja ...Petitioner.
Vs.
The State of Maharashtra & Ors. ...Respondents.

WITH
WRIT PETITION NO. 148 OF 2006

Shamsundar Haribhau Potare. ...Petitioner.
Vs.
The State of Maharashtra & Ors. ...Respondents.

Mr. Shekhar Naphade, Sr. Advocate a/w Mr. Janak Dwarkadas, Sr. Advocate, Girish Godbole, Aniruddha Joshi, Gaurav Joshi, Suresh Pakale, Makrand Gandhi, Satyen Vora, Tanvi Gandhi, Prashant Ghelani, Pratik Naphade, Amisha Shah, Janbhana Mehta, Sahil Gandhi, Sanmish Gala, Ashish Suryavanshi, Rohan Yagnik, Disha Kanakia i/b Markand Gandhi & Co., for the Petitioners in WP. No.9448 of 2010.

Mr. Sagar Joshi, for the Petitioner in PIL No.2/2009 and PIL 148/2006.

Mr. B.G. Ahuja, for the petitioners in PIL 122 of 2008.

Mr. D.J. Khambata, Additional Solicitor General with Mr. Nitin Jamdar, Spl.Counsel, A.M. Sethna, Mrs. S.V. Bharucha i/b Ms. Naveena Kumari for Union of India in all Petitions.

Mr. Ravi Kadam, Advocate General, with Mr. Girish Godbole, Mr. A. Joshi, Mr. Christine Rewrie i/b M/s Little & Co., for Respondent no.3 in PIL 2/2009 and Respondent 9 in PIL 148/2006.

Mr. Shekhar Naphade, Sr. Advocate a/w Mr. G.S. Godbole, Mr. A. Joshi, Mr. S.S. Pakale and Cristine R. i/b Little & Co., for Respondent no.9 in PIL 122/2008.

Mr. A.P. Kulkarni for Respondent No. 7 in PIL 2/2009 and PIL 122/2008, PIL 148/2006.

Mr. Vijay Patil, for Respondent no.2 in PIL 122/08 and PIL 148/06.

Mr. S.B.Deshmukh for Respondent no.6 in PIL 122/2008 and PIL 148/06.

Mr. S.S. Kanetkar for Respondent no.3 in PIL 122/08 and 148/06.

CORAM: B. H. MARLAPALLE &
U. D. SALVI, JJ.

DECEMBER 22, 2010.

P.C.

1] We have heard Mr. Naphade and Mr. Dwarkadas, learned Senior Counsel for the Petitioners, Mr. Khambata, learned Additional Solicitor General for Respondent Nos.1 to 3 and Mr. Kadam, learned Advocate General for the State of Maharashtra.

2] This Petition filed under Article 226 of Constitution of India, at the first instance, challenges the show cause notice dated 25.11.2010 issued by the Government of India through the Ministry of Environment and Forests. On 7.12.2010, this court after hearing the parties concerned, had stayed the impugned show cause notice to the extent of directing status

quo to be maintained, and the Petitioners were directed to appear before Respondent No.3 on 9.12.2010. Respondent No.3 in turn was directed to hear the Petitioners on the question whether the interim order to continue till the final order on the show cause notice would to be passed and Respondent No.3 was expected to pass the final order by 16.12.2010. The undertaking of the Petitioners that they shall not carry out any construction/development work till 16.12.2010 when the Petition would appear before this court, was also recorded.

3] Subsequently, the Petitioners filed their reply to the show cause notice, and were heard and the order dated 14.12.2010 came to be passed. In the said order, the request made by the Petitioners to vacate the order of status quo has been turned down. By amending the Petition, the order dated 14.12.2010 has also been challenged by the Petitioners.

4] It has been submitted by the Petitioners that its project of establishment of new township, covering eighteen villages in Pune District, has been commenced sometime in March 2004 after obtaining all permissions/clearances from the State Government as well as its various authorities. In all 76 permissions were obtained and the development work

has been continued. N.A. Permission was obtained on 31.8.2006. The Petitioners were informed by the State Government authorities at the Notification dated 27.1.1994 issued by the Ministry of Environment and Forest, Government of India would not be applicable to it as the project undertaken was a tourism hill station development project and it falls under Entry 18 in Schedule-1 of the said Notification. Though this Notification dated 27.1.1994 has been subsequently amended by the Notification dated 7.7.2004, it is claimed that the amended Notification is not applicable to the Petitioners' project, in as much as the project cannot be covered by entry no.31 i.e. "New construction Projects" added in Schedule-1 of the notification dated 27.1.1994.

5] Mr. Naphade, the learned Senior Counsel for the Petitioners urged that the Petitioners' project could not be termed as a new construction project even as of 7.7.2004 as it had already commenced the development/construction with sufficient progress. He emphasized that the project would remain to be covered under Entry no.18 of Schedule-1 of the Notification dated 27.1.1994

6] These two Notifications have been superseded by a subsequent Notification dated 14.9.2006 issued by the Ministry of Environment and Forests, Government of India and by the said Notification, the Government of India has directed that on and from the date of publication of the said Notification, the required construction of new projects or activities or the expansion or modernization of existing projects or activities listed in the schedule to the Notification entailing capacity addition with change in process and/ or technology, shall be undertaken in any part of India only after the prior environmental clearance from the Central Government or as the case may be, by the State Level Environment Impact Assessment Authority, duly constituted by the Central Government under Section 3(3) of the Environment (Protection) Act, 1986 is obtained.

7] As per Shri Naphade, this Notification is not applicable to the Petitioners' project because it is not a new project or the Petitioner is not expanding its activities and that it does not fall under any of the categories for which the said Notification has been issued. It is, therefore, urged before us that if the Petitioners' project is covered by Entry 18 of

Schedule 1 of the Notification dated 27.1.1994, the show cause notice issued has no legal support and the project work must be allowed to be continued.

8] It was also urged before us that while undertaking the project, Petitioner No.1-Company has invested as of today a sum of rupees three thousand crores and though, the township is expected to be developed in an area admeasuring 5000 hectors, the first phase covering an area of about 2000 hectors has been undertaken and sufficient steps have been taken by Petitioner No.1-Company to enrich the environment and ecology, leave alone degradation caused or likely to be caused. It is further contended that about six lacs trees have been planted and reports from various experts have already been placed on record which show that the Petitioners are doing not only the development of the township, but also overall development including providing basic amenities like water to the neighboring villages, schools and medical facilities etc. On overall considerations, it was urged that there is no justification to continue with the status quo order and when the final order would be passed by the

Ministry of Environment and Forest, Government of India, the same can be examined in this Petition as well.

