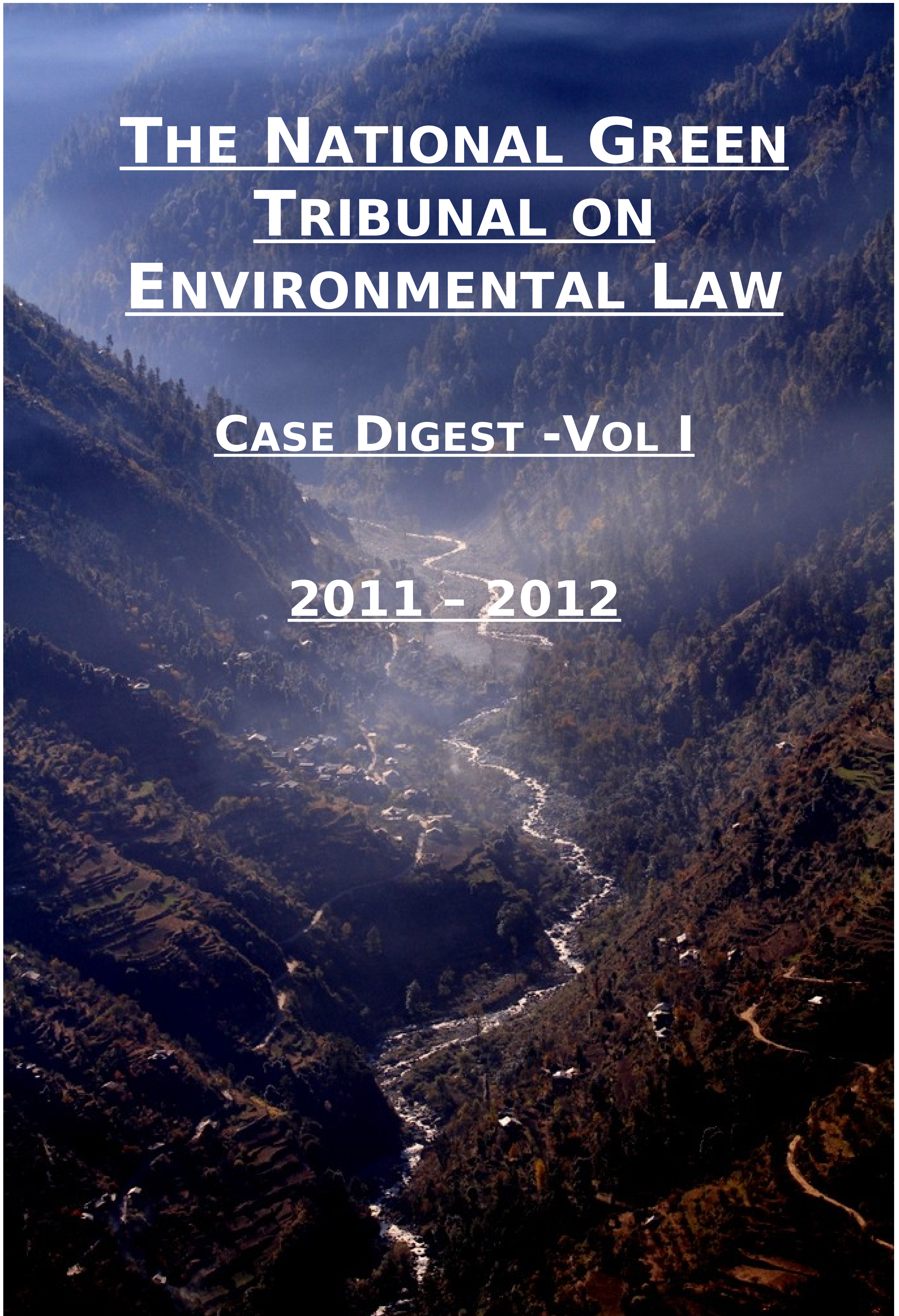

The National Green Tribunal on Environmental Law

Case Digest -Vol I

2011 – 2012

Table of Cases:

Deepak Kumar Rai v.M/s Prabhu Nath Rai Eent Bhatta Udyog Ltd. & Ors....13

Date: 7th July 2011....13

Prafulla Samantra v. Ministry of Environment and Forests & Ors. 14

Date: 28th July 2011....14

Gayatri Pragyna Mandal Beltrara v. Ministry of Environment and Forests & Ors....14

Mahendra Pandey v. State Environment Impact Assessment Authority & Ors....15

Date: 18th August 2011....15

The Sarpanch, Gram Panchayat, Tiroda & Ors. v. Ministry of Environment and Forests & Ors....16

Date: 12th September, 2011....16

M/s Nagarjuna Construction Company Ltd. & Ors. v. T. Mohan Rao & Ors....18

Date: 19th September, 2011....18

Krishi Vigyan Arogya Sanstha v. The Ministry of Environment and Forests & Ors....20

Date: 20th September, 2011....20

Kamlesh Singh v. Regional Officer and Ors....23

Date: 29th September, 2011....23

Gram Panchayat, Totu (Majthai) & Ors. v. State of Himachal Pradesh & Ors....24

Date: 11th October, 2011....24

Raagam Exports v. Tamil Nadu Pollution Control Board & Another 26

Date: 11th October, 2011....26

Bhawani Shankar Thapliyal v. Union of India....29

Date: 13th October, 2011....29

Balachandra Bhikaji Nalwade v. Ministry of Environment & Forests 30

Date: 29th November, 2011....30

Adivasi Majdoor Kisan Ekta Sangthan & Anr. v. Ministry of Environment and Forests & Ors....32

Date: 30th November, 2011..32
Bhagat Singh Kinnar v. Ministry of Environment and Forests & Ors. 33
Date: 1st December, 2011..34
Devi Gyan Negi v. Ministry of Environment and Forests & Ors....34
Date: 1st December, 2011..35
Vimal Bhai & Ors. v. Ministry of Environment and Forests & Ors..36
Date: 14th December, 2011..36
Jaya Prakash Dabral v. Union of India, & Ors...............................39
Date: 14th December, 2011..39
M/s Athiappa Chemicals Pvt. Ltd. v. Puducherry Pollution Control Committee, Government of Pondicherry & Ors............................41
Date: 14th December, 2011..41
M/s. Blooming Colours v. Tamil Nadu Pollution Control Board & Ors..42
Date: 15th December, 2011..42
Paryavarana Sanrakshan Sangarsh Samiti, Lippa v. Union of India & Ors..43
Date: 15th December, 2011..43
Hussain Saleh Mahmad Usman Bhai Kara v. Union of India & Ors. 46
Date: 10th January, 2012..46
Baijnath Prajapati v. Ministry of Environment and Forests & Ors. 47
Date: 20th January, 2012..48
Shri Govind Singh Pangtey v. Ministry of Environment and Forests & Ors..48
Date: 20th January, 2012..48
Satish Umesh Prabhu v. M/s Matoshree Infrastructure Pvt. Ltd....49
Date: 24th January, 2012..49
Suresh Banjan v. State of Maharashtra & Ors...........................50
Date: 31st January, 2012..50
M/s Baba Bricks Field v. U.P. Pollution Control Board...................52
Date: 2nd February, 2012..52

Sri Lakshmi Minerals v. Tamil Nadu Pollution Control Board & Ors. 54

Date: 8th February, 2012......54

Vimal Bhai v. Ministry of Environment and Forests & Ors......55

Date: 14th December, 2011......55

Husain Saleh Mahmad Usman Bhai Kara v. Gujarat State Level Environment Impact Assessment Authority & Ors......57

Date: 8th February, 2012......57

Jan Chetna v. Ministry of Environment and Forests & Ors......59

Date: 9th February, 2012......59

P. Manokaran Power Loom v. Tamil Nadu Pollution Control Board & Ors......61

Date: 15th February, 2012......62

N. Chellamuthu v. The District Collector & Ors......62

Date: 24th February, 2012......63

V. Srinivasan v. Tamil Nadu State Level Environment Impact Assessment Authority & Ors......64

Date: 24th February, 2012......64

Nanthivaram Radha Nagar Residential Welfare Association v. Tamil Nadu Pollution Control Board & Ors......65

Date: 24th February, 2012......65

I. P. Bhaskar v. The District Collector Kancheepuram District & Ors. 66

Date: 24th February, 2012......66

M/s Balaji Minerals v. Tamil Nadu Pollution Control Board & Ors..67

Date: 28th February, 2012......67

Maharaja Minerals v. Tamil Nadu Pollution Control Board & Ors.. 68

Date: 28th February, 2012......69

M/s Amman Plastics v. Tamil Nadu Pollution Control Board & Ors. 69

Date: 28th February, 2012......70

Mahameghabahan Aira Kharable Sawin v. Ministry of Environment and Forests & Ors......70

Date: 28th February, 2012......70

Utkal Bikas Yuva Parishad v. Ministry of Environment and Forests & Ors.....71

Date: 28th February, 2012.....71

Janajagrithi Samithi (Regd.) v. Union of India & Ors.....74

Date: 7th March, 2012.....74

Real Gem Ors. v. State of Maharashtra.....75

Date: 15th March, 2012.....76

Hindustan Coca Cola Beverages Pvt. Ltd. v. West Bengal Pollution Control Board & Ors.....76

Date: 19th March, 2012.....76

Jeet Singh Kanwar v. Ministry Of Environment and Forests & Ors. 79

Date: 22nd March, 2012.....79

KIOCL Ltd. v. Union of India & Ors.....79

Date: 23rd March, 2012.....80

K. G. Mathew v. State of Kerala & Ors.....81

Date: 26th March, 2012.....81

A.S. Mani v. State Level Environment Impact Assessment Authority, Tamil Nadu.....82

Date: 27th March, 2012.....82

Janajagrithi Samiti v. Union of India & Ors.....83

Date: 27th March, 2012.....83

Suresh Banjan v. State of Maharashtra & Ors.....84

Date: 27th March, 2012.....84

Ramana Industries v. Tamil Nadu Pollution Control Board & Ors. 85

Date: 29th March, 2012.....85

Prafulla Samantray v. Union of India & Ors.....86

Date: 30th March, 2012.....86

M/s Om Shakthi Engineering Works v. The Chairman, Tamil Nadu Pollution Control Board.....89

Date: 10th April, 2012.....89

Mayur Karsanbhai Parmar v. Union of India & Ors.....90

Date: 20th April, 2012.....90

Mayur Karsanbhai Parmar v. Union of India & Ors.....92

Date: 20th April, 2012...92

Adivasi Majdoor Kisan Ekta Sangthan & Anr. v. Ministry of Environment and Forests...94

Date: 30th November, 2011...94

Thervoy Gramam Munnetra Nala Sangam v. Union of India Ministry & Ors...95

Date: 26th April, 2012...96

Consumer Federation Tamil Nadu v. Ministry of Environment and Forests, Union of India & Ors...98

Date: 30th April, 2012...98

Nirma Ltd. v. Ministry of Environment and Forests & Ors............99

Date: 1st May, 2012...100

Husain Saleh Mahmad Usman Bhai Kara v. M/s. OPG Power Gujarat Private Limited...102

Date: 10th May, 2012...102

T. Mohana Rao v. Ministry of Environment and Forests & Ors....104

Date: 23rd May, 2012...105

T. Murugandam v. Ministry of Environment and Forests & Ors.. 108

Date: 23rd May, 2012...108

Dyaneshwar Vishnu Shedge v. Ministry of Environment & Forests 111

Date: 24th May, 2012...112

Janahit Seva Samiti v. Ministry of Environment & Forests..........113

Date: 24th May, 2012...113

Madheshwaran G. v. M/s Chemplast Sanmar Pvt. Ltd................114

Date: 30th May, 2012...114

Ossie Fernandes Coastal Action Network v. Ministry of Environment and Forests & Ors...115

Date: 30th May, 2012...115

Ossie Fernandes Coastal Action Network v. Ministry of Environment and Forest & Ors...118

Date: 30th May, 2012...118

Ramesh Agrawal v. Member Secretary, State level Environment Impact Assessment Authority...119

Date: 31st May, 2012...119

Verinder Singh v. Land Acquisition Collector-Cum- DRO, Haryana 122

Date: 13th July, 2012..122

Swami Gyan Swarup Sanand & Ors. v. Union of India & Ors......122

Date: 17th July, 2012..122

Vinod R. Patel v. Gujarat State Level Impact Assessment Authority & Ors..125

Date: 18th December, 2012..126

Antarsingh Patel v. Union of India & Ors......................................130

Date: 9th August, 2012..130

IL & FS Tamil Nadu Power Company Ltd. v. Ministry of Environment and Forests & Ors..132

Date: 9th August, 2012..132

Rana Sen Gupta v. Union of India & Ors......................................133

Date: 24th August, 2012..133

Rudresh Naik v. State of Goa & Ors...135

Date: 27th August, 2012..135

K. Karthi v. Tamil Nadu Pollution Control Board & Ors...............136

Date: 28th August, 2012..137

M/s Diana Infrastructure Ltd. v. State Level Environment Impact Assessment Authority, Maharashtra & Anr...................................138

Date: 29th August, 2012..138

Jesurethinam & Ors. v. Ministry of Environment and Forests & Ors. 139

Date: 30th August, 2012..139

Intech Pharma Pvt. Ltd. v. Goa Pollution Control Board.............140

Date: 4th September, 2012..140

M/s Siddartha Enterprises v. The NCT of Delhi & Ors.................142

Date: 4th September, 2012..143

Dileep Namdeo Dherange & Ors. v. Ministry of Environment and Forests & Ors..144

Date: 5th September, 2012..145

Mr. Joseph Coutinho v. Goa State Pollution Control Board..........147

Date: 6th September 2012...147

Rohit Choudhary v. Union of India & Ors.................................149

Date: 7th September, 2012..150

Golden Seam Textiles Pvt. Ltd. v. Karnataka Pollution Control Board..153

Date: 18th September, 2012..153

Union of India v. Goa Foundation & Ors...................................155

Date: 20th September, 2012..155

Girdhars International Pvt. Ltd. v. Delhi Pollution Control Committee..156

Date: 20th September, 2012..156

Husain Saleh Mahmad Usman Bhai Kara v. Gujarat Environment Impact Assessment Authority & Ors...157

Date: 26th September, 2012..157

Real Gem Buildtech Pvt. Ltd. v. State of Maharashtra................159

Date: 3rd October, 2012..159

Kshitija Infrastructure Pvt. Ltd. & Anr. v. Union of India & Ors....160

Date: 3rd October, 2012..160

M/s Hindalco Industries Ltd. v. Union of India & Ors...................162

Date: 17th October, 2012..162

M/s Hubtown Limited & Anr. (Mount Mary) v. Ministry of Environment and Forests & Ors..163

Date: 17th October, 2012..163

M/s OPG Power Gujrat Private Ltd. & Ors. v. Husain Saleh Mahmad Usman Bhai Kara & Ors..166

Date: 18th October, 2012..167

Husain Saleh Mahmad Usman Bhai Kara v. Union of India & Ors. 168

Date: 18th October, 2012..168

Vimal Bhai & Ors. v. Union of India & Ors.................................169

Date: 7th November, 2012..169

Shri S. K. Naik v. Jain Steel and Power Ltd. & Ors.......................172

Date: 22nd November, 2012..172

M/s Kuber Roller Flour Mills v. Rohit Chaudhary & Ors...............174

Date: 23rd November, 2012..174

M/s Pradip Industries v. Rohit Chaudhary & Ors..........................176
Date: 23rd November 2012..177
Save Mon Region Federation & Anr. v. Union of India & Ors......179
Date: 23rd November 2012..179
Uttam Bhisso Shetgaonkar v. Goa Coastal Zone Management Authority...179
Date: 27th November 2012..179
Shailesh Narvekar & Ors. v. Ministry of Environment and Forest & Ors...180
Date: 5th December 2012..180
Vinod R. Patel v. Gujarat State Level Impact Assessment Authority & Ors...184
Date: 9th August, 2012...184
Sajal Kumar & Anr. v. Union of India & Ors................................185
Date: 18th December 2012..185
Ankur v. Maharashtra State Environment Impact Assessment Authority...187
Date: 18th December 2012..187
Rudresh Naik v. State of Goa & Anr..189
Date: 18th December 2012..189
Supreme Court Group Housing Society & Anr. v. All India Panchayat Parishad & Ors...191
Date: 18th December 2012..191

National Green Tribunal

The National Green Tribunal Act (the Act) came into force on 18 October, 2010 paving the way for the institution of the National Green Tribunal in Delhi. The mandate of the Act is to provide for the establishment of the NGT for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto. The NGT has now established benches in different parts of the country, specifically - Delhi, Bhopal, Pune, Chennai and Kolkata. The National Green Tribunal at New Delhi seats the Principal Bench headed by the Chairperson, Justice Swatanter Kumar.

