

MUNICIPAL CORPORATION OF GREATER MUMBAI

No:CHE/DP/ 28782 / Gen dtd. 11.1.2018.

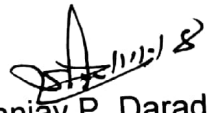
Sub: Processing the notification issued under no. TPS-1816/CR-443/16/DP/Pune & Konkan/ UD-13 dated 28.06.2017 under section 37(1AA)(C) of MR & TP Act 1966 amended upto date in respect of streamlining building plan approvals and environment clearance.

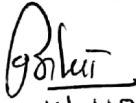
The Environment Cell for the environment clearance is established by MCGM as per Notification no.TPS/ 1816/ CR-443/16/ DP/ Pune & Konkan/ UD-13 dtd.28.06.2017 and accordingly some environment clearance proposals are processed.

In view of the order of National Green Tribunal (NGT) Principal Bench, New Delhi dtd. 08.12.2017, the opinion from Law Officer was requested vide this Office letter no. CHE/DP/26283/Gen dtd.19.12.2017 in respect of processing the environment clearance proposals by MCGM.

Law Officer vide no. LCT/14140 dtd.11.01.2018 has now offered their opinion which are enclosed herewith. You are now requested to take cognizance of the said notification while approving building proposals.

Dy.Ch.E.(BP)City/ES/ WS I/ WS II/ Spl.Cell


(Sanjay P. Darade)
Ch.E.(DP)


11/1/18
EE (P) ES

BRIHANMUMBAI MAHANAGARPALIKA

LEGAL DEPARTMENT

Dated – January 10, 2017.

Sub :- Processing the notification issued under No. TPS-1816/CR-43/16/DP/Pune & Konkan/UD-13 dated 28/06/2017 under section 37(1AA)(C) of M.R. & T.p. Act, 1966 amended upto date in respect of streamlining building plan approvals and environment clearance.

Ref :- CHE/DP/26283/Gen dated 19/12/2017.

Reference is requested to the note of Chief Engineer (D.P.) under No. CHE/DP/26283/Gen dated 19/12/2017. By the said note, Law Officer's remarks are requested on

- 1) Whether to process further Environmental Clearance proposals as per GOM notification dated 28.06.2017
- 2) Whether to allow to continue the development having total construction area from 5,000 sq. mt. and less than 20,000.00 sq.mt. without insisting MoEF clearance as per the earlier notification dated 14.09.2006 issued by GOI.
- 3) If the GOI notification dt.9.12.2016 is considered quashed, whether to process all further env.clearance proposals as per ~~MOEF notification dt.14.09.2006 which was in force prior to~~ notification dt.9.12.2016.
- 4) Whether the Building Proposals based on the Environmental Clearance granted so far by MCGM as per notification dated 28.06.2017 can be processed further for it's remaining approvals under DCR
- 5) Whether the Environmental Clearance proposals already received by MCGM can be processed for approval by obtaining recommendations from Env.Ceil members as per notification dated 28.06.2017, until suitable directions are received either from MOEF&CC or from GOM to keep the implementation of their respective notifications in abeyance
- 6) Whether the new proposal for Environmental Clearance shall be accepted and processed as per notification dated 28.06.2017, until suitable directions are received from MOEF&CC or from GOM to keep the implementation of their respective notifications in abeyance.



It is stated in the said note that the MoEF & Climate Change, GOI has sanctioned the amendments for incorporating Integration of Environmental conditions in the Building Bye-laws vide Notification No. S.O. 3999 E dated 09/12/2016.

It is further stated that the said Notification incorporates the green norms/parameters to be adopted for all buildings and constructions having built up area from 5000.00 sq.mtrs to 1,50,000.00 sq.mtrs., in the Development Control Regulations (DCR) and also directs the State Government and local planning authorities to constitute an Environmental Cell within their jurisdiction for implementation of the Notification and for compliance and monitoring of said norms/parameters.