9] Mr. Khambata, the learned Additional Solicitor General on the other hand while supporting the show cause notice and the order of status quo, has taken us through all abovementioned three notifications and submitted that issuance of clearance by the Ministry of Environment and Forest is a precondition even to commence the township development work. He also submitted that even if it is assumed that the Government of India did not call upon the Petitioners to comply with the requirements of the Notification that by itself would not stop implementation of the statutory provisions. He also pointed out that the Petitioner No.1-Company by its letter dated 5.8.2009 has also approached the State Level Environment Impact Assessment Authority created under the Notification dated 14.9.2006, and therefore, now the Petitioners cannot be allowed to turn back and take a contrary position to contend that it was not required for the Petitioner No.1-Company to obtain environmental clearance for its project. He has placed before us some reports made by the NGOs and

pointed that in addition to the main issue of environmental clearance there are other issues as well and they will have to be addressed to by the Ministry of Environment and Forest, Government of India, while passing the final order.

10] The People's Commission of Inquiry has submitted its report dated 20.4.2009 and raised the following issues:

- (a) Transfer of land and water from Krishna Valley Development Corporation
- (b) Transfer of the surplus land available under the Maharashtra Agricultural lands (Ceiling on Holdings) Act, 1961 to Petitioner No. 1-Company rather than returning it to the original owner as per the existing policy of the State Government.
- (c) Forest land covered under the project.
- (d) Transfer of Inam land which could have been regranted to the original land holders after accepting statutory price.
- (e) Acquisition of private land,
- (f) Rehabilitation of the displaced families.

This report claims that the transfer of Government/Corporation land to the Petitioner-1 Company is illegal.

11] We have noticed that there are three other PILs pending before this court viz. PIL No.148/2006, 122/2008 and 2/2009 challenging either allocation of land by Krishna Valley Development Corporation or the Government land or Inam land to Petitioner no.1-Company by the Government of Maharashtra or the adverse impact that may cause on the supply of water to the Pune city as well as for the irrigation purposes.

12] We are satisfied that the issues raised by the Petitioners regarding applicability of the Notifications referred to hereinabove is required to be considered, and it would not be appropriate to advert at this stage to the merits and de-merits of the arguments advanced by the respective parties.

13] Hence Rule. Respondents waive service. PIL Petition Nos. 148/2006, 122/2008 and 2/2009 to be clubbed with this Petition. Let this Petition alongwith the above PILs be listed for final hearing peremptorily on 27.1.2011 at 3.00 p.m.

14] Mr. Naphade, learned Senior Counsel for the Petitioners invited our attention to the earlier order passed on 7.12.2010, as well as the list of Exhibit-V (at page 182) and submitted that pending the final order from Respondent No.1, on the show cause notice, the Petitioner-Company should be allowed to continue with the construction of the buildings listed in the said Exhibit. It was urged that allowing such constructions to be continued on a very limited land i.e. 40 to 70 hectares could not be in anyway adverse to the alleged violations. The construction is in progress since more than five years and by the impugned show cause notice it has been abruptly stopped without pointing out any specific case of damage/degradation caused either to the environment/forests/ecology/water and even in the order dated 14.12.2010, there is no specific case made out, even prima facie, that the Petitioner-Company is guilty of causing any such degradation. The construction was undertaken after obtaining of permissions/clearance and the State Government had not at any point of time, objected to the same on account of any violations. It was also submitted that a fairly large number of employees are engaged in the project and the Petitioners are ready and willing to give an undertaking

that they would not claim any equity even if the final order on the show cause notice goes against them.

15] A separate Civil Application has been filed by some residents of the villages concerned and while praying for being impleaded as additional respondents so as to support the Petitioners, they have urged to vacate the status quo order.

16] Mr. Khambata, the learned Additional Solicitor General, on the other hand, referred to the letter dated 5.11.2008 addressed by the Assistant Director of Town Planning, Pune Branch to the Petitioner No.1-Company, in which it has been stated that as on 7.7.2004 the investments made in the development of the project was less than 25% and therefore the environment and forests clearance is essential. Relying upon this letter, Mr. Khambata submitted that the Notification dated 14.9.2006 applies to the Petitioner-Company, and when environment clearance is a pre-condition for commencing any activity by the Company, it cannot be permitted to continue with the construction of some selected projects at this

stage. He has also relied upon the following decisions to support his case that when there is a clash between the economic and environmental considerations, the latter must prevail and that the illegality which goes to the root of the case can be proceeded against by the competent authority and is required to be upheld by the courts, despite the lapse of time:

- i) K. Ramdas Shenoy Vs. The Chief Officers, Town Municipal Council, Udipi and others [AIR 1974 SC 2177];
- ii) Friends Colony Development Committee Vs. State of Orissa and others [AIR 2005 SC 1];
- iii) M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and others [AIR 1999 SC 2468];
- iv) M.C. Mehta Vs. Union of India and others [(2004) 12 SCC 118]

The learned Additional Solicitor General submits that there is no prima facie case made out to vacate/lift the order of status quo and even the Petitioners cannot invoke equity solely on the ground that they had obtained due clearances from the Government of Maharashtra. He also submitted that the Petitioner No.1 being a Company engaged in such huge investments, it ought to be aware of the requirements to be complied with under the Environment (Protection) Act, 1986 including the environmental

clearances required under the Notifications dated 27.1.1995, 7.7.2004 and 14.9.2006.

17] We have also noted that the hearing before the competent authority on the show cause notice is in progress and in addition to the reply submitted by the Petitioners, they may place on record additional material for the hearing fixed tomorrow i.e. on 23.12.2010. Though it was urged before us by the learned Senior Counsel for the Petitioners that the order dated 14.12.2010 is exfacie illegal, in as much as the said order has not been passed after they were heard by Respondent No.3, we have noted that the hearing was before Dr. Nalini Bhatt and she has passed the order and subsequently it has also been endorsed by Respondent No.3. Mr. Khambata has explained before us the circumstances under which this court directed Respondent No.3 to hear the Petitioners and pass the order. Prima facie, we are not inclined to accept that the said order is in breach of the principles of natural justice.

18] Hence, as of now we are not inclined to stay the status quo order dated 14.12.2010. However, we direct that Respondent No.3 and the

State Level Environment Impact Assessment Authority or the Central Level Committee as the case may be, shall visit the Petitioners' project and inspect it thoroughly. We expect this team should camp, for at least three days, at the site at Lavasa City and undertake the survey/inspection, either in the last week of December 2010 or in the first week of January 2011. The reports of such an inspection may be of great consequence for the competent authority to pass the final order on the show cause notice.

We direct that the final order shall be ~~passed by 10.1.2011 and~~
forward a copy thereof to the Petitioner No.1-Company. Such order shall be placed before us by 14.1.2011.

19] Liberty to the Petitioners to renew their request for interim relief on the next date in case the Petitions are not taken up for final hearing.

(U.D. SALVI, J.)

(B. H. MARLAPALLE, J.)

Sub : **Site Visit Report of the Lavasa City by the Central and State Expert Committees - dated 5th, 6th and 7th January, 2011.**

The Hon'ble High Court of Bombay vide its Order dated 23rd December, 2010 in the Writ Petition No. 9448 of 2010, M/s Lavasa Corporation Limited & Anr. Vs. Union of India & Ors. directed that:

Para 18:

"Hence, as of now we are not inclined to stay the status quo order dated 14.12.2010. However, we direct that Respondent No.3 and the State Level Environment Impact Assessment Authority or the Central Level Committee as the case may be, shall visit the Petitioners' project and inspect it thoroughly. We expect this team should camp, for at least three days, at the site at Lavasa City and undertake the survey/inspection, either in the last week of December 2010 or in the first week of January 2011.