The Tribunal, which has been operational for more than four years, provides access to justice on matters concerning the environment and its mandate is much wider than the previously existing authorities like the National Environmental Tribunal and the National Environment Appellate Authority. Significant principles like sustainable development, polluter pays, public trust doctrine, precautionary principle and intergenerational equity are entrenched in the legislation of NGT and its jurisdiction extends to any *"substantial questions related to environment which affects the community at large"* and where the impacts are broadly measurable. Issues related to the Air (Prevention and Control of Pollution) Act, 1981; Water (Prevention and Control of Pollution) Act, 1974; Forest (Conservation) Act, 1980; the Environment (Protection) Act, 1986 and the Environment Impact Assessment Notification 2006 as well as the Biological Diversity Act 2002 come within its purview. The Tribunal will also have the power to award compensation as well as costs for restoration of the ecology. For example, in the *Kaziranga case*[1]*,* an application was filed in the NGT against the unregulated quarrying and mining activities being carried on in and around the area of Kaziranga National Park. Justice Naidu indicated in his judgment, that the Assam Government and the MoEF have been callous and indifferent to the threats regarding the environment and thus, along with directing such operations to shut down immediately, the Tribunal also directed the State Government and MoEF to deposit a sum of Rs. 1 Lakh each to be utilized for the conservation of the flora and fauna, in and around the Kaziranga National Park.

[1] *See* Rohit Choudhary v. Union of India and Others*, Application No. 38/2011*

The Tribunal is a specialized body equipped with the necessary expertise to handle environmental disputes involving multi-disciplinary issues.[2] However, achieving the delicate balance between conservation and development can be a long and difficult process. There are no easy solutions, and compromise and difficult choices are perhaps inevitable, such as in the case of Lavasa[3] and POSCO.[4] In the past few years, it has become a common occurrence for local communities to resist the setting up of power plants that are likely to cause degradation of their basic subsistence rights through violent protests. For example, the *Sompeta* case[5] was heard and decided by the NGT, in which M/s Nagarjuna Construction Company Limited proposed to set-up a Coal Based Thermal Power Plant at Golagandi and Baruva villages, appurtenant to Sompeta Mandal in Srikakulam District of Andhra Pradesh. The main contention in this case was that the site for this project is an internationally recognized 'wetland'. The Tribunal decided against the setting up of this thermal power plant. Thus, conservation and development that compromises the long-term needs, capacities and desires of communities for short term gain cannot provide sustainable solutions to the complex challenges that the nation faces. It is the mission of the Judges and the Expert Members of the National Green Tribunal to maintain this precarious balance between the environment and anthropocentric development.

According to a data survey conducted by CEL[6], WWF-India, the maximum number of matters in the National Green Tribunal comprised matters on faulty Environmental Impact Assessment (EIA).[7] In Adivasi Majdoor Kisan Ekta Sangathan and Anr. v. MoEF,[8] the NGT criticised the process of public hearing conducted as a part of the EIA process, and observed,

"In the case on hand, after viewing the CD of the public hearing conducted on 5.1.2008, we are surprised to note to our dismay that the same was a "farce". It was a mockery of the public hearing and

[2] See www.greentribunal.gov.in
[3] Dyaneshwar Vishnu Shedge v. Union of India and Others; Appeal No. 9/2012.
[4] Praffula Samantra v. Union of India and Others; Appeal No. 8/2011.
[5] Appeals No. 1 to 6 of 2010.
[6]Categorisation of cases filed in the National Green Tribunal, available at http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/
[7] EIA is the process by which the potential impact (adverse or favourable) of a developmental activity, on the environment, can be determined. The process is an application based on self-assessment by the project proponent and a detailed analysis by the reviewing authorities appointed at the central and state level.
[8] Adivasi Majdoor Kisan Ekta Sangathan and Anr.v. MoEF; M.A. No. 36 of 2011 (Arising out of Appeal No. 3 of 2011).

the procedure required to be followed thereof. All the norms required in conducting a smooth and fair procedure was given a go by...

...The persons who supported the project all appeared to have been brought and prompted by the proponent. It was a mockery of the entire process of public hearing."

NGT has suspended operations for a number of industries across the country where damage to the environment was foreseeable. While POSCO, Hindalco, Nirma Cement plant have all faced shut down of operations during pendency of the case, a good example for the Tribunal's zero tolerance to environment degradation is Samta v. Union of India. The Tribunal suspended the environmental clearance granted by the Ministry of Environment and Forests for setting up the 4 x 660 MW super critical coal-based thermal power plant in Vizianagaram District. The Tribunal acknowledged that a huge loss of investment up to eleven crore rupees would be incurred but *"when it is noticed that the EAC had not made proper exercise by applying its mind to make a proper evaluation and the same also remained unnoticed by the MoEF while granting the EC for the project in question, taking into account the larger interest of the nation from the point of view of ecology and environment, the Tribunal cannot give its nod either for the recommendations made by the EAC or for the grant of EC made by the MoEF."* In another case, it was stated that consultants include "cooked data" in the key environment impact assessment reports which determine clearances for industrial projects. The Tribunal has directed the government to devise a mechanism to ensure authentic data and stated- "Steps should also be taken for black listing consultants found to have reported 'cooked data' or 'wrong data' and for producing sub-standard EIA/EMP report. "

While it is important to prioritise the environment over development, the Tribunal has always maintained that industries provide for a number of services to local people. Where the scales tend to tip towards protecting the people and their livelihoods, the Tribunal has given Orders in cases like Sterlite Industries v. Tamil Nadu Pollution Control Board where it allowed the Industry to resume factory operation. The Tribunal emphasised on the importance of the tenet of 'Sustainable Development' and stated that, *"While applying the concept of sustainable development, one has to keep in mind the "principle of proportionality" based on the concept of balance. It is an exercise in which courts or tribunals*

have to balance the priorities of development on the one hand and environmental protection on the other. So sustainable development should also mean the type or extent of development that can take place and which can be sustained by nature/ecology with or without mitigation. In these matters, the required standard now is that the risk of harm to the environment or to human health is to be decided in public interest, according to a 'reasonable person's test'.

In the last four years, the National Green Tribunal has disposed of more than 5000 cases and at present, (February 2015) it has a disposal rate of 66.52 %[9] - much higher than any other civil court in the country. It is India's privilege to be the third country in the world to have established an environmental court unlike most other countries where environment cases are handled by the regular civil courts. In its four years of existence, the NGT has proved to be a tribunal par its mandate as it has taken on environmental matters across the country and successfully changed the dynamics of environmental jurisprudence in India. The Tribunal, in its brief existence, has not only taken on the herculean task of cleaning up River Yamuna, it has also passed various orders to tackle the increasing air pollution levels in Delhi – the two most important concerns for every concerned citizen of the capital city. While the current government might be looking to decrease the powers of the Tribunal due to the delays caused in environmental clearances and a slow rate of development consequently, the Tribunal has successfully upheld its mandate to effectively dispose of matters related to the protection of the environment and the country's natural resources and propel us towards a more sustainable future.

[9] National Green Tribunal International Journal on Environment, Vol III

Detailed Case summaries

Deepak Kumar Rai v.M/s Prabhu Nath Rai Eent Bhatta Udyog Ltd. & Ors.

APPLICATION NO. 1 OF 2010

(ARISING OUT OF APPEAL NO. 12 OF 2008)

CORAM: Justice A.S. Naidu and Prof. Dr. G.K. Pandey
Key words: Brick Kiln, Implementation of Order
Application Dismissed

Date: 7th July 2011
The No-objection Certificate (NOC) granted in favour of Respondent No. 1 to establish a brick kiln, stood withdrawn by the National Environment Appellate Authority (NEAA) under Section 21 of the Air (Prevention and Control of Pollution) Act, 1981. The grievance of the Petitioner in this case was with regard to non-implementation of the orders passed by NEAA. This petition was thus filed primarily seeking to summon and prosecute Respondent No. 1 for wilfully violating the other of the NEAA.

The miscellaneous petition filed by the petitioner came up for hearing before the National Green Tribunal. The Petitioner appeared in person before this Tribunal. In course of hearing he fairly admitted that in the meanwhile by judgment of 28th April, 2010 the High Court of Allahabad had allowed the writ petition and has set aside the orders passed by the NEAA. The Petitioner was aggrieved by non-implementation of the directions issued by the NEAA in their order dated 18th May, 2009, but then in the meanwhile the said order passed by the NEAA was set aside by the High Court of Allahabad in Civil Misc. Writ Petition No. 27865 of 2010, and did not exist anymore.

"In view of the aforesaid clear position of both facts and Law we are satisfied that no relief can be granted to the Petitioner in this case. Accordingly, we dismiss the misc. petition..."

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7701/Deepak-Kumar-Rai-Vs-Government-of-Uttar-Pradesh-and-Others

Prafulla Samantra v. Ministry of Environment and Forests & Ors.

REVIEW APPLICATION NO. 3 OF 2010

(ARISING OUT OF NEAA APPEALS NO. 18-21 OF 2009)

CORAM: Justice A.S. Naidu and Prof. Dr. G.K. Pandey
Key words: Bauxite mining, Environment Clearance, Forest Clearance
Application resolved externally

Date: 28th July 2011
The Environmental Clearance (EC) accorded by Ministry of Environment and Forests (MoEF) vide its letter to the Lanjigarh Bauxite mining project of The Orissa Mining Corporation was assailed by Shri Prafulla Samantra and others in four separate appeals. The said Appeals were registered as Appeals No. 18, 19, 20 and 21 of 2009 before the erstwhile National Environment Appellate Authority (NEAA).

The proposal for grant of Stage II Forest Clearance for the aforesaid project was rejected by the MoEF, and consequently, the EC granted to the Project as rendered infructuous and inoperable, and the MoEF withdrew the EC in July 2011. In view of the aforesaid, it was the view of the Tribunal that nothing survived to be decided in the Review Application, more so because, the order of the NEAA, which was sought to be reviewed herein, worked out in the meanwhile and no longer existed. The Review Application thus was rendered infructuous.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7720/Prafula-Samantra-Vs-Ministry-of-Environment-and-Forest-and-Others

Gayatri Pragyna Mandal Beltrara v. Ministry of Environment and Forests & Ors.

APPEAL NO. 11 OF 2011(T)

CORAM: Justice L.S. Panta and Vijai Sharma
Keywords: Environment Clearance

Appeal Dismissed as Withdrawn
Date: 17th August, 2011

The Appellants stated at the outset that they wished to withdraw from the case. Mr. Jamuna Prasad, who had signed their power of attorney in the capacity of President of Gayatri Pragya Mandal, Beltra, had filed an application stating therein that Phil Mineral Beneficiation and Energy Ltd. (Respondent Company) had been given proper Environmental Clearance (EC) by the Ministry of Environment and Forests (MoEF). The Respondent Company had also planted trees covering 3/4th of the premises of the unit and also provided water for irrigation to the land owners in the villages. In addition one ambulance for the local community was also provided. Mr. Jamuna Prasad also submitted that the present appeal was being withdrawn voluntarily without any pressure, coercion and undue influence from any other person interested in the case. The appeal was accordingly dismissed as withdrawn, without expressing any opinion on the merits of the case.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7721/Gayatri-Pragyna-Mandal-Beltrara-Vs-Ministry-of-Environment-and-Forest-and-Others

Mahendra Pandey v. State Environment Impact Assessment Authority & Ors.

APPEALS NO. 1 AND 2 OF 2011

CORAM: Justice C.V. Ramulu and Prof. Dr. Devendra Kumar Agrawal
Keywords: Non-appearance, Prima Facie Case
Appeal Dismissed

Date: 18th August 2011
The Appeals initially came up for hearing on 7th July 2011. The Appellant argued the matter at length. However, he was not able to make out any *prima facie* case. He requested time for filing an amended memorandum. On that day, it was noted that if no further

pleadings explaining the details were filed, the matter would be closed at that stage itself and the matter was directed to be posted on 18th July, 2011. On that date, none appeared for the Appellant. The matter was adjourned to provide one more opportunity to him. Thus, when the matter was called none appeared nor was there any representation - the party was called three times by name. Therefore, the Judges took this to mean that the Appellant was not interested in pursuing the matter. Even, otherwise, on examination, they could see no tenable grounds, much less substantial grounds for entertaining the appeal.

Accordingly, the appeal was dismissed.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7722/Mahendra-Pandey-Vs-State-Environment-Impact-Assessment-Authority-and-Others

The Sarpanch, Gram Panchayat, Tiroda & Ors. v. Ministry of Environment and Forests & Ors.

APPEAL NO. 3 OF 2011
CORAM: Justice C.V. Ramulu and Prof. Dr. Devendra Kumar Agrawal
Key words: Mining, Environment Impact Assessment, Environmental Clearance, Public Hearing

Appeal Disposed With Directions

Date: 12th September, 2011

This appeal was filed, under Section 18(1) read with section 16 of the National Green Tribunal Act 2010, being aggrieved by the grant of Environmental Clearance (EC) dated 31st December, 2008 by the Ministry of Environment & Forests (MoEF), in favour of Gogte Minerals (Respondent No. 5), for conducting mining operations, at Tiroda Iron Ore Mine at Tiroda village, Sawantwadi Taluk, Sindhudurg in Maharashtra.