It is further stated that MoEF & Climate Change,GOI, vide their office memorandum NO. 19-159/2014-IA/III dated 15/03/2017 has concurred with the State Government to adopt the said Environmental norms in the DCR.

It is further stated that Urban Development Department, Government of Maharashtra has issued Notification under No. TPS-1816/CR-443/16/DP Pune & Konkan/UD-13 dated 28/06/2017 under section 37(1AA)(C) of M.R. & T.P Act, 1966 for integration of Environmental norms/conditions in DCR.

It is further stated that accordingly, the Environmental Cell (E.C.) of 6 members (3 Internal + 3 External) is formed at MCGM level.

It is further stated in the said note that as on today total 32 proposals for Environmental clearance have been received and forwarded to E.C. members for their recommendations and most of them are recommended by them. The Environmental Clearance as stipulated in the Notification is already issued in 6 proposals by MCGM as per recommendations of the EC and further Environmental Clearance for about 9 additional proposals are on the verge of issue by MCGM as the recommendations from EC in these cases are also received. The balance 18 proposals are submitted and are awaiting appraisal/recommendations from the EC.

It is further stated that the above said Notification dated 28/06/2017 issued by Urban Development Department, Government of Maharashtra is on the basis of MoEF Notification No. SO/3999(E) dated 19/12/2016.

It is further stated that earlier, the MoEF clearance were being granted as per the MoEF Notification No. S.O./1533(E) dated



14/09/2006 by Government of India, for projects over 20,000.00 sq.mtr. Construction area.

It is further stated that on 08/12/2017, National Green Tribunal (NGT) Principal Bench, New Delhi in regards to the various applications mentioned in the subject matter has pronounced certain order/directions, as below :-

- (1) We hold and declare that this Tribunal has jurisdiction to examine the legality, validity and correctness of a Notification issued by the competent forum in exercise of its power of subordinate legislation with regard to acts stated in Schedule- I to the National Green Tribunal Act, 2010.
- (2) We hold and declare that (I) clause 14(8), (ii) the provisions relating to Consent to Operate and Consent to Establish under Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 in clause 14 of the impugned Notification, (iii) Appendix-XVI relating to constitution and functioning of Environmental Cell, cannot be sustained and are liable to be quashed for the reasons afore-stated. Thus, we direct MoEF & CC to re-examine its Notification dated 9th December 2016 and take appropriate steps to delete, amend and rectify the clauses of the said Notification in light of this judgement.
- (3) As a result of the above, the bye-laws amended by the DDA vide its Notification dated 22nd March, 2016 can also not be given effect to, unless the Notification dated 9th December 2016 is amended in terms of this judgement.
- (4) Till the time the Ministry comply with the above directions and notify the amended provisions of Regulations of 2006, it will not implement the impugned Notifications. However, once the amended regulations are notified, MoEF & CC / SEIAA / Local Authorities can give effect to that, without any further reference to the Tribunal.
- (5) MoEF & CC shall, particularly take care that the laudable social cause of 'providing Housing to the poor' does not get defeated by business, economic profitability with reference to 'ease of doing business', while particularly protecting the environment.

It is further stated that certain clauses (as referred in item 2 above) of GOI notification dated 09.12.2016 are found unsustainable by NGT and in their opinion the said clauses stand liable to be quashed for reasons explained in the judgment. Accordingly NGT has directed MoEF to re-examine its notification dated 09.12.2016 and to take



appropriate steps to delete, amend, rectify the clauses of said notification. It is further stated that as per above said direction at sr. no. 4 till the time Ministry comply with the NGT directions and notify the amended provisions of regulations of 2006, it will not implement the impugned Notification dated 09.12.2016.

It is further stated that the further implementation of the notification dtd 09.12.2016 issued by GOI and thereby the notification issued by Govt of Maharashtra dated 28.06.2017 is to be kept in abeyance until the same is reviewed and the amended notification is published by MOEF& CC. Accordingly, the functioning of the Environmental Cell will need to be kept in abeyance and further Environmental Clearance cannot be processed by MCGM till the necessary amendments are made in GOI notification dated 09.12.2016 by MoEF & CC and until the GOM notification dated 28.06.2017 is also accordingly suitably amended thereafter.