The reports of such an inspection may be of great consequence for the competent authority to pass the final order on the show cause notice. We direct that the final order shall be passed by 10.1.2011 and forward a copy thereof to the Petitioner No.1-Company. Such order shall be placed before us by 14.1.2011."

2. In pursuance of the above directions of the Hon'ble High Court of Bombay, a Committee of Experts from Central Level Expert Appraisal Committee (EAC) and State Level Expert Appraisal Committee (SEAC) along with the officials from the Ministry of Environment and Forests (list annexed at 'A') visited Lavasa city for three days (5th, 6th, and 7th January, 2011) to undertake the survey/inspection and also to interact with the senior officials of M/s Lavasa Corporation Limited and the representatives of National Alliance of People Movement, local villagers and other stake holders. The Committee also interacted at Circuit House, Pune with the district level officials of Government of Maharashtra from various Departments of Pune district to peruse the available records of the project relating to approval of Plans, Revenue records, water availability and issues relating to forest diversion (a list of these officers is enclosed at Annexure 1).

3. The details of the site inspection undertaken by the Central/ State Committee are covered in the following paras:

Approved:
Nanur Jayal
13.1.11

5th January, 2011

4. The Committee reached the Lavasa City and had a birds eye view from the entrance gate which is above 1000 mts. The Committee then visited various developmental works in the Dasve village. During the preliminary inspection provided at these places, it was informed that about 80% of the development/ construction works are at a lower level around the water reservoir and that only 20% construction work would be in the middle and top level to comply with the requirement of restricting the activities below the slopes 1 : 3. It was also informed that the proposed development is over an area of 5000 ha. with an envisaged population of 2,00,000 for the year 2021.

5 The Committee also met Sarpanches of some of the villages along with villagers where it was expressed that the project has brought prosperity in the area and job opportunities for local villagers. These Sarpanches also highlighted that because of the development, accessibility to the villages, education and health facilities have been developed for which this area was neglected for the last 50 years.

6 After a round of preliminary inspection and discussions with the district level officials of the State Government and various stakeholders and a detailed presentation made M/s LCL, the committee noted that:

(i) **Lavasa City:** It is proposed to develop a self contained and eco-friendly hill station town with an aim to offer world class facilities and infrastructure on an area of 118 Sq. Kms. excluding forest area spread over 18 villages in Mulshi and Velhe talukas. The project is at about 45 kms. from Pune city and is on the backwaters of Warasgaon Dam. The geographical location is between 18^o26'33" N, 73^o25'13" E latitude and 18^o21'16" N, 73^o37'18" E longitude. The location of the Lavasa city has been selected reportedly due to the aesthetic setting of the valley and it is a site for tourism purposes.

(ii) The Regional Plan for Pune district was sanctioned by the Government of Maharashtra vide Notification dated 25th November, 1997 under the provisions of Section 15 of Maharashtra Regional and Town Planning Act, 1966 (MRTP Act, 1966).

(iii) The Urban Development Department, Government of Maharashtra vide Notification dated 26th November, 1996 had separately sanctioned special regulations for the development of Tourist Resorts/Holiday Homes/Townships in Hill Station type areas under the provisions of

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Section 20 (4) of the MRTP Act, 1966. Regulation No. 1 of the said special regulations empowered the State Government to declare any suitable area at appropriate height, having suitable topographical features, for the purpose of development of hill station.

(iv) The UD Department, GoM, designated 20 Revenue villages in Mulshi and Velhe talukas as hill station by way of modification made to the sanctioned Regional Plan. The notification to this effect was issued under the provisions of Section 20 (4) of the MRTP Act, 1966 vide Notification dated 31st May, 2001. Any developer company thereafter became entitled to develop a hill station on an area of at least 400 ha. or more from any of these villages according to the Hill Station Policy of the State Government.

(v) On the request of M/s LCL, locational clearance was given by the State Government to 18 villages under the Special Hill Station Development Policy on 1st June, 2001. It may be noted that this area was earlier reserved for afforestation in the Regional Plan of Pune but has now been modified for the hill stations.

(vi) The UD Department of GOM, vide letter dated 27th June, 2001 had given an in-principal approval to the Company for the development of Hill Station under the provisions of Regulation No. 21 of the said special Hill Station Development Policy subject to the following conditions :

- (a). No development will be permissible in the area of elevation of 1000 mts. or more above MSL.
- (b). To prepare an Environmental Impact Assessment Report in accordance with the criteria prescribed by the Central Ministry of Environment and Forests and to obtain approval to it from the Environment Department.
- (c). To obtain permission for the project from the Irrigation Department and other concerned departments wherever necessary.
- (d). To observe all aforesaid Regulation, as also to follow the orders of the order of the Bombay High Court in Petition No. 2773/97 and 3041/97 (such as amenities, non-paid amenities etc.) and other laws and regulation application on this context.

(vii) M/s LCL submitted a proposal for the development of an area measuring 585 ha. from village Dasve, Padalghar and Bhoini for development of infrastructure including construction of internal

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roads etc. to the Sub-Divisional Officer (Maval Sub-Division), Pune on 27th January, 2003. This was the first lay out plan submitted by the Company for approval. Thereafter, the Architect of the M/s LCL requested the Sub-Divisional Officer to keep the Company lay out pending accordingly the proposal was kept in abeyance. Thereafter, on the request made on 12th January, 2006 by M/s LCL, the proposal submitted was considered and approved by the Collector, Pune on 31st August, 2006 as per the provision of 44(A) of Maharashtra Land Revenue Code 1966 for the purpose of converting agricultural land for non-agricultural use. This was the first development permission given to M/s LCL which involved only the layout of the land without any construction permissions.

(viii) The Collector, Pune granted the first permission for construction of lodge and hotel building on a plot area of 10,000 sq.mts. on S.No. 8/1 Padalghar village for a built up area of 1725.42 sq.mts. on 30th August, 2007.

(ix) The Collector, Pune granted permission to the revised layout plan to the company for an area of 613.941 ha. on 7th June, 2008 and also granted permission for construction of residential building having total built up area 1,16,248.68 sq.mt. under Section 44(A) of Maharashtra Land Revenue Code, 1966. The building permission covered 9 types of residential buildings.

(x) Thereafter, on the request of M/s LCL, the company has been declared as Special Planning Authority (SPA) for the area under their jurisdiction under the Section 40(1)(B) of MRTP Act, 1966 vide Government Notification dated 12th June, 2008 with certain conditions. The total area of 3656.28 ha. was so notified under SPA.