Gogte Minerals had been granted EC, by the MoEF, for conducting mining operations. Aggrieved by the same, the appellants herein had filed an appeal before the then National Environment Appellate Authority in 2009, but the appeal was rejected at the threshold on

the ground that appeal was time barred. Aggrieved by the said order, the appellants herein approached the High Court, Bombay in Writ Petition No. 7050 of 2010, where the petition was allowed and the matter was remanded to the National Green Tribunal established under the National Green Tribunal Act 2010, for hearing the Appeal on merits, after treating the same filed within the period of limitation.

It was the Appellants' grievance that the EC was granted by the MoEF for the project of mining at Tiroda Iron Mine, without properly examining the environmental problems that would be created by the mining operations of iron ore at Tiroda village and no process, known to law, was followed. It was contended that the project was hazardous to human health and further was polluting the river joining the sea. The existence of forest and a school located adjacent to the buffer zone of the mining area was not taken into consideration. No scientific data was collected, as to what is the effect of dust on the school children and on the village inhabitants.

Apropos whether the EC process and public hearing conducted by the authorities was legal or not, the Tribunal was of the considered opinion that the EIA report cannot be said have been properly prepared since sufficient and appropriate data was not collected and presented as per the awarded Terms of Reference (ToR). But, it could not be said that the public hearing was vitiated or invalid as substantial compliance was made in this regard. However, the very purpose of the public hearing got defeated since the EIA report was defective.

Regarding the conduct and procedure of the Expert Appraisal Committee (EAC) while recommending grant of EC, the Tribunal was in full agreement with the submissions made by the counsel for the appellant that the EIA report which was prepared at the behest of project proponent, did not disclose proper and sufficient facts and information. For example, the entire baseline data pertained to a period much prior to award of ToR. Though the public hearing was conducted mostly in accordance with the procedure, the various objections raised in the Public Hearing, as reflected in the Public Hearing minutes placed on record were not properly evaluated and addressed in the EIA report. Therefore, it could not be said the EAC had conducted itself in the manner required in recommending the grant of EC to the project.

Regarding the EC measures such as precautionary principles suggested by the authorities having been adhered to by the project proponent, the Tribunal, considering the fact that the Mining operation did substantially comply with the conditions attached to the EC, before commencing the mining operations and thereafter and since almost two years had elapsed since the commencement of operations, refrained from quashing the EC.

Thus, the Appeal was disposed of *inter alia* with the following directions:

1) The EC granted in favour of the Mining Operator shall be kept in abeyance with immediate effect, till a fresh decision is taken by the MoEF. However, the operator may be allowed to lift and transport the iron ore already mined and stacked on the site, as per law.
2) The MoEF shall place the matter before the new EAC and seek a fresh consideration of the matter taking all the material as available as on date as to compliances. If the EAC considers it necessary to impose additional conditions, it may direct the proponent to comply with the same including fresh EIA based on prescribed ToR before taking a decision for revival of the EC.
3) The EAC shall call for fresh report in so far as causing air, noise and water pollution keeping in view the proximity of the school as observed in this judgment and may recommend for relocating the school by constructing a new building at a safe location within Tiroda revenue village with similar accommodation and suitable playground around, along with all modern basic amenities as required by the local Education Department.

With the above directions, the Appeal stands disposed of.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7740/The-Sarpanch-Grampanchayat-and-Others-Vs-Ministry-of-Environment-and-Forest

M/s Nagarjuna Construction Company Ltd. & Ors. v. T. Mohan Rao & Ors.

REVIEW PETITION NO. 2 OF 2010

(ARISING OUT OF APPEALS NO. 1 TO 6 OF 2010)

CORAM: Justice A.S. Naidu and Prof. Dr. G. K. Pandey

Key words: Thermal Power Plant, Wetlands, Public Hearing, Environmental Clearance

Application Allowed

Date: 19th September, 2011

This review petition was filed*, inter-alia* praying to review/recall the judgment dated 14th July, 2010 passed by the Member of the National Environment Appellate Authority (NEAA), in Appeals No. 1 to 6 of 2010.

It was contended by the original Appellants (Respondents 1 to 7 in the present case) before the NEAA that the minutes of public hearing were suppressed and that regarding the "Beela Swamp" of Sompeta where the project was proposed to be established - being ecologically important - the authorities acted illegally and with material irregularity in granting Environment Clearance. Further the authorities also did not keep in mind that the said swamp being an internationally recognized wetland; establishment of the Project thereon shall affect not only the eco system but also affect the migration of different birds. Several other infirmities, illegalities, omissions and commissions said to have been committed by the concerned authorities, while granting Environment Clearance, were put forth before the NEAA in course of hearing.

According to the Judges, the power of review should be sparingly exercised that only in exceptional circumstances. The first and foremost requirement to exercise the power of review to be satisfied, according to the Tribunal, was that the order sought to be reviewed:-

a) Suffers from any error apparent on the face of record;
b) Permitting the error to stand will lead to failure of justice.

The Tribunal found that the Member of NEAA did not bear in mind the cardinal principles of law while passing the impugned order. He was found to not only have utilized his personal, subejctive knowledge, but also did not follow the fundamental principles of natural justice. He had not discussed voluminous records produced before him and arrived at a conclusion abruptly only on the basis of facts gathered by him during the visit. Accordingly the Tribunal recalled the order dated 14th July, 2010 passed by the Member, NEAA in Appeals No. 1 to 6 of 2010.

While recalling the impugned Order dated 14th July, 2010 and directing to re-hear the appeals, the Judges felt that the ends of justice and equity would be better served if the Ministry of Environment and Forests was directed not to pass any order(s) with regard to the aforesaid Project, without obtaining prior permission from this Tribunal. The parties were also directed to maintain status quo as on date until further order.

The Review petition was accordingly allowed.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7760/Nagarjuna-Construction-Company-Vs-Mohana-and-Others-Sompeta-case

Krishi Vigyan Arogya Sanstha v. The Ministry of Environment and Forests & Ors.

APPEAL NO. 7 OF 2011 (T)

CORAM: Justice C.V. Ramulu and Dr. Devendra Kumar Agrawal

Key words: Coal-based thermal power plant, Environmental Clearance, Environment Impact Assessment Report, Public Hearing

Appeal Disposed with Directions

Date: 20th September, 2011

SUMMARY

This appeal was filed impugning the Environment Clearance granted, by the Ministry of Environment and Forests (MoEF) dated 4th January, 2010 in favour of the Maharashtra State Power Generation Co. Ltd. (Respondent No. 3), for the proposed expansion of the coal based thermal power unit in Nagpur district of Maharashtra.

The Appellants included social and environmental groups working for the welfare of the local communities and creating awareness on social and environmental issues, as well as those directly affected by the expansion of the said project. Some of the appellants seem to have participated in the public hearing and also made several representations to the concerned authorities seeking their

intervention. It was their case that the Environmental Impact Assessment report failed to take into account the cumulative impact of various existing and proposed power plants within the area. The said report misrepresented the facts as to the distance of the thermal power plant project from Nagpur city as 11 km which was not correct. This was deliberately done to reduce the impact of the project on human habitation. The existing power plant itself emitted pollution beyond permissible limits and no efforts were made to control it. Though the project proponent claimed to have planted 4.6 lakh trees since 1985, evidence of the same was not forthcoming. The Environmental Impact Assessment report failed to provide the details of alternative sites. The present site was also neither technically nor commercially feasible, since coal had to be transported from about 1000 km (from Orissa) and power generated had to be transmitted more than 1000 km. The proponent got the Environmental Clearance (EC) published in the newspapers with a delay of more than two weeks, thus preventing the public from acting upon it. Apart from the above, the public hearing was not conducted as required under the law – such was contended in the appeal.

Apropos whether the Environment Impact Assessment (EIA) report prepared for the project was proper and adequate and sufficient information was furnished, the Tribunal found certain deficiencies with the original report, and directed the Maharashtra Pollution Control Board to file a fresh report. Based on this report, it held that it could not be said that the Environmental Impact Assessment report suffered from significant deficiencies or lack of information which resulted in recommendation of the grant of EC by the Expert Appraisal Committee. However, the Tribunal went on to say that Expert Appraisal Committee/Ministry of Environment and Forests should always take a note even of small deficiencies in the EIA report and should ask the project proponent to rectify the same. With regards to the aspect of nuclear radiation and its impact on human habitation, the EIA report was totally silent as it was not required as per the granted Terms of Reference. Similarly, the report is silent about other thermal power plants existing or proposed in and around the project under reference since the Terms of Reference did not necessitate them to undertake cumulative impact assessment of all the thermal power projects of the area.

On whether the public hearing conducted for the purpose of inviting objections and suggestions, if any, was in accordance with the EIA Notification, 2006, the Tribunal opined that in view of the fact that

there were habitations within a 4.3-km-radius of the project site, the public hearing could have been conducted in a nearby place to the proposed project site. But the distance could not be taken as seriously prejudicial when there was full participation of the public representatives and others. There could not, thus, be said to have occurred a substantial procedural lapse in the hearing, calling for its invalidation. But, it was opined that it is always desirable to conduct the public hearing within the close proximity of the project site, within 1 km radius. However, the Tribunal noticed here that the Notification dated 21st February, 2009 inviting people to participate in the public hearing was not happily worded. The language used was not clear. The authorities could have taken care to avoid any ambiguous or inappropriate wordings. A plain reading of the notification gave a restrictive meaning, as alleged by the appellant. But, relevantly, there was no bar for participation of the people in the Public Hearing. A liberal interpretation of the public hearing requirement (essential compliance, rather than literal compliance) was taken by the Tribunal in this case, on evaluation of the evidence and satisfaction that no real prejudice was caused.

On whether the Expert Appraisal Committee (EAC) was right in not taking cognizance of the past violations of the project proponent and also not examining the objections recorded at the time of Public Hearing, it was observed that while the Nagpur city sewage water was proposed to be utilized, it was common knowledge that the hot water let out from the boiler, if allowed to enter the land, would not only contaminate the land but also would render the land around unfit for agriculture or otherwise. There were no details as to how these aspects have to be mitigated and monitored by the project proponents and further to be inspected and supervised by the authorities concerned. Since a large number of thermal power projects existed and/or proposed in and around the project area, they are likely to have cumulative impacts especially in terms of nuclear radiation. It was given to understand that no national prescribed standards are available with regard to nuclear radiation for various types of eco-system.

This appeal was disposed of without interfering with the EC, with the following main directions keeping in view the principle of sustainable development and the precautionary principle:

a. The MoEF was directed to look into the long term impacts of nuclear radiation from the thermal power projects, by instituting a scientific long term study involving Bhabha Atomic Research

Centre or any other recognized scientific institution dealing with nuclear radiation with reference to the coal ash generated by the power project, particularly the cumulative effect of a number of thermal power projects on humans and ecology..

b. The MoEF was to direct the proponent to synchronize the commissioning of the project with that of the Sewage Waste water Treatment plant, treated water from which is proposed to be used for the operation of the project. Until, there is such synchronization, no Consent to Operate shall be issued by the Maharashtra State Pollution Control Board and the Board shall monitor the mitigating measures suggested in the Environmental Clearance.
c. The MoEF was directed to include in the Terms of Reference of all the future projects asking the proponent to furnish details of possible nuclear radioactivity levels of the coal proposed to be used for the thermal power plant.
d. The MoEF was directed to get the national standards prescribed, if not already available, from the Department of Atomic Energy, Govt. of India within a period of one year from the date of receipt of this order, as to permissible levels of nuclear radiation in residential, industrial and ecologically sensitive areas of the country.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7761/Krishi-Vigyan-Arogya-Sanstha-and-Others-Vs-Ministry-of-Environment-and-Forest-and-Others

Kamlesh Singh v. Regional Officer and Ors.

APPEAL NO. 6 OF 2011

CORAM: Justice C.V. Ramulu and Dr. Devendra Kumar Agrawal
Key words: Brick kiln, Mango Orchards, Appellate jurisdiction
Appeal disposed of with directions

Date: 29th September, 2011

In Appeals No. 6 and 7 of 2011, common questions of law and fact arose for consideration, and were disposed of by this common order. These two appeals were directed against the orders passed by the Appellate Authority, Uttar Pradesh Pollution Control Board.

The Appellants contended that they were the owners of certain extents of land wherein mango trees were planted (existing), which were being affected by the brick kiln erected by Respondent no. 2. Due to their close proximity, the heat generated and ash emanated from them spoiled the flowering and fruiting of the mangoes. Apart from this, the brick kiln is also located very close to the human habitation which results in health hazard. The distance between the brick kiln and the human habitation and mango orchards was against the prescribed distance under the governmental orders issued from time to time. Nor was the direction of the wind properly taken into consideration looking into the location of the orchard and human habitation.

It was the case of the Respondents that the brick kiln was located beyond the distance prescribed by the governmental orders, from the mango orchards as well as human inhabitation in both the cases.

The Tribunal was of the considered opinion that the Appellants had not made out a case to demonstrate that the brick kiln established by the Respondents was causing any real damage to the mango flowering or fruiting and the Appellate Authority has not committed any error calling for the Tribunal's interference. However, they noticed that there are other fields having mango orchards in the close proximity to the brick kilns though confirmed distances of them are not readily available. Moreover, the affected parties, if any, are not before the bench though, the Appellant stated that there is environmental threat for the mango trees of other landlords. Therefore, they held that the matter had to be examined in details by calling for a fresh report from the authorities concerned.

The appeal was disposed of with the following directions for compliance while granting renewal of the consent to operate is given by the Pollution Control Board authorities in favour of the brick kiln owners:

a. Before renewing the consent to operate in favour of the Respondent brick kiln owners, the District Environmental Engineer concerned was directed to issue notices to all the landlords whose lands are located within the restricted distance from the brick kiln (as prescribed in the government order) and also the villagers of the village which fall within the restricted distance from the influence zone of the brick kilns (as prescribed

in the government order) keeping in view the environmental standards.

b. For this purpose the District Environmental Engineer was further directed to issue a notice on the conspicuous places in the villages concerned apart from serving personal notice on the affected parties. The notice of enquiry shall be notified by beating of drum (Dugdugi/Munadi).
c. The Appellant is at liberty to take appropriate steps as per law, if these directions are not complied while renewing the consent to operate in favour of the Respondents.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7762/Kamlesh-Singh-Vs-Regional-Officer-and-Others

Gram Panchayat, Totu (Majthai) & Ors. v. State of Himachal Pradesh & Ors.

ORIGINAL APPLICATION NO. 2 OF 2011

CORAM: Justice A.S. Naidu and Prof. Dr. G.K. Pandey
Key words: Solid waste management, Compensatory afforestation

Application Dismissed

Date: 11th October, 2011
Gram Panchayat, Totu situated in District Shimla of Himachal Pradesh, filed this appeal under Section 18(1) read with Section 14, 15 and 19 of the National Green Tribunal Act, 2010, *inter alia* praying to restrain the Municipal Corporation, Shimla and Himachal Pradesh State Government from undertaking construction of the Solid Bio-Waste Management Plant at Village Bharyal on Tara Devi – Totu Bypass, about 9 km away from Shimla, and for other consequential reliefs.