It is further stated that earlier, the MoEF clearance was processed at state and central Govt. level as per notification dtd 14.09.2006, for the total construction area equal to 20,000 sq. mt. and more. The GOI has issued notification dated 09.12.2016 with amendments to the earlier notification dtd 14.09.2006 as such it is felt that the proposals for Environmental Clearance for total construction area less than 20,000 sq. mt. also can not be processed at MCGM level.

It is further stated with reference to (i) the Environmental Clearance issued by MCGM in 4 cases so far, (ii) the recommendations already received from the environmental cell in 11 additional cases and (iii) the proposals received by MCGM to-date for Environmental Clearance as per GOM Notification dated 28/06/2017, it is understood that since the impugned Notification of MOEF & CC is not set aside by NGT nor has the NGT quashed to set aside the relevant clauses pertaining to the EC & its functioning in its afore-stated order, the permissions so far granted by MCGM therefore felt to be remained valid and that to be considered as valid clearance for processing of said proposals for further approvals under DCR and further that MCGM can also go ahead and issue Environmental Clearance to those additional 9 cases which have already been recommended to MCGM by the EC to date and further that MCGM can also process the balance applications received by them so far as per Notification of GOM dated 28/08/2017



for grant of Environment clearance based on recommendations of the EC in those cases.

It is further stated that there is no specific orders received from the MoEF & CC(GOI) or Environment Department(GOM), NGT in the order has also not given any retrospective effect and the Environment Clearance granted by MCGM are felt legal at that point of view.

Perused the note at pgs N/1 to N/5 and complete file papers at pgs. C/1 to C/152.

On perusal of the complete file papers especially the order passed by the National Green Tribunal, Principal Bench, New Delhi and the various Notifications/Gazettes dated 8th December 2017, the undersigned's pointwise opinion is as follows :-

1. Whether to process further Environmental Clearance proposals as per GOM Notification dtd 28.06.2017.

Answer :- No.

2. Whether to allow to continue the development having total construction area from 5,000 sq. mtr. and less than 20,000.00 sq.mtr. without insisting MoEF clearance as per the earlier Notification dtd 14.09.2006 issued by GOI.

Answer :- No.

3. If the GOI Notification dated 9.12.2016 is considered quashed, whether to process all further env.clearance proposals as per MOEF notification dt.14.09.2006 which was in force prior to Notification dt.9.12.2016.

Answer :- No.

4. Whether the Building Proposals based on the Environmental Clearance granted so far by MCGM as per notification dated 28.06.2017 can be processed further for it's remaining approvals under DCR.

Answer :- Any Building proposals sanctioned prior to the judgement dated 8th December 2017 on the basis of environmental clearance given by M.C.G.M. can be considered and continued. The clearance of the MoEF should also be prior to the date of judgement, i.e., 8th December 2017.

5. Whether the Environmental Clearance proposals already received by MCGM can be processed for approval by obtaining recommendations from Env.Cell members as per notification dated 28.06.2017, until



suitable directions are received either from MOEF&CC or from GOM to keep the implementation of their respective notifications in abeyance.

Answer :- No.

6. Whether the new proposal for Environmental Clearance shall be accepted and processed as per notification dated 28.06.2017, until suitable directions are received from MoEF&CC or from GOM to keep the implementation of their respective notifications in abeyance.

Answer :- No.

File papers received under No. LCT/14140 dated 19th December 2017 are returned herewith.

LCT/14140
17.10.18
(Sushama Phulsunge)
(Sushama Phulsunge)
Dy. Law Officer(Criminal)
(Sanjay P. Darade)
Chief Engineer(D.P.)

(Jernold Xavier)
(Jernold Xavier)
Law Officer.

बृहन्मुंबई महानगर पालिका			
प्रमुख अभियंता (विकास नियोजन)			
यांचे कार्यालय			
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