(xi) To develop this hill station, M/s LCL applied to Maharashtra Krishna Valley Development Corporation (MKVDC) in October, 2001 for getting permissions for the water supply. After studying the water availability of the Khadakwasla Dam project, which consists of three dams namely; (i) Khadakwasla dam on Mutha River at Khadakwasla, (ii) Panshet Dam on Ambi River at Panshet and (iii) Warasgaon Dam on Mose River at Warasgaon, MKVDC gave permission to M/s LCL to construct 8 bandharas (check Dams) vide their letter dated 29th May, 2002 of which 6 bandharas will be constructed on the company owned land and the other 2 by the Chief Engineer, Konkan Regional Office, Mumbai. The MKVDC also allotted 141.15 ha. of the land to M/s LCL to construct 2 bandharas

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behind the Warasgoan Dam, out of which, 12.36 ha. was above submergence level and the remaining 128.79 ha. was in submergence area. As per the agreement between MKVDC and M/s LCL Ltd., the land was allotted on a lease basis for a period of 30 years.

(xii) In regard to the Forest Clearances, it was noted that the forest areas are excluded from the layout plan. However, the following three clearances have been given for laying of transmission lines for the sub-station and construction of Mugaon and Tambini Road.

- (a) Diversion of 4.9368 ha. of reserved forest land for laying of 110 KV LILO @ LOC No. 19, Bhira - Khopadi to substation in favour of Lavasa Corporation Limited at Bhoini in Pune District, Maharashtra dated 23rd March, 2009.
- (b) Diversion of 2.40 ha. of reserve forest land for upgradation of existing Zila Parishad owned Mugaon Tambini Road, Pune district, Maharashtra dated 16th April 2009.
- (c) Diversion of 6.1868 ha.(2.5550 ha open surface and 3.6318 hectares passage through tunnel without breaking the top surface) reserved forest land for widening existing Mugaon - Tambini road, proposed approach road, Via duct and tunnel in favour of M/s Lavasa corporation limited in Pune district, Maharashtra - In principle approval dated 3rd June, 2010.

The Conservator of Forests has certified that there is no violation of Forest Act, 1980 in Dasve Reserve forest area. He further certified that there was no violation of Forest Act, except F.S. No. 35 in Mugaon Reserve Forest. This alleged violation in Mugaon F.S. No. 35 was done by the project authority, M/s LCL and the enquiry concerned with this alleged violation is in progress.

7. M/s LCL made a detailed presentation covering the location of the project, various clearances obtained by the company, the Master Plan, the accessibility to the project, various infrastructure facilities etc. It was informed that:

- a) There are four access roads to Lavasa City on Mumbai-Pune Road and presently only one is being developed and other three are in the process of finalizing the alignments which will

Munish Dayal

improve the connectivity from various places and will also shorten the distance.

- b) Tourism being a seasonal activity, the hill station is being developed for sustainable economic returns through real estate developments - residential apartments, villas and cottages, club and convention centers and commercial centers/ town hall, hotels including health care center, educational institutions and various theme parks.
- c) The facilities are being developed with a projected population of 2 lakhs people by 2020.
- d) The project has received "Environmental Clearance" from the State Government in March, 2004 for an area of 2000 ha. on the basis of the Rapid EIA prepared by NEERI, Nagpur and the development is within the approved area.
- e) The Special Planning Authority (SPA) was notified due to delays in getting permission from various district and local level authorities and was needed to have flexibility in the development based on the market driven forces.
- f) The first meeting of the SPA Board was held on 19.09.2008 and a ten (10) member Committee was constituted with Shri Suresh Pendharkar as the Chairman and CEO of SPA. The SPA has the powers to prepare and approve the draft planning proposal and also act as a regulatory authority.
- g) The proposed draft Development Control Rules (DCR) have been approved by the Lavasa SPA and are yet to be notified by the Government.
- h) M/s LCL have initiated works relating to slope stabilization, hydro seeding, employment generated schemes for local people, school for under privileged children, hospital etc. which is benefitting the local population while ensuring the environmental protection.

8. After this presentation by M/s LCL, the Committee members met the representatives of National Alliance of Peoples' Movements (NAPM) along with the villagers outside the convention center at Lavasa. The representatives said

Narun Deyak

that the project had exploited the natural resources without benefit to local people and that their group was against the development of the project. They requested the Committee to give them sufficient time to make further submissions and also to show the damages caused by various project activities in the Mugaon village. The Committee accepted their request and decided to visit Mugaon village and listen further to NAPM and local people led by Ms. Medha Patkar.

6th January, 2011

9. As was decided on the previous day, the Committee interacted with the representatives of National Alliance of Peoples' Movements (NAPM) at Mugaon Village. Shri Anna Hazare and Dr. Balasaheb Ambedkar were also present during this interactive meeting. The local residents expressed their grievances on various activities of M/s LCL such as construction of roads, operations of stone crushers, cutting of hills and diversion of water from the Dams for the Lavasa Project. They emphasized their total dependence on the natural resources for their livelihood and how these had been adversely impacted due to the activities of M/s LCL and also due to resultant destruction of vegetation cover in their neighbourhood.

The specific submissions made included:

- i. Uncertainty about the total area under planning for the hill city and inconsistency in the proposals of M/s LCL made from time to time;
- ii. Violations by M/s LCL under the Environment (Protection) Act, 1986 and various Notifications of Environmental Impact Assessment of 27th January, 1994, 7th July, 2004 and 14th September, 2006;
- iii. No post facto clearance should be granted to Lavasa city;
- iv. Massive hill and tree cutting by M/s LCL;
- v. Land filling in Warasgaon dam by M/s LCL;
- vi. Allotment of land to M/s LCL by MKVDC was wrong because the land acquired for the public purpose from the local people was for the construction of Dam, and cannot be leased to any private company for commercial purposes;
- vii. Special Planning Authority status cannot be granted to a private company;

Nandh Daryal

The submission concluded by emphasizing that the show cause notice issued on 25th November, 2010 by the Ministry should be strictly implemented.

Some representatives said that though M/s LCL has made claims about their CSR activities including providing employment to 700 - 800 people, yet there are no permanent jobs for these local people. Some accidents from the area and death of some people were also reported. The local people are threatened due to their refusal to part with their lands. The proposed roads are passing through some of the forest areas, which is not allowed.

Dr. Chaudhary highlighted the need for proper Impact Assessment and said that detailed studies are required to be done about the impacts of hill cutting and operation of stone crushers.

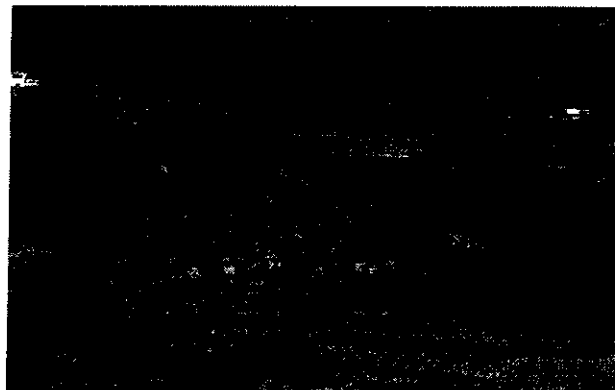
Dr. Balasaheb Ambedkar spoke about the issues relating to constitution of Special Planning Authority (SPA) and stated that the GR of the State Government is yet to be issued in this regard. He made reference to Regional Planning Board being totally under the control of M/s LCL.