In 1999, a Solid Bio-Waste Management Plant was installed by Shimla Municipality at a certain place. As the township grew all around the place, the Plant came to be virtually situated in the middle of the town. The Municipality, had entrusted the management of the plant to a private company which did not possess the necessary technical know-how to run the plant, as a

result of which the area was polluted and it caused nuisance to general public at large.

In 2003, two sites suitable for locating the plant were selected in order to shift the location. First, for the site near village Bharyal, a proceeding was drawn up on 2nd September, 2003. In furtherance of the said decision, necessary steps were taken for obtaining allotment of lands and permissions from different authorities concerned, as per the Municipal Solid Waste (Management and Handling) Rules, 2000 ('MSW Rules'). The MoEF, by its letter conveyed approval for diversion of certain area of forest land for non forestry purpose. In the year 2009 unfortunately the plant which was situated at caught fire and the Municipality could not control it. The smell and smoke emanating from the dump site posed immense health risks, like respiratory ailments amongst the residents of the locality.

The Tribunal was not inclined to interfere with the decision to install the Plant and Landfill site by the Municipality at Bharyal village. However, it directed the Project proponent to obtain all the statutory permissions and NOC as stipulated in MSW Rules, 2000 read with EIA Notification, 2006 and 2009, before commissioning of the MSW Plant and Landfill site. The Municipality was also directed to ensure that necessary preventive and control measures are implemented to avoid any adverse impact on the environment, especially on the ground water and surface water bodies.

The Tribunal also noted that the High Court of Himachal Pradesh had allowed enough opportunity to all the parties to put forth their grievances with regard to site in question. None of the Applicants appeared before the High Court and raised any objection with regard to the viability of the Project and its location. Consequently they were estopped from agitating the questions which could have been raised before the High Court but were not raised.

The Tribunal, going a step forward, voiced its opinion that the MoEF should review the MSW Rules, 2000, and make them more realistic and comprehensive in terms of the environmental requirement for protection of natural habitat, human settlement, water bodies and other sensitive areas etc. by specifying the minimum distance required to be maintained from the MSW Plant vis-a-vis those areas. The precautionary principle as enunciated under Section 20 of the NGT Act vis-à-vis the authoritative pronouncement of the Supreme Court, requires and mandates that the MoEF should prescribe criteria which are workable, unambiguous and not vague. The

Tribunal therefore, calls upon the MoEF to critically review the MSW Rules, 2000 and make them more pragmatic, and workable, within a period of six months.

The Application was thus disposed, upholding the decision to set up the MSW Plant and Landfill site at Bharyal village and directing the Project Proponent, Municipal Corporation of Shimla, to set up the said plant only after following the mandatory requirement stipulated in Municipal Solid Waste (Management and Handling) Rules, 2000 as well as after obtaining EC under the provisions of EIA Notification, 2006 as amended in 2009 before commissioning of the MSW facilities. The Tribunal also directed the Municipality to plant at least twice the number of trees saplings, of the same species which have been felled by the project proponent, to maintain ecological balance.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7764/Gram-PanchayatTotu-Majthai-and-Others-Vs-State-of-Himachal-Pradesh-and-Others

Raagam Exports v. Tamil Nadu Pollution Control Board & Another

NATIONAL GREEN TRIBUNAL, NEW DELHI

CORAM: Justice A.S. Naidu and Prof. Dr. G.K. Pandey

Key words: Dyeing and Bleach works, Industrial effluents, Water pollution

Application disposed of with directions

Date: 11th October, 2011

1. **Application No. 3/2011: Raagam Exports Vs Tamil Nadu Pollution Control Board and Another**
2. **Application No. 4/2011: Planisamy Dyeing Vs Tamil Nadu Pollution Control Board and Another**
3. **Application No. 5/2011: Stallion Garments Vs Tamil Nadu Pollution Control Board and Another**

4. **Application No. 6/2011: Valli Textiles Vs Tamil Nadu Pollution Control Board and Another**

5. **Application No. 7/2011: Danam Process Vs Tamil Nadu Pollution Control Board and Another**

6. **Application No. 8/2011: Tube Knit Fashions Ltd. Vs Tamil Nadu Pollution Control Board and Another**

7. **Application No. 9/2011: Magaarani Dyings Vs Tamil Nadu Pollution Control Board and Another**

8. **Application No. 10/2011: M/s Sathya Process Vs Tamil Nadu Pollution Control Board and Another**

9. **Application No. 11/2011: Velan Dyings Vs Tamil Nadu Pollution Control Board and Another**

10. **Application No. 17/2011: Poomer Textiles Process Vs Tamil Nadu Pollution Control Board**

11. **Application No. 18/2011: Prem Dying Works Vs Tamil Nadu Pollution Control Board**

12. **Application No. 21/2011: Sri Jayalakkshmi Process Vs Tamil Nadu Pollution Control Board and Another**

13. **Application No. 27/2011: Crystal Knitters Ltd. Vs Tamil Nadu Pollution Control Board**

By this judgment, thirteen applications involving the same facts and points of law were disposed of. The respondents in each of the case were also identical and by consent of Counsel appearing for the parties, all the cases were heard together and disposed of by this common judgment.

All these Applications were filed by different fabric bleaching and dyeing units (exporting hosiery) situated at Tirupur in the State of Tamil Nadu.

Alleging that the units engaged in the aforementioned activities at Tirupur are discharging the industrial effluents into the river Noyyal, thereby polluting it (and adjunct water bodies) to the extent that its water had been rendered neither fit for irrigation nor potable, a Public Interest Litigation was filed before the High Court of Madras. In the said petition directions were sought to the extent that the dyeing units would clean the river water stored at Orathapalyan

Dam within a stipulated time at their own expense and as an interim measure shall not discharge their industrial effluents into the river. The High Court was pleased to direct the same.

A prayer was made before this Tribunal, to direct the Tamil Nadu Pollution Control Board to permit the applicants to re-commence operation of their units as they claimed to have achieved ‘zero liquid discharge level’, and complied with other directions set forth by the Supreme Court in the case- *Tirupur Dyeing Factory Owners Association* v. *Noyyal River Ayacutdars Protection Association,* AIR 2010 SC 3645) and the Madras High Court by its order dated 4th January, 2011.

The trade effluent discharged by the 754 different units was admittedly treated through its conventional treatment system but it was recorded that the said system did not satisfy the total dissolved solids (TDS) limit of 2100 mg per litre (mg/l) prescribed by Tamil Nadu Pollution Control Board. The sudden and rapid growth in textile sector in the area started the deterioration of the environment in as much as the trade effluents either treated partially treated or sometimes rven untreated found their way into the river either directly or indirectly.

The Tribunal observed that owing to the Applicants having not approached the Competent Authority till today, it was not possible for it to issue any direction to the Tamil Nadu Pollution Control Board (Respondent No.1).

In view of the discussions made above, the Tribunal disposed of all the above applications with an observation that if the Applicants file suitable applications, individually, seeking permission to commence their units, before the Competent Authority, the said Authority was to consider the applications separately and conduct such inspections as deemed just, proper and necessary; and if satisfied that the Applicants or any of them have complied with the directions issued by the Supreme Court as well as High Court of Madras and also satisfy all the requirements of law, pass such order/orders/direction as deemed just proper and in accordance with the law as well as the counter/affidavit filed before the Tribunal. The Competent Authority was directed to take the decision on the applications to be filed by the Applicants, as expeditiously as possible, owing to the fact that the units had been lying closed for some time. This provides an important insight into the jurisprudential mind of the Tribunal – the principle of sustainable

development is seen in its entirety, i.e. environmental needs taken care of, but the importance of livelihoods is also not cast aside completely.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7765/Raagam-Exports-Vs-Tamil-Nadu-Pollution-Control-Board-and-Another

Bhawani Shankar Thapliyal v. Union of India

APPEAL NO. 9 OF 2011

CORAM: Shri C.V. Ramulu and Dr. Devendra Kumar Agrawal
Key words: Hydroelectric Power Project

Appeal Dismissed

Date: 13th October, 2011
This appeal was filed against the direction issued by the Ministry of Environment and Forests (MoEF) under section 5 of the Environment Protection Act, 1986 to M/s Alaknanda Hydro Power Company Ltd. with regard to the construction of the Srinagar Hydroelectric Power Project on River Alaknanda near Srinagar in Garhwal District of Uttarakhand, seeking the following reliefs:

A. To direct the Respondent No. 3 to physically remove the muck from the river bank and store it at another area after obtaining prior approval of the MoEF (Respondent No. 1) so as to flatten the level to 35 degree and to stay construction of the project till the following activities are complied with:

1. Catchment Area Treatment work is completed up to Year 4.
2. Fresh compensatory afforestation in the project area.
3. Green belt work is completed up to Year 4.
4. Private land up to 50 meters from the reservoir rim is acquired by the Respondent No. 3 for making the Green Belt.

B. To direct Respondent No. 3 and Respondent No. 4 to reduce forest submergence to 175 hectares and to direct Respondent No. 4 to take back forest land in excess of 175 hectares handed over to Respondent No. 3.

C. To direct Respondent No. 3 to release 67.6 percent of Mean Annual Runoff (MAR) as Minimum Environmental Flows.

D. To direct Respondent No. 3 to dismantle Sedimentation Tank, Power Channel and all other structures of the project that are made beyond those specified for 200 MW project as per 1981 Detailed Project report.

E. To direct Respondent No. 3 to make project of Maximum Probable Flood Level of 604.2 meters only.

Reliefs B, D & E were subsequently withdrawn by way of an application, and sought by way of a Special Leave Petition before the Supreme Court. The Supreme Court dismissed the SLP by an order dated 10th October, 2011. Appellant No. 2 had filed a detailed representation regarding prayers A & C on 5th October, 2011 before the MoEF.

The MoEF was directed to consider and dispose of the representation filed by Appellant No. 2 along with the applications/compliance/objection of Respondent No. 3 within a period of 8 weeks from the date of receipt of the Tribunal's order, after hearing all the parties. The Tribunal further made it clear that the Appellant and the Respondents may work out their remedies on reconsideration by the MoEF, if any necessary.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7766/Bhawani-Shankar-Thapliyal-Vs-Union-of-India

Balachandra Bhikaji Nalwade v. Ministry of Environment & Forests

APPEAL NO. 21 OF 2011

CORAM: Justice Shri C.V. Ramulu and Prof. R. Nagendran

Key words: Coal-based Thermal Power Plant, Expert Appraisal Committee, Environmental Clearance, Precautionary Principle, Sustainable Development

Appeal Dismissed

Date: 29th November, 2011

This appeal was filed against the grant of Environmental Clearance (EC) for the coal based Thermal Power Plant (TPP) in favour of JWS

Energy Limited (Respondent No. 3) at Jaigad, Ratnagiri District, Maharashtra, by the Ministry of Environment & Forests (MoEF) dated 28 June, 2010.

The following points arose for consideration in this appeal:

i) Whether the Dr. Bala Saheb Sawant Konkan Krishi Vidyapeeth Daboli (KKVD) report was not properly considered by the Expert Assessment Committee (EAC) while recommending for the grant of EC and whether it was contrary to the directions of the High Court of Delhi;
ii) Whether the likely impact due to the TPP on the ecosystem had been studied and whether the same amounted to violation of Precautionary Principle;
iii) Whether the EAC was prejudiced and influenced by earlier clearance granted to the project and failed to keep in mind the principle of sustainable development while recommending for grant of EC.

The Appellant was engaged in a fruit (mango) business and owned mango orchards in the project affected area. The EC granted by the MoEF as upheld by National Environment Appellate Authority (NEAA) was contended by him as being arbitrary and illegal and in violation of Environment Impact Assessment Notification, 1994 (as amended in 2002). It was the case of Respondent No. 1 that subsequent to an order of the High Court of Delhi, the MoEF had placed the matter before the Expert Appraisal Committee (Thermal Power) (EAC) in its meetings held during November 2009, December 2009 and January 2010, respectively. The EAC then scientifically reviewed the likely impact on Alphonso mangoes before recommending grant of EC for the TPP. Further, as directed by the EAC, a sub-group conducted a study and reported that there was no threat to Alphonso mango trees because of the TPP.

The KKVD's first annual report was furnished in April 2009 which was to be followed by subsequent reports over a period of three years. The available report of KKVD on the basis of data collected thus far and analyzed was considered by the sub-group in 2009. In the meeting held in the months of November and December 2009, the representatives of KKVD and Maharashtra Pollution Control Board considered their expert views prior to finalizing and forwarding recommendations to the EAC. Apart from this, Prof. Saimullah of Aligarh Muslim University shared his expert knowledge

and literature on the subject and his views were considered by EAC sub-group.

Apropos the question of whether the EAC considered the matter in light of the precautionary principle, apart from the above findings, the Tribunal found that the EAC as well as the MoEF have taken all the precautionary measures into consideration in the conditions attached to the EC in respect of the effect of TPP on the mango plantations and other significant environmental issues. All necessary data and expert opinions were taken on the point, as recorded in the judgment.

After noticing the above, it was observed that the official Respondents had taken the precautionary principles into consideration in the process of granting of EC, and that they were not guilty of having relied upon a report which suffered from serious deficiencies and short comings. Further, it also could not be said, that the EAC and MoEF are prejudiced by the earlier grant of EC while reconsidering the EC. According to the Tribunal, all other issues agitated by the Appellant were not required to be delved into further, since they did not have bearing on the questions in the matter.

It went on to say, "*Production of electricity is very essential for industrial growth apart from domestic need. In the light of the existing power scenario in the country, the project under consideration when operated within the eco-legal frame work may contribute significantly to sustainable industrial development in the area under consideration. Therefore, the project under consideration does not violate the principle of Sustainable Development.*"

For all the above reasons, we are of the considered opinion that the appeal is devoid of any merit and liable to be dismissed. However, we make it clear that the authorities concerned shall monitor and take care of the Precautionary Principle and the post commissioning mitigative measures attached to the EC and take appropriate action as and when necessary."

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7767/Balachandra-Bhikaji-Nalwade-Vs-Ministry-of-Environment-and-Forest-and-Others

Adivasi Majdoor Kisan Ekta Sangthan & Anr. v. Ministry of Environment and Forests & Ors.

M.A. NO. 36 OF 2011

(ARISING OUT OF APPEAL NO. 3 OF 2011)

CORAM: Justice A.S. Naidu and Dr. G.K. Pandey
Key words: M/s Jindal Steel Power Ltd, private land
Application Dismissed

Date: 30th November, 2011
The Appellants *inter alia* assailing the environmental clearance order dated 18th May, 2009 granted by Ministry of Environment and Forests (MoEF) filed an appeal before the erstwhile National Environment Appellate Authority (NEAA). The NEAA while admitting the appeal passed an interim order to the effect that Respondent No.3 shall maintain *status quo* in the field activities.

