

	<p>Item No. 39</p> <p>September 24, 2018</p> <p>PU & DV</p>	<p>habitat for such animals.</p> <p>(ii) The Environmental Impact Assessment (EIA) for the project had been carried out without determining its effects on the local environment, humans and the wildlife in the region as well as the neighbouring States of Rajasthan and Delhi.</p> <p>(iii) The EIA was conducted in violation of Office Memorandum dated 02.12.2009 issued by the Ministry of Environment, Forest and Climate Change which provides that proposal for environment clearance will not be linked with the clearance from the forestry and wildlife angle even if it involves forest land and/or wildlife habitat as these clearances are independent of each other and, in any case, requires to be obtained being applicable to such projects before starting any activity at site. No such clearance was sought for before the Environmental Clearances was obtained from the Ministry of Environment, Forest and Climate Change.</p> <p>(iv) Despite the fact that reconnaissance report submitted by the Wildlife Institute of India to the Ministry of Environment, Forest and Climate Change, Government of India, in 2013 stipulated that there should be no ancillary development of the Nuclear Power Plant in the area identified for the project and that the present land use should be retained being an integral part of the black buck habitat, a deer park has been proposed in the Environment Impact Assessment (EIA) report in the village Badopal in an area of 40-50 acres of</p>
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	<p>Item No. 39</p> <p>September 24, 2018</p> <p>PU & DV</p>	<p>land.</p> <p>(v) While granting the Environmental Clearance, the Ministry had overlooked the fact that it was subject to clearance from the wildlife angle and that the State Government of Harayana was to prepare a Conservation Plan of the township area in absence of which no construction activity was permitted.</p> <p>(vi) Notice for Public Hearing issued by the Haryana State Pollution Control Board was in English language and not in Hindi thereby depriving the local people of knowing the actual content of the notice. The EIA Report misrepresented the number of people who had attended the Public Hearing as being only 102 when actually there were 5000 to 7000 people who were strongly protested against the project. No Public Hearing was actually held.</p> <p>(vii) Work on the project taken up in January 2014 even before the Atomic Energy Regulatory Board (AERB) had granted clearance. Requirement of developing a 'Green Belt' of 35% of the area around the project boundary was harmful for the Black Bucks as dense vegetation do not form its habitation.</p> <p>(viii) The AERB which was to examine the project for grant of Siting Consent is not an independent statutory body but is subordinate agency of the Government and, therefore, cannot set or enforce rules for radiation and nuclear safety.</p> <p>2. Founded on the above, the appellant has sought for</p>
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<p>Item No. 39</p> <p>September 24, 2018</p> <p>PU & DV</p>	<p>the following reliefs:</p> <ul style="list-style-type: none"> A. <i>Set aside the Environmental Clearance dated 27.12.2013 as given by the Respondent o. 1.</i> B. <i>Set aside the EIA Report prepared by MECON Limited which is not qualified/ eligible and have no authority to do so.</i> C. <i>Appoint an internationally recognized agency for purpose of carrying out a survey of the region and take a census of the existing scheduled animals and submit its report to the Hon'ble Tribunal.</i> D. <i>Direct the Respondents to take suitable measures for protection of the wild life in the region and for which declare the region as Wild Life Sanctuary or National Park.</i> E. <i>Restrain the respondents from using the water from Bhakra Dam for nuclear Power Generation in violation of the Interstate Water agreement between the Punjab, Haryana and Rajasthan.</i> F. <i>Direct the National Biodiversity Authority to constitute and Expert Committee to determine Agro-biodiversity of the region and impact of the nuclear hazardous waste, radioactive emissions/increase in temperature upto 7 C in the water to be discharged from the Nuclear Power Plant.</i> G. <i>Direct the National Biodiversity Authority to have bio-survey of the area and its sustainable use of biological diversity keeping in view the precautionary principle, public Trust doctrine and Inter-generational principles for the present and future generation.</i> H. <i>Pass such other orders and further orders as may be necessary on the facts and it the circumstances of the case."</i> <p>3. In the counter affidavits filed by the respondents, all contentions raised by the appellant have been denied. The respondent no. 1, Ministry of Environment, Forests and Climate Change (MoEF&CC) has stated that the proposal for Environmental Clearance had been considered by the Expert Appraisal Committee (EAC) which comprises of eminent experts on the subject after examining the project documents, additional clarifications furnished in response to its various observations and representations received on the project and only thereafter recommended grant of</p>
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	<p>Item No. 39</p> <p>September 24, 2018</p> <p>PU & DV</p>	<p>Environmental Clearance for the project. The Office Memorandum dated 02.12.2009 issued by the MoEF&CC has clarified that proposals for Environmental Clearance will not be linked with the clearance from wildlife angle being independent of each other and would be necessary to be obtained before starting any activity at site. The impugned Environmental Clearance was granted by the MoEF&CC after consideration of the recommendations of the EIA which is subject to strict compliance of the provisions of EIA Notification, 2006 and the general and special conditions imposed on respondent no. 5 in the impugned Environmental Clearance (EC). Special conditions contained in the impugned EC cover all aspects requiring prevention and mitigation measures in respect of the project which include obtaining clearance from the wildlife angle due to location of Schedule-II species of the animals in close vicinity of the project area. It also envisages preparation of Conservation Plan of the township site in consultation with all stakeholders, AERB clearance, regular monitoring of conventional gaseous pollutants, radioactive pollutants in the air as well as in the discharge water as per the AERB standards, etc. The respondent MOEF & CC further contends that it is entitled to revoke the impugned EC if the conditions stipulated therein are not complied with to the satisfaction of the Ministry or are violated in any manner by the project proponent. The Ministry is also vested with the right to impose additional conditions or modify the existing ones, if necessary.</p> <p>4. Contrary to the contention otherwise, the appellant was called in the 19th Meeting of the EAC dated</p>