Dr. Anna Hazare observed that world over people are worried about environment and we have to take care of people at village level for the nation to progress. He mentioned about the enhanced rate of siltation of Dams due to large scale hill cutting and various developmental activities with special reference to the Dams in the vicinity of Mugaon Village. He said that the Social Environmental Impact Assessment is necessary to assess impacts of such projects on local people and that the construction of various bandharas (Dams) within submergence area of the Dams was a new concept introduced by M/s LCL and give it to a private company is not in any rule. He stressed that Lavasa City is not a social project but a commercial one. The State Government had issued various clearances so speedily and there was a need to review them at this stage, he concluded.

Ms. Medha Patkar referred to Lavasa project as a model being followed for development in general with disregard for environmental and social aspect. She express that local people were not consulted for transfer of water which is a natural resources. She also referred to the SPA and rules followed while approving the various plans. She handed over copies of documents related to the grant of NOC to develop hill station at Lavasa and the conditions attached with it as well as the draft minutes of the State Government meeting on Lavasa Hill Station Project held on 14th July, 2007.

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10. After discussions with the local residents at Mugaon village site, the Committee members accompanied by the local people inspected the road under construction upto NASA point (a site identified for the development of space theme based amusement park) which is on the hill top of the village. It was observed that there was large scale hill cutting and destruction of vegetation all around. It was informed that these activities were undertaken without due approval by M/s LCL. The labour colony constructed in the village was also reported to be on the ceiling surplus land. The back water of the dams, were seen to be filled with stone crushing material. The local people informed that the water tankers are not supplied to these villages and the quality of water has also deteriorated. At the end, the villagers expressed that the project had adversely impacted their life and they are not willing to part with their land for any of the project activities.



11. Some of the expert members also visited the Sewage Treatment Plant, Water Treatment Plant, the site for disposal of hazardous waste including electronic waste and used oil, the location of generating sets etc of M/s LCL. There observations and comments are covered under the environmental issues.

12. After the site inspection, the presentation by M/s LCL further continued in the afternoon to cover the environmental aspects and various steps initiated therefore. In the continued presentation, it was highlighted that:

- i. The Rapid EIA for the project was prepared by NEERI, Nagpur in January, 2004, (though on the copies of the Reports given to the Committee, the month was indicated as September, 2004) for obtaining "Environmental Clearance" from the State Government. This was one time study undertaken for the project and no comprehensive EIA was prepared for the project.
- ii. The analysis of Air quality data, Water quality data undertaken by the recognized environmental laboratories indicate that these parameters are within prescribed limits.

Nand Dayal

- iii. For stabilization of slopes, various measures have been taken including hydro-seeding, tow wall, retaining wall etc. and the slopes are getting re-generated through vegetation cover.
- iv. For bio-diversity conservation, steps have also been initiated including creation of a large nursery for plantations, a creation of nature trail, bio mimicry etc.
- v. Various structures have been created for rain harvesting.
- vi. The details on the area under the possession of the company, the layout plan and the global FSI concept were also presented.

13. After the presentation, the Committee also met some stakeholders, who have invested in the Lavasa project, as contractors, companies and individuals. Their submissions reflected that the contractors have a big financial burden on them as they have invested around Rs. 100 crores for equipments and machinery, which are now lying idle. A request was made to sort out the matter at the earliest for continuation of the project because the lives of many families are dependent on this project.

14. Some of the local people also submitted their written request highlighting the benefit of the project, the job opportunities created, the infrastructure facilities available to the local residents etc. They requested for continuation of the project due to the benefits which is accruing to them.

7th January, 2011

15. Some of the expert members visited ongoing construction works including the location of clearances issued by the Forest Dept., disposal of bio-medical waste from the hospital, the school run by M/s LCL for under privileged children of local villagers etc. As requested by Shri Ajit Gulabchand, Chairman and Managing Director of the M/s LCL/HCC. The Committee met him for a brief period at Convention Centre, Lavasa City. He informed the Committee about various clearances obtained for the project including the "Environmental Clearance" and environmental initiatives undertaken by the Company. He requested that the project may be permitted to continue and any suggestions by the Committee would be implemented by M/s LCL for further improvement.

16. After these discussions, the Committee met once again the State Government officials at Pune and collected available documentation for finalizing its Report. At Pune Circuit House, Shri B.G. Ahuja met the Committee briefly and handed a detailed representations about water availability for Pune.

Narun Dayal

Observations of the Committee

17. After the presentation by various stake holders including M/s LCL, the site visit to the environmental facilities, the stretches where hill cutting was undertaken etc., the Committee decided that the emphasis in the Site Inspection Report needs to be on the environmental degradation caused due to the development of the Hill Station/Tourism project. The Committee observed the following:

(i) Town Planning

a). The layout plan of the Lavasa city for an area of 585 ha. was approved by the Collector Pune on 31st August, 2006 for various land uses including the un-acquired pockets. The access road to the township is outside the sanctioned plan. The Plan broadly categorized the area in terms of commercial use, hotel, layout, amenity spaces, mandatory open spaces, public and semi-public areas, roads and water bodies including the adjoining the Government Forest land. There was no approved landscape plan, parking and circulation plan, baseline environmental information within and around the site. Even in the no-development zone, the widening and strengthening of the road was seen to have been completed.

b). The regulation of building activity, till the constitution of SPA in June, 2008, was with the Collector, Pune. No records about any constructions undertaken by M/S LCL before 2006 could be shown. Since large number of buildings have come up including the buildings along the water reservoir, a detailed analysis and Report from the Collector, Pune would be necessary to confirm violations, if any. This process would also involve thorough verification of records of individual buildings, the permission obtained under the provision of Section 44A of Maharashtra Land Revenue Code, 1966 for converting agriculture land in to non - agriculture purposes, the construction commencement certificates as well as occupancy certificates.

c). As per the Hill Station Development Policy, the maximum width of the roads is 9 mts. For a township with a projected population of 2 lakhs, it appears that the proposed width of 9 mts. is insufficient to take peak traffic load, meet emergency services for the entire development. A "world class" huge Convention Centre does not go with the concept of a hill station with only 9 mts. access road, without adequate parking provisions.

d). The Master Plan of Lavasa city, covering 18 villages, as presented by M/s LCL, is primarily a lay out plan. The preparation of Master Plan and its approval

Nanhi Dayal

has to follow a set procedure as laid down in the MRTTP Act, 1966 which also includes inviting objections/suggestions from the public and after completing the process, a final Plan is prepared, which has to be approved by the State Government. No documents indicating the procedure followed in this regard for finalization of Master Plan was shown to the Committee. Any revision/ amendment/ change in the Master Plan also requires the same process to be followed. The Master Plan for the city has to be prepared as per the provisions of the MRTTP Act, 1966 for a comprehensive approach for an integrated development and various infrastructure development Plans need to be prepared in consonance with the Master Plan.

e) The modified DCRs as proposed by SPA are yet to be formally notified by Government of Maharashtra, the present status of DCR followed or any deviation was not available.

f) From a perusal of the lease agreement between M/s LCL & MKVDC, the Committee observed that the agreement is specifically for the construction of the bandharas and related structures and prima facie not for the construction of residential and commercial buildings or convention centre on the 12.36 ha. of the land. These constructions are an infringement of the lease agreement.