M/s Jindal Steel Power Ltd. resisted hearing of the appeal by NEAA on several grounds one of them being that there was no Judicial Member and filed an application to stay the proceedings till a Judicial Member joins. The said application having been rejected by NEAA, M/s. Jindal Steel Power Ltd. approached the High Court of Chhattisgarh through a writ petition, which was admitted, and it was ordered in the interim to stay further proceedings of the appeal pending before the NEAA. After constitution of the NGT, the Appeal stood transferred from NEAA to this Tribunal. The present Miscellaneous Application was filed by M/s Jindal Steel Power Ltd., with a prayer to continue the interim order of the High Court of Chhattisgarh and allow Ms Jindal Steel Power Ltd., to carry on acquisition activities for acquiring land and also to do activities in favour of the environment like plantation of trees etc., pending the disposal of the appeal. The counsel for Appellant however, resisted the submissions made by Respondent No. 3 and submitted that as the appellants had a *prima facie* case, the Tribunal should not grant any interim order.

After hearing the matter, the Tribunal granted liberty to Respondent No. 3 to acquire/purchase lands from private persons at its own risk. This was accompanied by the caveat from the Tribunal that such activities, however, did not confer any equity on the said Respondent. It was allowed to carry on plantation and other environment friendly activities but not to make any construction or

development or extract coal without obtaining prior permission of this Tribunal.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7768/Adivasi-Majdoor-kisan-Ekta-Sangathan-and-Another-Vs-Ministry-of-Environment-and-Forest-and-Others

Bhagat Singh Kinnar v. Ministry of Environment and Forests & Ors.

M.A. NO. 6 OF 2011

(ARISING OUT OF APPEAL NO. 14 OF 2011(T))

CORAM: Justice A.S. Naidu and Dr. G.K. Pandey

Key words: Integrated Hydroelectric Power Project, Amendment of pleadings, Forest Clearance

Application Partly Allowed

Date: 1st December, 2011

The order passed by the Ministry of Environment and Forests (MoEF) granting environment clearance to Himachal Pradesh Power Construction Ltd., for the construction of the Integrated Kashang Hydroelectric Power Project was assailed by the appellant under Section 11(1) of the National Environment Appellate Authority Act before the National Environment Appellant Authority (NEAA). After the formation of National Green Tribunal in 2010, the said appeal stood transferred to this Tribunal. At that stage the present application was filed by the appellant with a prayer to permit him to amend some of the averments made in the Memorandum of Appeal.

Originally the appeal was filed before the NEAA assailing the environment clearance granted by the MoEF. The appellant by way of amendment of Appeal Memorandum has assailed the forest clearance granted on 14th June, 2011.

After going through the pleadings and the proposed amendment, the Tribunal stated that the amendments sought for are more in the nature of elucidating and clarifying facts most of which have been pleaded earlier. The appellant being a resident of a remote village, it was noted that it was difficult for him to get proper legal advice. The amendments sought for were also necessary for effectual

adjudication, in the opinion of the Tribunal. The same did not change the nature and character of the case pleaded, nor did it take away any admissions made. However, the appellant was not permitted to introduce a prayer which had become time barred by way of amendment. For the reasons stated above, the petition was allowed for amendment in part, and the application was accordingly disposed of.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7769/Bhagat-Singh-Kinner-Vs-Ministry-of-Environment-and-Forest-and-Others

Devi Gyan Negi v. Ministry of Environment and Forests & Ors.

M.A. NO. 7 OF 2011

(ARISING OUT OF APPEAL NO. 15 OF 2011(T))

CORAM: Justice A.S. Naidu and Dr. G.K. Pandey

Key words: Integrated Hydroelectric Power Project, Environmental Clearance, Memorandum of Appeal, Forest Clearance

Application Partly Allowed

Date: 1st December, 2011

An order dated 16th April, 2010 passed by the Ministry of Environment and Forests (MoEF) granting environment clearance to Himachal Pradesh Power Construction Ltd., for construction of Integrated Kashang Hydroelectric Power Project was assailed by the appellant under Section 11(1) of the National Environment Appellate Authority Act, before the National Environment Appellant Authority (NEAA) which, after the formation of National Green Tribunal under the National Green Tribunal Act, 2010, stood transferred to it.

It was averred that the Appellant (who was illiterate and hailed from a remote tribal district in Himachal Pradesh), after consultation with some advocates, and on being told that all the necessary averments had not been made, sought to amend the Memorandum of Appeal. Counsel appearing for Respondent No. 5 & 6 argued the

fact that originally the appeal was filed before the NEAA assailing the environment clearance (EC) granted by the MoEF. Trying to assail the forest clearance (FC) granted on 14th June, 2011 (which was being attempted to be inserted by amendment) was not the subject matter of the earlier appeal.

According to the Tribunal, as was evident from several judgments of the Supreme Court, a Court should be liberal and unless the amendment sought for causes injustice or prejudice to the other side, should be generally allowed. The amendment sought, should be necessary for the purpose of determining the real question in controversy between the parties and for effective adjudication of the *inter se* disputes, it is always prudent to allow amendment of the pleadings unless the same causes injury which cannot be compensated in terms of cost.

After going through the pleadings and the proposed amendment, the Tribunal felt that the amendments sought for were more in the nature of elucidating and clarifying the facts most of which have been pleaded earlier. The appellant being a resident of a remote village, it was difficult for him to get proper legal advice. The appeal was pending at Delhi, and travelling from Village Lippa to Delhi is a cumbersome affair for an ordinary person. The amendments sought for are also necessary for effective adjudication. The same did not change the nature and character of the case pleaded, nor take away any admissions made. However, the appellant was barred from introducing a prayer which had become time barred by way of amendment.

For the reasons stated above, amendment in part of the petition was allowed. The application was accordingly disposed of.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7770/Devi-Gyan-Negi-Vs-Ministry-of-Environment-and-Forest-and-Others

Vimal Bhai & Ors. v. Ministry of Environment and Forests & Ors.

APPEAL NO. 5 OF 2011

CORAM: Justice Shri C.V. Ramulu and Dr. Devendra Kumar Agrawal

Key words: Forest Clearance, Cumulative Impact Assessment, Aggrieved Person

Appeal Disposed with directions

Date: 14th December, 2011
This appeal was filed against the grant of Forest Clearance (FC) accorded by Respondent No. 1 through its Order dated 3rd June, 2011 under which deforestation of of government forest land diverted for construction of a high diversion dam across river Alaknanda near Helong village in Chamoli District of Uttarakhand State for generating hydroelectric power.

The Environmental Clearance (EC) was granted as early as 22nd August, 2007 by the Ministry of Environment and Forests (MoEF). It had been more than three years, and the EC had not been challenged– hence, it stood validated. Thus, the only challenge that was made was for the grant of FC and not EC.

All the Appellants were persons affected by the FC of the proposed hydroelectric power project in question The total land requirement of the project was about 120 hectares. Of this, about 40ha was agriculture land and about 80 hectares was government forest land. The grant of FC in the present case was substantially based on the study made by Indian Institute of Technology, Roorkee (IITR) and Wildlife Institute of India, Dehradun (WII). As per the scope of work, "effectiveness of mitigating measures and compliance of stipulated conditions on which various projects earlier have been examined", was to be completed. However, no such study was conducted. Thus, the recommendation of the Forest Advisory Committee (for short FAC) was based on a non-existent study and as such was alleged to be arbitrary and whimsical. According to the Respondents, all the allegations made and the grounds raised in the appeal were baseless and liable to be rejected.

The following questions arose for consideration in this appeal-
a) Whether the appellants could be called as aggrieved and /or injured "person(s)" as defined under the National Green Tribunal (for short NGT) Act and the appeal was maintainable by them:

The Tribunal stated that a reading of Sections 2(j), (i) to (viii) of the National Green Tribunal Act, 2010 would reveal that any individual, Hindu undivided family, Company, Firm, an association of persons or a body of individuals whether incorporated or not, trustees of a trust, a local authority and every artificial juridical person not falling within any of the preceding sub-clauses, would be a "person" who

can maintain an application/appeal under the NGT Act. The only exception to be made for treating an appeal/application as not maintainable could be a matter which falls beyond the seven (7) Acts as notified in Schedule I of the NGT Act 2010 and in a case of mala-fide and vexatious litigation brought before this Tribunal and not otherwise.

"The statutory provisions are subservient to the constitutional mandates. The person as defined or person aggrieved as occurs in Sections 2(j), 16 and 18 (2) of the NGT Act cannot be placed above "every citizen" as appears in Article 51A of the Constitution of India. Once the mandate is of every citizen, any person can approach this Tribunal complaining environmental threat in the activities of the State or any organization or individual."

Therefore, the appellants were held to be interested persons in the environment and ecology of the area, even though they were not directly affected/injured at this point of time. They were aggrieved persons since they apprehended some danger if the project was launched without taking proper precautions.

b) Whether the appellants are justified in raising grounds that may be available for challenging the EC or its conditions in the guise of challenging the grant of present FC:

Admittedly, the EC was granted to the project on 22nd August, 2007 and no challenge was made against it. The FC alone was under challenge in this Appeal. Therefore, the submission made by counsel for the appellant that all the issues that arise from the EC could also be raised in this appeal was rejected. But, the Tribunal opined that an exception could be made when the issues overlap i.e. the issues that were considered at the time of grant of EC and again while granting FC, since they are considered one after the other, independently.

c) Whether the FC granted in favour of project proponent is in consonance with the principles of sustainable development and the precautionary principle:

The Appellants raised grounds pertaining to the negative impact of tunneling on water springs and its subsequent impact on forests and agriculture; methane emissions from reservoirs; deterioration in water quality due to less absorption of beneficent chemicals; loss of aesthetic and 'non-use values'; value of free-flowing rivers; breeding of mosquitoes in reservoirs and the negative impact on

health; deprivation of sand and fish to local people; negative cultural impacts; and negative impact of blasting/ tunneling, etc. The Respondents filed detailed replies to these allegations, relying on various documents/reports starting from Environment Impact Assessment/Environment Management Plan report, Geological reports, Appraisal documents for World Bank loan, etc.

The process of analyzing cumulative effects is an enhancement of the traditional EIA components: (i) scoping, (ii) describing the affected environment, and (iii) determining the environmental consequences. The Cumulative Impact Assessment f(or short CIA) studies in the instant case were awarded to IITR & WII separately with elaborate terms of reference and time bound deliverables as evidenced from the material placed on record.

The Tribunal, after evaluating the submissions placed before it, was of the considered opinion that the stipulations regarding environmental flow certainly follow the sustainable development and precautionary principles.

“We are of the opinion that there are no substantial merits calling for our interference into the FC, in question, granted by Respondent No. 1. “

The appeal was disposed of subject to the following directions:

1. Integrated CIA Report preparation: The first respondent shall setup an appropriate committee of experts drawn from IITR and WII in the preparation of CIA report of the five projects considered in WII report to integrate the physical, biological and social impacts in making comprehensive cumulative impact assessment report and frame appropriate conclusions and recommendations within a reasonable timeframe for consideration and final review by the Ministry of Environment and Forest to avoid any unforeseen environmental and ecological threat in the study area. If this direction is not carried out, the appellant is at liberty to take appropriate steps as required under the law.

2. Preparation of Cost Benefit Analysis Norms: Considering the need for better procedures in making sound evaluation of the forest land diversion proposals, following options for cost benefit analysis shall be explored for future proposals:

a. the guidelines for cost benefit analysis may be updated/modified to provide clear instructions regarding the various cost and

benefit elements to be incorporated for the purpose of arriving at cost benefit ratio; and

b. the cost benefit analysis for each proposal received for diversion of forest land shall be done adopting the prescribed procedure.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7771/Vimal-Bhai-and-Others-Vs-Ministry-of-Environment-and-Forest

Jaya Prakash Dabral v. Union of India, & Ors.

APPLICATION NO. 12 OF 2011

CORAM: Justice Shri C.V. Ramulu and Dr. Devendra Kumar Agrawal

Key words: Tunnel-based Hydroelectric project, Aggrieved person

Application Allowed

Date: 14th December, 2011

This application was filed under Section 14(1) of the National Green Tribunal Act, 2010 (NGT Act) by the parties in person. It was their case that a cause of action had arisen in view of the fact that on 23rd June, 2011, a crack had occurred in the tunnel which received wide spread publicity in the local newspapers. They felt there was an urgent need to bring to notice the negative impact of tunnel based hydro power projects. If the construction of the dam was allowed, they alleged that it may cause irreparable and irreversible loss to the environment.

According to the applicants, Mandakini is an important tributary of river Alaknanda which eventually forms River Ganga after merging with River Bhagirathi in Devprayag. Six hydroelectric projects had been planned on the Mandakini. What was alarming according to the Applicants was that in the entire length of 50 km from the first dam to the last dam, the river will be channeled through tunnels. This, according to them, would havegrave environmental consequences. The river water will only appear out of a power house and then disappear in another tunnel. The Government proposes to build these projects contiguous to one another. Both percolation and evaporation of river water will be less and adversely affect the forest and environment.

It was contended in reply by the Respondents that the application under Section 14(1) of the NGT Act was not maintainable. The applicants were neither person(s) aggrieved or person(s) injured for the purpose of maintaining this application. They claimed to be directly affected due to likely methane emissions, deterioration of water quality, loss of bio-diversity etc. There is no requirement under the NGT Act 2010 that the grievance should be of a particular level, in environmental matters.

Further, it was submitted by the respondents that a writ petition had been filed and was pending before the High Court of Uttarakhand. The subject matter of the present application and the subject matter of the Writ Petition before the High Court of Uttarakhand under Article 226 of the Constitution of India were substantially one and the same. In view of the same, it was argued that the Tribunal could not decide the matter while it was *sub judice* in the High Court.

The only point that fell for consideration was:

Whether the appellants could be called as aggrieved and/or injured "person"(s) as defined under the NGT Act and whether the appeal was maintainable by them.

The Tribunal took note of the judgment delivered by them in *Vimal Bhai* v. *Ministry of Environment and Forests & Ors. (Appeal No. 5 of 2011)* on similar lines. Based on that reasoning, the Applicants herein were "persons aggrieved", in a matter of this nature. Therefore, the applicants were entitled to maintain an application of this nature.

The Applicants were directed to re-submit the application in its proper form as required under the rules duly serving papers in advance on the Respondents.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7772/Jaya-Prakash-Dabral-Vs-Union-of-India

M/s Athiappa Chemicals Pvt. Ltd. v. Puducherry Pollution Control Committee, Government of Pondicherry & Ors.

APPLICATION NO. 30 OF 2011

CORAM: Justice Shri C.V. Ramulu and Dr. Devendra Kumar Agrawal

Key words: Jurisdiction

Application Dismissed

Date: 14th December, 2011

This was an application filed under Section 14 of the National Green Tribunal Act 2010 challenging the Order issued by the Puducherry Pollution Control Committee, Pondicherry under Section 31-A of the Air (Prevention and Control of Pollution) Act, 1981 (the Air Act) directing the Applicant to stop all the manufacturing activities until the three directions mentioned therein were complied with.