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	<p>Item No. 39</p> <p>September 24, 2018</p> <p>PU & DV</p>	<p>detail by the experts with special reference to the Environment Management Plan (EMP). The report also deals with additional studies covering public consultation and the social impact assessment on the public at large in the surrounding area of the proposed NPP, etc.</p> <p>9. The draft EIA Report was considered in accordance with the procedure laid down in the EIA Notification, 2006 and after it was discussed in detail by the Experts, it was reviewed, assessed, evaluated and re-evaluated by the EAC consisting of 16 Experts in different areas of expertise. The issues were considered by the EAC in its 8th, 9th, 14th, 15th and 16th meetings held on different dates between 15.06.2010 and 19.11.2013 based upon which the Environmental Clearance was granted after consideration of all relevant factors. The people had actively participated in the public consultation process which would be borne out by the videography and the question and answer sessions held between the public and the representatives of respondent no. 5. The EAC Members had also visited the project site and held meetings with representatives of respondent no. 5.</p> <p>10. It is thus stated that the Environmental Clearance had been granted based on the in-depth review of the comprehensive EIA Report, other supporting documents and the site visit by the EAC. On the issue relating to wildlife clearance, it is stated that such clearance cannot be linked with the Environmental Clearance in terms of the Notification dated 02.12.2009 which stipulates that Environmental Clearance will not be linked with this clearance from the forestry and wildlife angle even if it involves forest land and/or wildlife habitat and further</p>
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<p>Item No. 39</p> <p>September 24, 2018</p> <p>PU & DV</p>	<p>both the issues will have to be dealt with separately and independently. It is contended that the appellant has misconstrued the contents of the EIA Report. The Wildlife Institute of India in its Reconnaissance Report also has opined that the project site is not suitable as Blackbucks habitat for various reasons including the absence of xylophatic highlands essential for lekking and breeding of the blackbucks. It is asserted that there is no National Park/Wildlife Sanctuary within 10 km of the site and, therefore, application for clearance from wildlife angle from the Standing Committee of the National Board of Wildlife is not warranted.</p> <p>11. In so far as the availability of the water for cooling is concerned, it is stated that the Chief Engineer, BWS irrigation department, Panchkula, Haryana, by his letter dated 23.01.2006 suggested that the canal water can be made available through Sirsa Branch by remodelling of Kacha Lake which has been approved by the Government of Haryana. The Respondent No.5 has taken up the matter with the Central Water Commission (CWC) seeking its concurrence on the proposal by letter dated 03.10.2011 and consequential thereto the CWC conveyed its “No Objection” for use of 320 cusecs of water by the plant subject to the compliance of the conditions laid down by the Bhakra Beas Management Board (BBMB), Chandigarh.</p> <p>12. The appellant in his rejoinders has not been able to controvert any of the factual aspects put forth by Respondents No. 1 and 5 in their affidavits in reply to the contentions raised in the appeal.</p> <p>13. We have heard the learned Counsel for the parties</p>
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	<p>Item No. 39</p> <p>September 24, 2018</p> <p>PU & DV</p>	<p>report as a measure for protection of the wildlife species but will be reconsidered if advised not to establish such a park. It also appears that in terms of point 6 (a)-ii of the impugned Environmental Clearance, a Conservation Plan is required to be prepared by the forest and wild life department, Government of Haryana, for implementation. It is categorically stated by the Respondent No.5 that it shall relocate the colony if the Conservation Plan requires to do so.</p> <p>15. M/s Macon Limited, Ranchi, whose credibility has been questioned by the appellant firstly, on the ground that it is not manned by experts and secondly, that the NABET accreditation scheme is yet to grant accreditation to it, in our considered opinion, does not appear to suffer from the vice of incompetence. In the first instance the EIA studies were carried out by the company following all stipulations prescribed in the EIA notification, 2006 and secondly, even though Ministry of Environment, Forest and Climate Change OM dated 02.12.2009 prescribes that the consultation would be confined only to the accredited sectors and parameters for bringing in more specificity in the EIA document, M/s Macon Limited was accredited as EIA consultant for conventional sector and for 16 EIA sectors. Furthermore, despite the restriction imposed by the said OM of the Ministry of Environment, Forest and Climate Change, the requirements for accreditation for the nuclear sectors was decided and put up on the website of the Quality Council of India only in December, 2014. During this period the application of M/s Macon Limited filed in the year 2011 and of the other consultants were kept pending as the criteria for</p>
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