(ii) Environmental Issues

a) Environmental Clearance

The project was issued "Environmental Clearance" (EC) in March, 2004 by the Environment Department, Government of Maharashtra for development of hill station project over an area of 2000 ha. as permitted by Urban Development Department by a Government resolution of 26.11.1996. The clearance letter stipulates various conditions including the water requirement through Bandharas on Mose river, approach roads with estimated traffic of 6000 vehicles per day, management of municipal and biomedical waste etc. One of the condition stipulated is that "the above permission is without any prejudice to any other permission require under any of the laws, by laws or regulation in force". No documents were made available to the Committee regarding the powers of the State Government for issuing such an "Environmental Clearance", the process specified and the process adopted for appraisal of Lavasa project details of site, inspection, public hearing etc. The Committee also noted that the "Environmental Clearance" does not specify essential details of the project such as number of buildings, type of buildings with their usage/activities, built-up area, parking requirements and General and Specific Conditions for mitigating the environmental impacts etc.

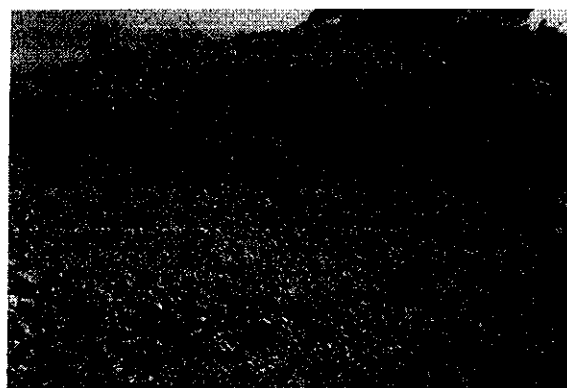
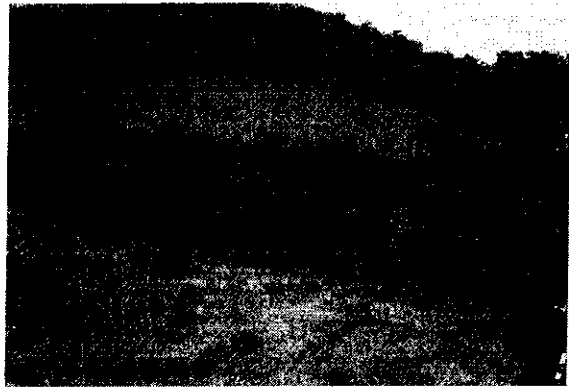
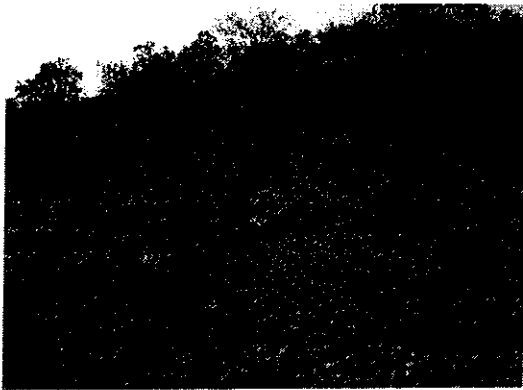
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b) Change in land use

The area proposed for the hill station project of M/s LCL was originally planned as an Afforestation Zone in the Regional Plan for Pune district. Even though the project boundaries have been drawn by delineating the forest areas, the area surrounding the Lavasa site continues to be in the afforestation zone. The project area is within the eco-sensitive region, having green tree cover and practically all of it is on the hill slopes of the mountain skirting the Warasgaon backwaters.

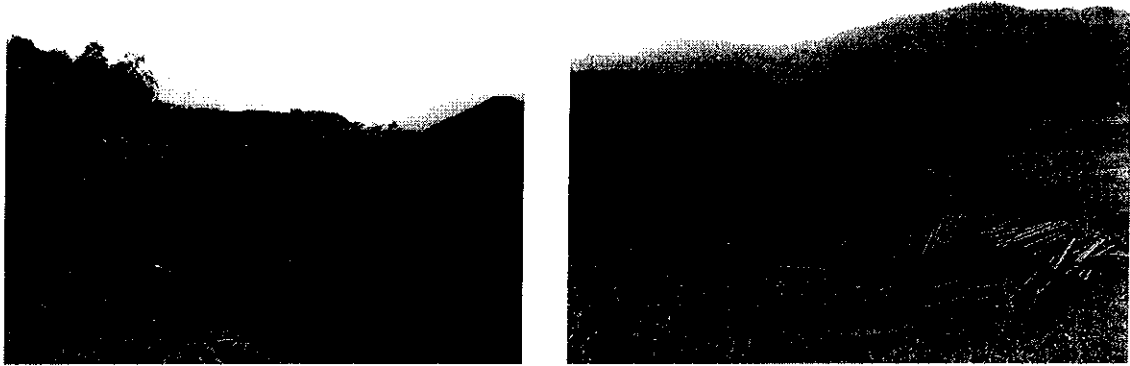
c) Hill cutting and Quarrying

Large scale hill cutting was observed for obtaining building material for construction of cottages, villas and apartments as well as for widening the road. Due to the hill cutting, the topography has changed from good vegetative cover to barren exposed slopes and enhancement in siltation etc would occur. M/s LCL justified this by the slope stabilization and hydro seeding measures undertaken to address the above issues. Although the project proponents are attempting to protect the slopes of cutting of hills to prevent erosion of soil and land slides by various measures, yet there are many portions, which are still without such protection measures and are under threat of erosion in the rainy season. The large scale siltation of reservoir due to such erosion is therefore occurring.



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The excavated material was observed to occupy areas in the valley in some places near Mugaon within the flood zone, which is unscientific way of storing the raw material.



The Collector Pune has granted lease for quarrying for excavation of minor minerals for building construction purposes for M/s LCL. Some of the leases are upto the period of July, 2013; however, the work is temporarily closed as per the Show Cause Notice issued by the Ministry.

The Committee could not see record on whether the hill cutting is at locations approved by the District Collector as well as the quantum of quarry material to be excavated. Unless there is a scientifically formulated quarrying operation and its approval with necessary Environmental Management Plans, such hill cutting activities would lead to serious environmental degradation, particularly in ecologically sensitive Western Ghat areas where the project is located.

d) Water Supply

To develop this hill stations, MKVDC had given permission to M/s LCL to construct 6 bandharas vide their letter of May, 2002. As per the permission, M/s LCL have constructed 2 bandharas to meet their water requirements to their townships. The other bandharas are also being planned for augmenting the water supply. The drawl of water for the project is apprehended to reduce water availability for irrigation purposes as well as the down stream requirements of drinking water etc. Recent assessment of MKVDC about the requirement of water to M/s LCL and the requirement of the water for the down stream areas for irrigation and drinking purposes, especially of Pune City, was not available to the Committee.

e) Rehabilitation Plan

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The project is spread over 18 villages consisting of various Gaothans. There are some adivasi communities in the affected area and that there has been a large scale diversion of "ceiling surplus" land which was allotted to these adivasis and nomadic tribes. No scheme for rehabilitation of affected villagers as also for the protection of existing gaothans was available to the Committee. Many villagers from Mugaon were complained that their lands has been taken forcibly and their sources of water supply etc. are being affected by the project. No details on the transfer of adivasi land to M/s LCL and rules governing thereto were available to the Committee.