It was submitted that this Tribunal had been conferred with vast powers and the application of this nature is maintainable since a substantial question of law had arisen for the consideration of the Tribunal. Since the Appellate Authority under the Air Act sat periodically once in a month or once in two months, therefore, the appeal under Section 31 of the Air Act was not an effective remedy. Further, Section 14 of the NGT Act contemplates that this Tribunal can entertain any application and assume jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved.

It was stated by the Tribunal that it was a statutory Tribunal and it cannot examine the *vires* challenged of any act or provision thereof. It is for the constitutional courts to examine such matters. A statutory Tribunal can interpret the provisions of law with which it is supposed to deal with. Therefore, it could not go into the questions raised by the Applicant. Merely because the Appellate Authority under Section 31 of the Air Act conducts sittings periodically, this Tribunal could not assume jurisdiction under Section 14 of the NGT Act. Thus, entertaining an application of this nature amounts to allowing the Applicant to circumvent the statutory appeal which is not permissible in the law. Therefore, the considered opinion of the Tribunal was that the Application is not maintainable and being devoid of merits and was dismissed at the stage of admission.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7773/MS-Athiappa-Chemicals-Vs-Puducherry-Pollution-Control-Committee

M/s. Blooming Colours v. Tamil Nadu Pollution Control Board & Ors.

APPLICATION NO. 33 OF 2011

CORAM: Justice A.S. Naidu and Dr. G.K. Pandey
Key words: Industrial effluents
Application Dismissed

Date: 15th December, 2011
It was submitted that the relief sought for in this application was squarely covered by the decision of this Tribunal passed in *Application No. 3/2011 to 11/2011* i.e. *M/s. Raagam Exports* v. *Tamil Nadu Pollution Control Board and Ors.* as well as other analogous matters, disposed of on 11th October, 2011.

Therefore, without issuing notice to the Respondents, the Tribunal disposed of this Application with an observation that if the Applicant files suitable application, seeking permission to commence its unit, before the Competent Authority, under the provisions of appropriate Law in vogue, the said Authority was to consider the said application, conduct such inspections as deemed just, proper and necessary and if satisfied that the Applicant has complied with the directions issued by the Supreme Court as well as High Court of Madras, and also satisfies all the requirements of law, pass such order/orders/direction as deemed just proper and in accordance with the law.

The unit was lying closed for quite some time therefore ends of justice and equity, warrants that the Competent Authority should take a decision on the application to be filed by the Applicant, as expeditiously as possible.

As the case was disposed of at the admission stage, liberty was granted to any of the opposite parties to move this Tribunal by filing appropriate Application, if any feel aggrieved, by this order.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7774/Blooming-Colours-Vs-Tamil-Nadu-Pollution-Control-Board

Paryavarana Sanrakshan Sangarsh Samiti, Lippa v. Union of India & Ors.[10]

M.A. NO. 23 OF 2011

(ARISING OUT OF APPEAL NO. 17 OF 2011)

CORAM: Justice A.S. Naidu and Dr. G.K. Pandey

Key words: Integrated Hydroelectric Project, Limitation, Condonation of delay, Forest diversion

Application Allowed

Date: 15th December, 2011

The Appellant sought to assail the order dated 14th June, 2011 issued by Ministry of Environment and Forests (MoEF), granting final approval for diversion of forest land in favour of Himachal Pradesh Power Corporation Ltd., (HPPCL) for construction of integrated hydroelectric project in this appeal, filed under Section 18(1) read with Section 14, 15 & 16 of the National Green Tribunal Act, 2010 (NGT Act).

In the course of hearing, on the question of limitation, the Appellant prayed to be allowed to file a detailed application for condonation of delay. An application was accordingly filed in October, 2011. A reply to the said application was filed by Respondent No. 3. Counsel for

[10] Orders disposing of applications for condonation of delay/on questions of limitation have been selectively included in this compendium of judgments, which constitute an important body of decisional law formulated by the National Green Tribunal with respect to its specific law of limitation.

Respondents No. 3 and 4 contended that the Appeal had not been filed within the prescribed period i.e. 30 (thirty) days, thus it was barred by limitation. The Memorandum of Appeal in this case was also not accompanied with an application for condonation of delay, and therefore the Appeal was liable to be dismissed, on the ground of limitation – such was their contention.

As per the NGT Act, Section 16 requires that the period of limitation for filing an appeal be 30 days from the date on which the order or decision is communicated. However, according to the said section, the outer limit for filing of such appeal is 90 days provided the Tribunal is satisfied that the Appellant was prevented by sufficient cause from filing the appeal in time. In the application filed for condonation of delay the appellant has vividly explained the reasons already averred in the Memorandum of Appeal. In the view of the Tribunal, the reasons assigned were sufficient and the delay caused had been properly explained.

The submission of Respondents No. 3 and 4 that the President of the Appellant Samiti was present in the Ministry when the order was passed, was not considered material, as no document was produced before the Tribunal to reveal that the copy of the impugned order was served upon him, nor was there any material to reveal in what context he went to the Ministry of Environment and Forests. In the considered view of this Tribunal, the Appeal having been filed within 90 days from the date of impugned order, cannot be said to be time barred, only because the Memorandum of Appeal was not accompanied by a separate application for condonation of delay. Since the appeal has been filed on the 90th day and under the proviso of Section 16 of the NGT Act, this Tribunal had the authority and jurisdiction to condone the delay. Accordingly, the application was disposed of as allowed and the appeal was listed for hearing on merits.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7775/Paryavaran-Sanrakshan-Sangarsh-Samiti-Lippa-Vs-Union-of-India-and-Others

Hussain Saleh Mahmad Usman Bhai Kara v. Union of India & Ors.

M.A. NO. 32 OF 2011

(ARISING OUT OF APPLICATION NO. 32 OF 2011)

CORAM: Justice A.S. Naidu and Dr. Vijai Sharma

Key words: Coal-based Thermal Power Plant, Forest Conservation Guidelines, Environmental Clearance

Application Dismissed

Date: 10th January, 2012

The State Level Environment Impact Assessment Authority, Gujarat (SEIAA) by its order dated 11th June, 2010 granted environmental clearance (EC) for establishing a coal based thermal power plant at Bhadreshwar village, Mundra taluk, District Kutch in favour of OPG Power Gujarat Pvt. Ltd. (Respondent No. 3.)

The present application was filed alleging violation of certain conditions stipulated in the aforesaid EC, more particularly violation of the guidelines issued under the Forest (Conservation) Act, 1980. The Applicant had also filed an application for interim stay of construction in furtherance of the EC granted to Respondent No. 3, on the ground that it would cause irreparable damage to ecology and environment.

According to the Senior Advocate appearing on behalf of the Applicant, the land over which the project is proposed to be constructed involves both forest and non-forest lands, but said aspect was not disclosed either in the Environment Impact Assessment (EIA) Report or in the EC letter, as it was intentionally suppressed by the Project Proponent (Respondent No. 3). Drawing the court's attention to para 4.4 of the Circular issued under the Forest (Conservation) Act, 1980, Senior Counsel submitted that as and when a project involves use of forest as well as non-forest land, work should not be started on non-forest land till approval of the Central Government for release of forest land is granted.

According to the Advocate appearing for Respondent No. 3, a perusal of the records revealed that 3.68 ha of forest land are involved in the aforesaid project. The forest land, he submitted, would be used only for laying pipelines without causing any damage

to the existing forest. Senior Counsel, advancing the cause of the Project Proponent, submitted that Para 4.4 of the Circular issued under the Forest (Conservation) Act, 1980 is only a guideline and it has neither any statutory force nor can it be said to be binding upon Respondent No. 3. It was also submitted that alternative steps were being taken not to use the reserve forest land and instead use other land situated in the vicinity for laying down the pipe lines, and as such, if the construction work was stalled Respondent No.3 would suffer insurmountable hardship.

Para 4.4 of the guidelines on Forest (Conservation) Act, 1980, creates certain embargos with regard to commencement of construction so far as projects which involve both forest and non-forest land. According to the Tribunal, the question as to whether the said guidelines would have mandatory effect or otherwise would be decided in the main application.

Considering the submissions, facts and circumstances, the Tribunal held that the balance of convenience tilted in favour of Respondent No. 3, and were satisfied that irreparable loss and prejudice would be caused if the said Respondent was restrained from raising any construction over the non-forest land at this stage.

The application was disposed of with a direction that if Respondent No. 3 carried out any construction in connection with the power plant over non-forest land at the site, the same would be at the risk of the Respondent. It was also made clear that in future, Respondent No. 3 would be barred from claiming any equity with regard to the constructions made.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/?7780/Hussain-Saleh-Mahmad-Usman-Bhai-Kara-Vs-Union-of-India-and-Others

Baijnath Prajapati v. Ministry of Environment and Forests & Ors.

APPEAL NO. 18 OF 2011

CORAM: Justice A.S. Naidu and Dr. Vijai Sharma

Key words: Environmental Clearance, Coal-based thermal power plant

Appeal withdrawn

Date: 20th January, 2012
Through the present Appeal, the order dated 28th May, 2010, its corrigendum dated 1st September 2010 and the office memorandum dated 23rd November, 2010, granting environmental clearance in favour of Moser Baer Power and Infrastructure Ltd. (Respondent No. 3) for a coal based thermal power plant – were all challenged.

As the Appeal was barred by limitation, by order dated 27th September, 2011 notices were issued to the Respondents. The Appellant sought withdrawal of the Appeal on the ground that he had realised that '*this developmental project is required for development of the region and that he cannot oppose this project'*.

This Tribunal had to see that it does not engage in adjudication that is motivated by frivolous considerations or reasons not connected with environmental protection and conservation. To avoid such frivolous cases in future, the Tribunal saw it fit to impose costs of Rs. 50,000/- on the Appellant.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/?7781/Baijnath-Prajapati-Vs-Ministry-of-Environment-and-Forest-and-Others

Shri Govind Singh Pangtey v. Ministry of Environment and Forests & Ors.

APPEAL NO. 2 OF 2011(T)

CORAM: Justice A.S. Naidu and Dr. Vijai Sharma
Key words: Hydroelectric Power Project, Forest Clearance, Environmental Clearance

Application withdrawn

Date: 20th January, 2012
Environmental clearance (EC) was granted to a hydroelectric power project situated at Pithoragarh District of Uttarakhand, in favour of National Thermal Power Corporation Ltd. by order dated 26th March 2009. The EC was assailed before the erstwhile National Environment Appellate Authority (NEAA). In conformity with the provisions of the National Green Tribunal Act, the said Appeal stood transferred to this Tribunal after its formation.

In the course of hearing, it was revealed that by order dated 19th July, 2010 the MoEF, exercising the power conferred upon it under Section 2 of the Forest Conservation Act 1980, had denied approval for diverting 217.522 ha of forest land for construction of the impugned project. Consequently, the EC granted would be rendered inoperative.

Being confronted with the said facts and changed circumstances, Counsel for the Appellant submitted that the Appellants were no longer inclined to pursue the Appeal, as the impugned order had become nugatory.

The Tribunal accepted the prayer made for withdrawal and permitted the Appellant to withdraw this Appeal.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7860/Shri-Govind-Singh-Pangtey-Vs-Ministry-of-Environment-and-Forest-and-Others

Satish Umesh Prabhu v. M/s Matoshree Infrastructure Pvt. Ltd.

M.A. NO. 30 OF 2011

ARISING OUT OF APPEAL No. 15 OF 2011

CORAM: Justice A.S. Naidu and Dr. Vijai Sharma
Key words: Condonation of delay

Application Allowed

Date: 24th January, 2012
Environmental Clearance (EC) granted by the Maharashtra State Level Environment Impact Assessment Authority was impugned on

various grounds. The said Appeal being one under section 16 of the National Green Tribunal Act, 2010, the prescribed period of limitation was thirty days from the date of the order or communication thereof. Proviso to section 16 sub-section (j) stipulates that the Tribunal may, if it is satisfied that the Appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

In the case in hand, the Appeal was filed after a lapse of thirty days. The Appeal was thus barred by time. This Application was filed for condonation of delay in filing the Appeal. It was submitted that the Appellants had been misguided by clause 11 of the order granting EC. It was further submitted that the Appellants were expecting the Tribunal to start sitting in Pune soon and that they were waiting to file the Appeal there. However, there was delay and the Appellants were constrained to come to Delhi and seek legal assistance. Thereafter, the Appellants made arrangements and filed the Appeal on 5th September, 2011. According to the Appellants, they were pursuing their cause diligently. The delay was caused due to reasons beyond their control and that it was a fit case for condonation.

The Tribunal observed that the State Level Environment Impact Assessment Authority had no jurisdiction or authority to enhance the period of limitation prescribed under the statute. Thus, they were satisfied that Respondent No. 2 had acted in excess of jurisdiction conferred upon him in incorporating clause 11 to the impugned order and thereby granting six months time to file the Appeal.

"We often come across such a clause in different Environment Clearances granted by the Authorities and we are constrained to observe that the same is not sanctioned by law. Therefore, we direct the authorities concerned as well as Ministry of Environment and Forests to henceforth refrain from incorporating such a clause in the order of Environmental Clearance."

Consequently, the Tribunal condoned the delay. The Miscellaneous Application was accordingly allowed.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7861/Sh-Satish-Umesh-

Prabhu-and-Others-Vs-Ms-Matoshree-Infrastructure-Private-Limited-and-Others

Suresh Banjan v. State of Maharashtra & Ors.

APPEAL NO. 35 OF 2011

CORAM: Justice A.S. Naidu and Dr. G.K. Pandey
Key words: Environmental Clearance, Public hearing

Application disposed of with consent of parties.

Date: 31st January, 2012
The order passed by State Environmental Impact Assessment Authority (SEIAA) (Respondent No. 2) granting environmental clearance (EC), to the slum rehabilitation project at Mumbai, in favour of Harekrishna Builders (Respondent No. 4) was assailed in this Appeal *inter alia* on the following grounds:

(a) That the SEIAA granted the EC on the basis of faulty, forged and incorrect representation of facts, without conducting any enquiry.
(b) That Respondent No. 4 had time and again altered the number of stories in the proposed structure, and thus varied the approved plan.
(c) That Respondent No. 4 had misrepresented and misled regarding the status of the construction.
(d) That no public hearing was conducted before granting EC.
(e) That the terms of reference enshrined in Environmental clearance (EC), were violated and the EC had been granted without verification.

In the Respondent's application for EC it was clearly stated that it had commenced its work since 1996 and 3 buildings out of 6 have already been completed, and that the work in other buildings was in full swing.

The Tribunal took a liberal view of the situation, and chose to view it in light of the constitutional rights of those benefiting from the project. It observed that under Article 21 of the Constitution, a person is entitled to live with dignity and comfort. In "Universal Declaration of Human Rights, 1948", housing had been specifically recognized as one of the basic rights. In the case in hand, the slum dwellers have been evicted from the slums which they were occupying since long. They were allotted transit accommodations

where sanitary facilities and other amenities, to meet day-to-day existence, were lacking. That apart, construction of a housing project over more than 7 years, would affect the environment. The pollution level in the locality, both air and water would be in a deplorable state. Due to the construction work, noise and dust emanating in the area would pose a threat to health, apart from causing annoyance and inconvenience.