(iii) Analysis of EIA Report

A perusal of the EIA Report prepared by NEERI, Nagpur for the project in 2004, based on which the "Environmental Clearance" was issued by the State Government indicates that the activities undertaken by M/s LCL and those projected in the report do not match, the locations and number of samples are not adequate, the necessary full season data on flora and fauna etc was not available.

The results of soil analysis in the EIA report indicate iron concentration as high as 1,12,510 mg/kg which comes to nearly 11.25%. The presence of Cadmium (50.5 mg/kg), Lead (562 mg/kg), Nickel (610.9 mg/kg) and Chromium (200.4 mg/kg) has also been indicated in the soil sample analysis. As per the Hazardous Wastes (Management & Handling Amendment) Rules, 2003 and 2008, these concentrations if correct would mean the soil is not suitable for construction or any other purposes. Further, the impacts of such soils on water bodies has not been brought out. In fact, the Report "Post Project Environmental Monitoring at Lavasa" of March, 2008 also indicates high values of these metals. Such soil characteristic is a serious issue, which should have been addressed in any EIA/EMP report.

There are some further shortcomings in the EIA reports from the point of view of monitoring season, selection of monitoring locations etc. The population estimation in the EIA report is based on peak floating population of 54,000 and fixed population of 7,000. While the ambient air quality modeling takes into account 8 DG sets, yet the NOC and CFO obtained from MPCB in the year 2002 and 2005 for 40 DG sets of capacity 1000 KVA and 50 DG sets of 500 KVA each. These additionalities are relevant for the prediction of air quality.

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The EIA study with the above shortcomings is not adequate for assessing the Lavasa project of such magnitude located in the eco-sensitive areas of the Western Ghat.

(iv) Compliance to conditions stipulated by MPCB

Under the Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974 the Maharashtra Pollution Control Board (MPCB) issued a No Objection Certificate to M/s LCL in May, 2002 stipulating various conditions. Subsequently, a Consent to Operate was granted to the project in May, 2005 with various terms and conditions. The environmental facilities were inspected by the members to ascertain the compliance status. It was specifically noted that:

a) Sewage Treatment Facilities

(i) The Maharashtra Pollution Control Board (MPCB) while issuing Consent on 5th January, 2005 [condition 2 (iii)] on Sewage Effluent Disposal stipulated that "The treated domestic effluent shall be disposed on land for gardening/ irrigation/ lawns/ tree plantations and the return waters of 264 KLD shall be collected and treated to bring it to the above Standards and such freshened return water shall be disposed of on land for gardening/irrigation/ lawns/tree plantations through close controlled transportation. In no case effluent shall find its way to any water body directly/indirectly at any time."

During the visits to the modular STPs of 146 KLD and 60 KLD and full fledged STP of 2.4 MLD it was noticed that although most of the treated water is claimed to be used for the construction purposes, yet its discharge to the water bodies in the rainy season is inevitable.

Therefore, M/s LCL are unable to comply this condition, particularly in rainy season and that the treated water is discharged in storm water drains after treatment. This is a violation of the NOC condition and in any case the project being in the catchment area of the Warasgaon dam, such discharges in water bodies is prohibited.

b) Management of Bio-medical waste

The annual number of patients treated in Apollo Lavasa Hospital is said to be about 2,000. Although the quantity of bio-medical wastes generated is very small and limited to the category 1, 4, 6 and 7, it is sent to the common Bio-

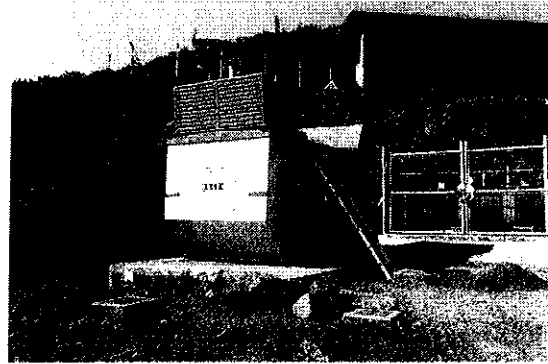
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medical Waste treatment Storage and Disposal Facility namely; Life Secure Enterprises at Pune once a week (every Thursday), which is violation of condition 9(v) of the Authorization dated 11th June, 2010 issued by MPCB under the Bio-Medical Waste (Management & Handling) Rules, 1989, which permits storage of the bio-medical wastes upto 48 hours only.

The Hospital has not installed the Effluent Treatment Plant (ETP) for treatment of the liquid waste generated (category 8) which was required before the start of the hospital as per the condition 13 of the above mentioned authorization.

c) DG sets

A number of DG sets are used in the project area but none of these DG sets has the Stack (chimney) height as specified at condition No. 5(iii) of the CFO issued by MPCB on 5th March, 2005. There is generation of used oil waste from the DG sets and in violation of Condition no. 6 of CFO the wastes have been kept in open scrap yard located on the bank of the river, which could affect the water quality of the backwaters, in case of any spillage.



v) General Observations

In the absence of any baseline environmental studies for the notified area of Lavasa project and its adjoining areas, it is difficult to assess the impacts of the project on the surrounding areas as well as the influence of uncontrolled and induced development. The natural sub-systems of the whole environmentally sensitive area mandated conduct of detailed, comprehensive and in-depth studies on surface drainage, water resource, physiography, topography, flora-fauna, micro-climate, bio-diversity, etc. There are apprehensions by the locals that there is likelihood of landslide because of cutting of slopes, disturbances in ground water, surface water run off, impacts due to cutting of trees, forest management and ecology, which appear justified to some extent

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and could have been analysed if these studies were made available to the Committee.

The Committee noted during the site visit that obvious damage has been done for the sake of speedy development of hill town and "flexible" development controls guided by market considerations. There should have been a constant update of investigations related to impact assessment based on changing construction typology, intensity and area.

(vi) Constitution of Special Planning Authority (SPA)

Section 40 of the Maharashtra Regional & Town Planning Act, 1966 has a provision to appoint and notify a SPA for developing certain notified areas. The some of the powers vested with SPA are following:-

- (a). All planning functions
- (b). All sanction and approval powers
- (c). And the enforcement and regulatory functions

A SPA in June, 2008 by the Government of Maharashtra for an area of 3646.28 ha. spread over 14 villages for M/s LCL. This area is already in possession of M/s LCL. There are still private lands falling within this area for which M/s LCL are still trying to purchase from the locals. The first board meeting of the SPA was held in September, 2008. The Committee consist of ten members with Chief Planner, Lavasa Corporation Limited as the Chairman and Chief Executive Officer of SPA Committee. It is seen that a majority of the members are from M/s Hindustan Construction Company, which is the parent company of M/s LCL. Director, Town Planning of Government of Maharashtra is the only member of the SPA who is a government official. M/s LCL have stated that the SPA has been notified for speedy approvals and flexibility in development. In case of Lavasa specifically, the Chief of their planning section, who is designated as the Chairman & CEO of the SPA, has complete freedom to prepare plans, get the same approved through SPA (being CEO) and also act as a building regulatory agency for all that development.

After establishment of SPA in June, 2008, major construction activities have been undertaken by M/s LCL. The constructions on the banks of the back waters/water body such as Town Centre, Convention Centre, hotel and commercial buildings etc. and quite a few residential buildings are apparently without adequate open spaces, set backs distances, parking spaces etc. Part of these buildings are prima facie located on the 12.36 ha. of land leased from MKVDC and which are in violation of the lease agreement as pointed out in para 17 (f) above. The detailed Master Plan of the proposed project based on

Narayan

detailed ground surveys showing the network of roads, open spaces, amenities, parking areas, slopes, land use etc. could not be shown to the Committee. Even the figures of the area of Phase I are not consistent, and M/s LCL stated that they have kept the planning flexible to suit the commercial demand. With such flexibility in planning - the expected impact on environment will be variable and difficult to predict.

The Committee could not see any documents about the public consultation before taking up such a large project, since the figures of population will vary and since requirements for water supply, sewerage, amenities, solid waste disposal etc. cannot be ascertained due to the piece meal approach adopted in the project, it was very essential that a detailed Master Plan was prepared following due procedures, before undertaking the work.

The creation of SPA and powers vested with the M/s Lavasa Corporation Ltd. leads to a perception of conflict of interest because the promoter is also a regulator and whether any changes / revisions are carried out without following due procedures is not known to the stake holders.

18. Conclusions

The broad contours of this report was discussed in detail with all the members of the inspection team, including the Chairman and members of the SEAC, Maharashtra in the afternoon of 7th January, 2011 and they were in agreement. The following are the consensus conclusions reached by the inspecting Committee.

In the above paras, the Committee has endeavored to bring out the factual matrix in regards to the results of their discussions with State Government officials, representatives of stake holders and M/s LCL, their field observations and their perusal of documents made available. The Committee hopes that their report would be of utility to competent authority in Ministry of Environment & Forests when it passes the final directions in the Lavasa City case.

There were a number of important issues which come to the Committees notice during its inspection and the Committee venture to place its recommendations below for consideration of the Maharashtra Government and MoEF.

- i. A comprehensive EIA should be prepared for whole of any area which is notified by Government of Maharashtra under the Hill Station Development Policy (HSDP). The State Government may also

Nand Dayal

review their Hill Station Development Policy (HSDP) keeping in view the eco-sensitive nature of the Western Ghats.

- ii. A comprehensive Master Plan under HSDP should be prepared covering land use plan, infrastructure plans for water supply, sewage, drainage etc, traffic and transportation plan. This Master Plan should be finalized only after addressing the legitimate concerns of the local population through public hearing as already provided under the MRTTP Act, 1966. No development/ construction work should be undertaken unless all necessary statutory clearances, including prior environmental clearance from Central / State Authorities have been obtained.
- iii. In view of a number of projects already approved under HSDP and some learnt to be in the pipeline, a high level monitoring committee at the state level may be constituted with the experts of different fields as also representatives of the stake holders to monitor the compliance to the environmental issues, rules and regulations as well as environmental mitigation measures, on a regular basis.
- iv. Since SPAs are public authorities, the State Government of Maharashtra may review the provision for constitution of SPA for project like Lavasa and powers vested with it in view of the perceived conflict of interest because the promoter of the project is also acting as the regulator, and take remedial measures.
- v. Maharashtra Government may take a quick review of projects approved or in pipeline under HSDP in light of our report. MoEF may also like to request other State Governments to undertake similar reviews of large township projects and guide Government of Maharashtra etc if so requested.

Acknowledgement

The Committee would like to place on record its appreciation for the arrangements made by the State Government of Maharashtra, specially the Collector, Pune under whose guidance various state departments provided useful information to the Committee in its deliberations. The Committee would also like to thank all the stakeholders who have provided insight into the ground situation. The Committee hopes that the report will be useful for the Ministry for making their final order to the Show Cause Notice.

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मा.जिल्हाधिकारी पुणे यांचे अध्यक्षतेखाली दिनांक ११/१/२०११ रोजी साय.

७० वाजता झालेल्या केंद्रीय पर्यावरण विभागाकडील समितीमार्फत मुळशी

तालुक्यातील लवास कंपनीचे स्थळपहाणीबाबत सभेस उपस्थिती

अ.क्र.	नाव व पदनाम	स्वाक्षरी
१	मा.जिल्हाधिकारी पुणे	
२	अपर जिल्हाधिकारी पुणे	
३	मुख्य कार्यकारी अधिकारी, जिल्हा परिषद पुणे	 4/1/2011
४	पोलीस अधिक्षक पुणे	
५	निवासी उपजिल्हाधिकारी पुणे	
६	वनसंरक्षक, पुणे	
७	सहाय्यक संचालक नगररचना	
८	रजा राखीव उपजिल्हाधिकारी	
९	स्वागत अधिकारी पुणे	
१०	उपविभागीय अधिकारी, मावळ उपविभाग पुणे	
११	प्रादेशिक अधिकारी प्रदूषण नियंत्रण महामंडळ, शेतकी कॉलेज आवार पुणे ५	
१२	कार्यकारी अभियंता एकात्मिक घटक पुणे	
१३	कार्यकारी अभियंता, सार्वजनिक बांधकाम विभाग जिल्हा परिषद	
१४	तहसिलदार मुळशी जि. पुणे	
१५	जिल्हा खनिकर्म अधिकारी पुणे	
१६	अधिसक भूमी अभिलेख पुणे	
१७	उप. अधिसक भूमी अभिलेख मुळशी	
१८	कार्यकारी अभियंता, न. उ. रोजी वि. मं.	
१९	उपसंचालक नगर रचना, पु. को. उ. क.	

P.T.O. →

List of members of the Expert Committees from Central/ State Expert Appraisal Committee

1. Shri Naresh Dayal - Chairman

Members of the Central Expert Committee

2. Dr. Apurba Gupta
3. Dr. S. P. Bansal
4. Shri Bala Subramanyam
5. Dr. R. S. Mahawar

Members of the State Level Expert Appraisal Committee

6. Shri P. M.A Hakeem
7. Dr. G.K. Deshpande
8. Dr. S.B. Chaphekar
9. Shri D.J. Bharti

Officials from Ministry of Environment & Forests

10. Dr. Nalini Bhat
11. Shri Bharat Bhushan