Considering all these aspects, the Tribunal suggested that the parties put forward a workable solution to end the litigation. After elaborate submissions and counter submissions, the parties agreed to dispose of the case in the following terms:-

(i) Respondent No. 4 shall adhere to, the sanctioned plan and shall not deviate.
(ii) Respondent No. 4 shall take immediate steps to complete the entire construction, as per the plan and EC terms, within a period of three and half years.
(iii) The project being a time bound one, any delay caused should be seriously viewed and the authorities to initiate appropriate action in accordance with law, if the project is not completed within the stipulated time.
(iv) Respondent No. 4 shall provide all amenities as per the approved plan and agreement entered inter se between the Society and the Builder.
(v) Respondent No. 4 shall further ensure that till all the members who have been found eligible for allotment of flats and staying in transit accommodations are provided with flats, it shall not sell any flat to outsiders.
(vi) To facilitate expeditious completion of the work, the Appellant shall vacate the slum which he is occupying within a period of one month, failing which necessary steps shall be taken to demolish the same.

Link to the judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7862/Suresh-Banjan-Vs-State-of-Maharashtra-and-Others

M/s Baba Bricks Field v. U.P. Pollution Control Board

APPEAL NO. 29 OF 2011

CORAM: Justice A.S. Naidu and Vijai Sharma

Key words: Brick kiln, No-objection certificate

Appeal withdrawn

Date: 2nd February, 2012

This Appeal was filed assailing the legality of the order dated 12th September, 2011, passed under Section 31 of the Air (Prevention and Control of Pollution) Act, 1981 (Air Act). The Appellant was the owner of a piece of land in District Bahraich, Uttar Pradesh. He intended to establish a brick kiln over the said land and filed an Application before the competent authority for granting license/no objection certificate, under the Air Act. The authorities granted the no objection certificate in October, 2009.

After obtaining the no objection certificate (NOC), the Appellant took steps for setting up the brick kiln. Thereafter, some allegations were made by adversaries and rivals of the Appellant before the authorities. After receiving this complaint, the Sub-Divisional Magistrate, called upon the Appellant to show cause and produce the relevant documents relating to the establishment of the kiln. The said direction was duly complied with by the Appellant, within the time prescribed.

The Sub-Divisional Magistrate conducted a field enquiry, and recorded the statements of the complainant and other villagers and being satisfied submitted a report in favour of the Appellant, to the District Magistrate. Thereafter, the Appellant established his kiln and obtained registration certificate. While the matter stood thus, he received the order dated 21st October, 2009 from the Uttar Pradesh Pollution Control Board (UPPCB), revoking the no objection certificate granted to the Appellant. The Appellant being aggrieved assailed the said order before the High Court of Allahabad through a writ petition. The said petition was disposed of granting liberty to the petitioner to move an application against the impugned order before the appropriate authority. Consequently, the Appellant filed

an application before UPPCB in December, 2009. After receipt of the application from the Appellant, the Regional Officer, UPPCB, conducted the site inspection, which revealed that the brick kiln in question was installed at a place other than the place for which the NOC was granted. It also did not satisfy the guidelines set forth by the District Board. That apart, the kiln was set up at a distance of 80 meters from thickly populated Abadi lands. After considering the facts and circumstances, by a well discussed order dated 19th January, 2010, the UPPCB rejected the petition filed by the Appellant and confirmed the order cancelling the NOC.

Subsequently, the Appellant filed an appeal under Section 31(2) of the Air Act. The Appellate Authority discussed the facts and circumstances, and came to the conclusion that the findings arrived at by the Board do not suffer from any infirmity and dismissed the Appeal.

The Appellant prayed to withdraw the Appeal, and the Tribunal found no reason to go into the merits of the case. It granted liberty to the Appellant to file a fresh application before the competent authority in respect of the lands that satisfy the siting criteria for the kiln. If such an application was filed in the proper manner, the competent Authority was directed to dispose of the said application strictly in accordance with law, as expeditiously as possible.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7863/Ms-Baba-Bricks-Field-Vs-Uttar-Pradesh-Pollution-Control-Board

Sri Lakshmi Minerals v. Tamil Nadu Pollution Control Board & Ors.

APPLICATION NO. 5 OF 2012

CORAM: Justice Shri C.V. Ramulu and Dr. Devendra Kumar Agrawal

Key words: Consent to operate, Question of law

Application disposed of with directions

Date: 8th February, 2012

This application was filed seeking a direction to the Respondents to inspect the unit of Sri Lakshmi Minerals and to consider the representation made by it to the District Environmental Engineer,

Tamil Nadu Pollution Control Board (TNPCB) (Respondent No. 2) in July, 2011 for grant of consent to operate the unit.

By an order dated 31st May, 2010 passed by the TNPCB, the unit of the Applicant was directed to be closed and further directed the Tamil Nadu Electricity Board (Respondent No. 3) to stop supply of electricity to the same. The Applicant had made two representations requesting Respondent No. 2 to inspect the unit and to grant letter of consent, as per law. Though no appeal was preferred against the order dated 31st May, 2010 the above mentioned representations were filed after rectifying the defects pointed out by the authorities under the Water and Air Acts earlier. In this Application, the grievance of the applicant was that the said representations had not been considered by Respondent No. 2, till date.

The Tribunal disagreed with the Applicant's arguments. In its opinion, irrespective of whether an appeal had been filed or not against the order of the TNPCB dated 31st May, 2010, this Application seeking a direction to Respondent No. 2 to dispose of representations was not maintainable. No substantial question of law relating to environment had arisen as contemplated under section 14 of the National Green Tribunal Act.

The Application was consequently disposed of at the admission stage with liberty granted to the Applicant to file an appeal against the order passed by the Respondent No. 1 dated 31st May, 2010, if he was so advised; and it was always open for the appellate authority to consider the same as per law, including the limitation aspect of the matter.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7864/Sri-Lakshmi-Minerals-Vs-Tamil-Nadu-Pollution-Control-Board-and-Others

Vimal Bhai v. Ministry of Environment and Forests & Ors.

APPEAL NO. 5 OF 2011

CORAM: Justice Shri C.V. Ramulu and Dr. Devendra Kumar Agrawal

Key words: Forest Clearance, Aggrieved person, Cumulative Impact Assessment

Appeal disposed with directions

Date: 14th December, 2011

This appeal was filed against the grant of Forest Clearance (FC) accorded by the First Respondent through its order 3rd June, 2011, under which deforestation of government forest land diverted for construction of a dam across the river Alaknanda in Chamoli District of Uttarakhand.

The environmental clearance (EC) was already granted as early as August 2007 by the Ministry of Environment and Forest (MoEF). The EC remained unchallenged for three years, and thus attained finality. Thus, the only challenge made was for the grant of FC and not EC.

All the Appellants were affected by the grant of the FC. The total land requirement of the project was about 120 ha. The grant of FC in this case was substantially based on the study made by Indian Institute of Technology, Roorkee (IITR) and Wildlife Institute of India, Dehradun (WII). As per the scope of work, "effectiveness of mitigative measures and compliance of stipulated conditions on which various projects earlier have been examined", was to be completed, however, no such study was conducted. The recommendation of the Forest Advisory Committee (FAC) was evidently based on a non-existent study. According to Respondents, all the allegations made and the grounds raised in the appeal were all baseless and liable to be rejected.

It arose for consideration in this appeal whether the Appellants could be called as aggrieved and/or injured "person(s)" as defined under the National Green Tribunal (NGT) Act and the appeal was maintainable by them. It was the argument of the counsel of the Respondent that even the above-defined person shall be a person either aggrieved or injured directly or indirectly and not otherwise. The only exception to be made for treating an appeal/application as not maintainable could be a matter which falls beyond the seven Acts as notified in Schedule I of the NGT Act 2010 and in a case of mala-fide and vexatious litigation brought before this Tribunal and not otherwise.

It was opined that the statutory provisions are subservient to Constitutional mandates. The person as defined or person aggrieved as occurs in sections 2(j), 16 and 18(2) of the NGT Act cannot be placed above "every citizen" as appears in Article 51A of the Constitution of India. Once the mandate is of every citizen, any person can approach this Tribunal complaining environmental threat

in the activities of the State or any organization or individual. Therefore, the Appellants were aggrieved persons as per the scheme of the NGT Act, even though they were not directly affected/ injured at that point in time.

It also required to be considered whether the Appellants were justified in raising grounds that were available for challenging the EC or its conditions in the guise of challenging the grant of present FC. The FC alone was under challenge in this Appeal. Therefore, the submission made by counsel for the Appellant that all the issues that arise from the EC can also be raised in this appeal was rejected. But exception could be made for overlapping issues i.e. the issues that were considered at the time of grant of EC again while granting FC, considered one after the other, independently.

The Appellants raised grounds pertaining to negative impact of tunnelling on water springs and subsequent impact on forests and agriculture; methane emissions from reservoirs; deterioration in water quality due to less absorption of beneficent chemicals; loss of aesthetic and ‘non-use values’; value of free-flowing rivers; breeding of mosquitoes in reservoirs and the negative impact on health; deprivation of sand and fish to local people; negative cultural impacts; and negative impact of blasting/tunnelling, etc. The Respondents filed detailed replies countering the allegations.

The process of analyzing cumulative effects is an enhancement of the traditional EIA components: (i) scoping, (ii) describing the affected environment, and (iii) determining the environmental consequences. The Cumulative Impact Assessment (CIA) studies in the instant case were awarded to IITR & WII separately with elaborate TOR and time bound deliverables as evidenced from the material placed on record.

With regards to question pertaining to environmental flow, though originally part of EC, the Tribunal was of the considered opinion that the stipulations regarding environmental flow certainly follow the principle of sustainable development and the precautionary principle.

The appeal accordingly stood disposed of subject to the following directions:

1. The first respondent shall set up an appropriate committee of experts for the preparation of CIA report of the five projects considered in WII report.

2. Considering the need for better procedures in making sound evaluation of the forest land diversion proposals, certain options for cost benefit analysis shall be explored for future proposals.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/?7865/Vimal-Bhai-and-Others-Vs-Ministry-of-Environment-and-Forest

Husain Saleh Mahmad Usman Bhai Kara v. Gujarat State Level Environment Impact Assessment Authority & Ors.

APPEAL NO. 19 OF 2011

CORAM: Justice A.S. Naidu and Dr. G.K. Pandey

Key words: Coal Based Thermal Power Plant, Environment Clearance, Forest Clearance

Applications disposed with directions

Date: 8th February, 2012

1. **Appeal No. 19/2011: Hussain Saleh Mahmad Usman Bhai Kara v. Gujarat State Level Environment Impact Assessment Authority & Ors.**

2. **Appeal No. 37/2011: Bhikhalal Nathubhai Nagdan Ahir and Others v. Ministry of Environment and Forest & Ors.**

3. **Application No. 32/2011: Hussain Saleh Mahmad Usman Bhai Kara v. Union of India & Ors.**

The matter in the aforesaid two Appeals as well as the Application, related to setting up of a 300 Coal Based Thermal Power Plant at Kutch, in Gujarat by OPG Power Gujarat Pvt. Ltd. The facts of all the aforesaid three cases being similar, by consent of parties, the same were heard together.

In Appeal No. 19/2011, the Appellants assailed the environmental clearance (EC) granted in favour of OPG Power Gujarat Pvt. Ltd. (Respondent No. 3) by the Gujarat State Level Impact Assessment Authority for setting up the thermal power plant. Appeal No.

37/2011 was filed assailing the grant of Coastal Regulation Zone (CRZ) clearance for the proposed intake and outfall of sea water by OPG Power Gujarat Pvt. Ltd. for utilisation in the power plant proposed to be set up at Bhadreshwar village**.** Application No. 32/2011 was filed by Husain Saleh Mahmad Usman Bhai Kara, alleging violation of the Environment Protection Act, 1986 - especially the conditions stipulated in the EC granted to the thermal power plant set up by OPG Gujarat Power Ltd., and also violation of the guidelines issued under the Forest (Conservation) Act, 1980. In the said Application, it is alleged that EC was granted by the Gujarat State Level Environment Impact Assessment Authority without insisting upon Forest Clearance (FC) though the project area included reserved forest.

It was admitted that in the Application filed by the Project Proponent under the Forest (Conservation) Act, 1980 seeking permission to use land for non-forest activities, i.e., to lay down the pipeline from the project area to the sea has been returned. It was also submitted that Respondent No. 3 was endeavouring to find out alternative ways to avoid use of forest land and also sea water, and, if the new technique was adopted, then there would not be any need for forest and/or CRZ clearance.

In the Tribunal's opinion, it was trite that in the absence of permission under the Forest (Conservation) Act and CRZ clearance, the EC granted in favour of Respondent No. 3 was rendered redundant in as much as the said EC is subject to the permission and clearance granted under the Forest (Conservation) Act, 1980 as well as CRZ Regulations. Therefore, it held that until the Respondent No. 3 obtained clearance to use reserve forest land as well as CRZ, it could not proceed with the project.

After hearing both the parties, in view of the discussions made above and the present day scenario, the Tribunal felt that it would be just, proper and equitable to dispose of the three cases *inter alia* with the following directions:-

i) Respondent No. 3 was to adhere to the terms and conditions laid down in the EC granted by Gujarat State Level Impact Assessment Authority.
ii) If any deviation was proposed to the original project plan, by implementing technical changes, the proponents were to apply to the concerned authorities who shall consider and dispose of

the same as expeditiously as possible, and take not later than four months.

iii) In the event that Respondent No. 3 intended to follow the original project technique then it was required to make further applications under the Forest (Conservation) Act, which was to be considered and disposed of expeditiously.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/?7866/Hussain-Saleh-Mahmad-Usman-Bhai-Kara-Vs-Gujarat-State-Level-Environment-Impact-Assessment-Authority-and-Others

Jan Chetna v. Ministry of Environment and Forests & Ors.

APPEAL NO. 22 of 2011(T)

CORAM: Justice A.S. Naidu and Dr. G.K. Pandey

Key words: Sponge Iron Plant, Environmental Clearance, Public Hearing, Locus standi

Appeal partly allowed

Date: 9th February, 2012

Scania Steels & Power Ltd. (Scania) was operating a sponge iron plant in Raigarh district in Chhattisgarh, before 2004 i.e. prior to the Environmental Impact Assessment (EIA) Notification, 2006. In the year, 2008, Scania applied to the Ministry of Environment and Forest (in short MoEF) for expansion of the existing project. It proposed to enhance the production of sponge iron from 66,000 TPA to 1,32,000 TPA by adding another unit, installing a steel melting shop, a ferro alloy plant and captive power plant. The proposal was considered by the MoEF and environment clearance (EC) was granted by letter dated 5th November, 2008 for the proposed expansion.

Jan Chetna (Appellant No.1) claimed to be a project affected person, having agriculture land adjacent to the project site, and therefore

challenged the order dated 5th November, 2008, passed by the Ministry of Environment and Forests (MoEF) granting EC for expansion of the project in question before the then National Environment Appellate Authority (NEAA). The NEAA had dismissed the Appeal. The said order was assailed by Jan Chetna before the High Court of Delhi, which set aside the order passed by NEAA and directed it to dispose of the Appeal on merits, as expeditiously as possible. While NEAA was in session of the case, the NGT Act was promulgated and in consonance with the provisions of the said Act, the Appeal stood transferred to this Tribunal.

With regard to the locus standi of the Appellants, the Tribunal opined that the expression “aggrieved persons” could not be considered in a restricted manner. The Tribunal did not hesitate in holding that that the Appellants satisfied the definition of “person aggrieved” and had locus standi to file this Appeal.

A cumulative reading of the provisions of EIA Notification, 2006 in the light of the principles laid down by the Supreme court in different decisions, lent itself to the impression that public consultations as incorporated in 2006 Notification were in recognition and furtherance of the rights to the environment. Public consultations ordinarily have two components; (i) public hearing at the site or in its close proximity and (ii) to obtain responses in writing from other concerned persons having a plausible stake in the environmental aspects of the project or activity.

According to the Tribunal, the wording of Clause 7(ii) of the EIA Notification was very clear and bereft of any ambiguity. It stipulates that all applications seeking prior environmental clearance for expansion, with increase in the production capacity beyond the capacity for which prior EC has been granted under the EIA Notification**,** or with increase either in lease area or production capacity etc., would attract the exclusion of public consultation. In the case in hand, the production capacity of an existing sponge iron unit was sought to be enhanced, and its production capacity increased. However, crucially, no EC had been granted to the said existing unit, under the EIA Notification, 2006. Thus, the concession not to hold public consultation could not be extended to the expansion of the existing Sponge Iron Unit. Furthermore, all the proposed units being interlinked and dependent on one another, and as no unit could be established in the absence of the other, the Tribunal was of the view that the decision taken to exempt public consultation to the entire project under Clause 7(ii) of the EIA

Notification, 2006, was not just and proper specially due to significant increase in pollution load and consequential environmental ramifications.

Only because, the authorities had exempted public consultation in respect of some other projects, could not be ground for exempting the same so far as Scania is concerned. Law is well settled that each case has to be determined and decided in consonance with the facts and circumstances relating to the said case and there cannot be a universal decision to either conduct or exempt public hearing while granting EC. Thus, importantly, past actions of this sort were not acscribed precedent value.

The MoEF was directed to get public consultation (Public Hearing) conducted for the proposed projects at the site or nearby area of the site as per the provisions contained in the EIA Notification, 2006. This direction is necessary in order to achieve the object and purpose of the Notification 31 vis-a-vis the Statute. The Appeal was thus allowed in part.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/?7867/Jan-Chetna-and-Another-Vs-Ministry-of-Environment-and-Forest-and-Others

P. Manokaran Power Loom v. Tamil Nadu Pollution Control Board & Ors.

APPEAL NO. 19 of 2011

CORAM: Justice Shri C.V. Ramulu and Dr. Prof R. Nagendran

Key words: Condonation of delay

Appeal Dismissed

Date: 15th February, 2012
This appeal was directed against an order made under Section 31A of Air (Prevention and Control of Pollution) Act 1981 (Air Act), where the Appellant's unit was directed to be closed and the supply of electricity suspended for certain violations under the Air Act. Aggrieved thereby, the Appellant approached the High Court of Madras by way of writ. The said writ petition papers were directed to be returned to the Appellant to enable him to approach this Tribunal.

When the matter came up for hearing in February, 2012, the Tribunal heard the Appellant regarding the maintainability of the application. It was admitted that against the impugned order, an appeal under Section 31 of the Air Act was available. Instead of availing of that remedy, appellant had approached the High Court of Madras under Article 226 of the Constitution of India, which returned the papers to enable the Petitioners to approach this Tribunal. This, however, was not to mean that the Tribunal could allow Petitioners to bypass the appeal available under Section 31 of the Air Act, in its opinion.

Further, this Tribunal is the Appellate Authority against any order that may be passed by the Appellant Authority under Section 31 of the Air Act. Therefore, hearing the appeal would amount to bypassing the first appellate forum. The Appeal was accordingly dismissed.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7880/Ms-P-Manokaran-Power-Loom-and-Others-Vs-Tamil-Nadu-Pollution-Control-Board

N. Chellamuthu v. The District Collector & Ors.

APPLICATION NO. 20 OF 2011

CORAM: Justice Shri C.V. Ramulu and Dr. Prof R.Nagendran
Key words: Powerloom, Noise pollution

Application disposed with directions

Date: 24th February, 2012
This application was filed seeking relief for protection of environment against K. Sampath (Respondent No. 5), who was allegedly causing noise and dust pollution round the clock by running three powerlooms at Erode District, Tamil Nadu.

As per the Applicant, school going children were not able to do their home work, and elderly people were not able to sleep, due to the noise. Some of them were affected by health problems like asthma, sinusitis, etc., due to emission of cotton dust. Though he made a representation on 24th January, 2011 to Tamil Nadu Pollution Control Board (Respondent No. 2), ventilating the grievances of residents and to remove all the powerlooms from the residential locality, nothing was done. However, a team from the Tamil Nadu Pollution Control Board visited the powerloom units of Respondent No. 5 in November, 2011, and found that noise pollution control measures had not been installed in any of the powerlooms. Air sampling and noise level surveys were done but to no avail.

The counsel for the applicant stated that in spite of all directions issued by the Pollution Control Board Authorities nothing substantial has been done till date. Therefore, the respondents are required to be told that they have to adhere to the norms of the Pollution Control Board as desired by the authorities.

Under these circumstances the application was disposed of directing the District Environmental Engineer, Tamil Nadu Pollution Control Board, Erode, Tamil Nadu and Executive Officer, Veerappan Chatram Municipality, Erode district, Tamil Nadu, to monitor the situation periodically and record the sound and dust pollution levels caused by the powerlooms.

The Appeal was accordingly disposed of with directions.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7881/N-Chellamuthu-Vs-The-District-Collector-and-Others

V. Srinivasan v. Tamil Nadu State Level Environment Impact Assessment Authority & Ors.

APPEAL NO. 18 OF 2011 (T)

CORAM: Justice Shri C.V. Ramulu and Dr. Prof R. Nagendran

Key words: Integrated Municipal Solid Waste Processing Plant, Environmental Clearance, Environmental Impact Assessment

Appeal Allowed

Date: 24th February, 2012

This appeal is directed against the Environmental Clearance (EC) granted in favour of the Corporation of Chennai (Respondent No. 3) by the Tamil Nadu State Environment Impact Assessment Authority vide letter dated 30th June, 2010 for setting up of Integrated Municipal Solid Waste Processing Plant for the treatment of Municipal Solid Waste.

After elaborate arguments, it came to light that the Tamil Nadu State Environment Impact Statement Authority (SEIAA) had no jurisdiction to grant EC of this nature. Since Guindy National Park was located within a distance of 10 km from the project site, the EC should have been obtained from the competent authority i.e. the Central Government, through the Ministry of Environment and Forests (MoEF), New Delhi.

The Principal Chief Conservator of Forests cum Chief Wildlife Warden, Tamil Nadu, submitted a report dated 25th November, 2011 and also filed a reply stating that the aerial distance between the two nearest points of the project site and the boundary of the Guindy National Park were 5.6 km and 6.2 km respectiely. Thus, the Tribunal held that this project fell under *category A* (under the EIA Notification, 2006). For grant of EC for *category A* projects the jurisdiction lay with the Central Government (MoEF) and not with the Tamil Nadu SEIAA.

The Tribunal made it clear that the Appellant was at liberty to file all the objections as raised in this appeal before the Central

Government (MoEF), whenever an application was made by the project proponent for grant of EC. Also, the MoEF was directed to issue notices to all the parties before granting EC in favour of the project proponent, whenever considered.

With regard to the EIA consultant of the Project Proponent who furnished the details for the purpose of obtaining EC as to the distance between the project site and the Guindy National Park, which is proved to be false - this Tribunal had deprecated such practices adopted by EIA consultants in furnishing false information and the MoEF had issue suitable guidelines to deal with such project proponents.

"*We have no doubt in our mind that the information furnished by the EIA consultant in the present case as to distance is not only a gross negligence but also professional misconduct. The concerned authority shall take appropriate steps to prevent such occurrences by taking suitable action against the EIA Consultant and warning him in writing in this regard."*

The appeal was accordingly allowed, and the EC issued by the Tamil Nadu SEIAA, set aside.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7882/V-Srinivasan-Vs-Tamil-Nadu-State-Level-Environment-Impact-Assessment-Authority-and-Others

Nanthivaram Radha Nagar Residential Welfare Association v. Tamil Nadu Pollution Control Board & Ors.

APPEAL NO. 20 OF 2011
CORAM: Justice Shri C.V. Ramulu and Prof. R. Nagendran
Key words: Solid Waste, Dumping, Water Pollution

Appeal resolved externally

Date: 24th February, 2012
This matter was last heard on 4th January, 2012. The Tribunal was informed then that in so far as the residential area was concerned,

there was no longer any dumping of solid waste. But in case of the water body the garbage was still being dumped, which was polluting the water body and causing it to shrink. On 10th January, 2012 the Tribunal had directed the Nandhivaram Grama Panchayat as well the District Environmental Engineer, Tamil Nadu Pollution Control Board (TNPCB), Kanchipuram District, Marai Malai Nagar, to monitor the situation and also to take out video graphic evidence of the entire area including the water body.

However, it was stated that the authorities were not vigilant enough to stop the dumping in both the areas.

Under these circumstances, the two appeals were disposed of, directing:

1) The District Environmental Engineer, TNPCB, Kanchipuram District, Marai Malai Nagar to monitor the situation periodically and report the same to the TNPCB. The Executive Officer, Nandhivaram Panchayat was to take appropriate steps by deputing personnel every alternate day to ensure that there was no dumping of garbage in the water body or Radha Nagar residential area.
2) The District Environmental Engineer, TNPCB, as well as Executive Officer, Nandhivaram Panchayat were to display a Notice Board showing the importance of keeping the water body clean and also warning the people that action will be taken as per law, if any violation is noticed.

   The petitioner was granted liberty to approach this Tribunal if these directions were not adhered to.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7883/Nanthivaram-Radha-Nagar-Residential-Welfare-Association-Vs-Tamil-Nadu-Pollution-Control-Board

I. P. Bhaskar v. The District Collector Kancheepuram District & Ors.

APPEAL NO. 21 OF 2011

CORAM: Justice Shri C.V. Ramulu and Prof. R. Nagendran

Key words: Solid waste, Dumping, Water Pollution

Appeal solved by external factors

Date: 24th February, 2012
This matter was last heard on 4th January, 2012. The Tribunal was informed then that in so far as the residential area was concerned, there was no longer any dumping of solid waste. But in case of the water body the garbage was still being dumped, which was polluting the water body and causing it to shrink. On 10th January, 2012 the Tribunal had directed the Nandhivaram Grama Panchayat as well the District Environmental Engineer, Tamil Nadu Pollution Control Board (TNPCB), Kanchipuram District, Marai Malai Nagar, to monitor the situation and also to take out video graphic evidence of the entire area including the water body.

However, it was stated that the authorities were not vigilant enough to stop the dumping in both the areas.

Under these circumstances, the two appeals were disposed of, directing:

3) The District Environmental Engineer, TNPCB, Kanchipuram District, Marai Malai Nagar to monitor the situation periodically and report the same to the TNPCB. The Executive Officer, Nandhivaram Panchayat was to take appropriate steps by deputing personnel every alternate day to ensure that there was no dumping of garbage in the water body or Radha Nagar residential area.
4) The District Environmental Engineer, TNPCB, as well as Executive Officer, Nandhivaram Panchayat were to display a Notice Board showing the importance of keeping the water body clean and also warning the people that action will be taken as per law, if any violation is noticed.

The petitioner was granted liberty to approach this Tribunal if these directions were not adhered to.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7884/IP-Bhaskar-and-Others-Vs-The-District-Collector-Kancheepuram-District-and-Others

M/s Balaji Minerals v. Tamil Nadu Pollution Control Board & Ors.

APPLICATION NO. 22 OF 2011

CORAM: Justice Shri C.V. Ramulu and Prof. R. Nagendran

Key words: Consent to operate

Application disposed with directions

Date: 28th February, 2012

This application was filed seeking to direct the Respondents to inspect the applicant's unit and permit Balaji Minerals to operate the unit which was closed in August, 2010.

The Tamil Nadu Pollution Control Board (TNPCB) after inspecting the unit had found certain deficiencies and directed the applicant to comply with the same. Since the applicant had not complied with, the TNPCB invoked its power under section 31A of Air (Prevention and Control of Pollution) Act, 1981 and directed to close down the unit and directed the Assistant Engineer to stop supply of electricity with immediate effect.

The Applicant had made several representations requesting the board to re-inspect the unit, since he had complied with the deficiencies. As there was no response to the same, this application was filed.

The Tribunal had directed Respondents No. 1 and 2 to inspect the Unit of the Applicant and submit a fresh report on or before 15th February 2012. There was no report submitted by Respondents No. 1 and 2. Under these circumstances, the Tribunal directed the following:

- The Respondents No. 1 and 2 to consider the representations made by the applicant dated 13th August, 2010 and 15th September, 2010 and take appropriate action by inspecting the unit and taking decision within a period of six weeks from the date of this order and communicate a copy of the decision to the applicant on or before 10th April, 2012.
- If for any reason, Respondents No. 1 and 2 do not act upon and take a decision as directed above, the applicant is at liberty to operate the Unit and the Tamil Nadu Electricity Board shall restore electricity and power supply to the unit. If the decision

made is against the applicant, he may work out remedies as available under the law.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7885/Ms-Balaji-Minerals-Vs-Tamil-Nadu-Pollution-Control-Board

Maharaja Minerals v. Tamil Nadu Pollution Control Board & Ors.

APPLICATION NO. 23 OF 2011

CORAM: Justice Shri C.V. Ramulu and Prof. R. Nagendran
Key words: Re-inspection

Application Allowed

Date: 28th February, 2012
This application was filed seeking to direct the Respondents to inspect the applicant's unit and permit the applicant to operate the unit which was closed.

The Tamil Nadu Pollution Control Board (TNPCB) after inspecting the unit found certain deficiencies and directed the applicant to rectify the same. Since the applicant had not complied, the TNPCB invoked its power under Section 31A of Air (Prevention and Control of Pollution) Act, 1981 and directed closure of the unit, and the Assistant Engineer to stop supply of electricity with immediate effect.

It appears the applicant had made several representations requesting the TNPCB to re- inspect the unit since he had complied with the deficiencies pointed out earlier. As there was no response, this application was filed.

Therefore, the Tribunal directed the Respondents No. 1 and 2 to inspect the Unit of the applicant and submit a fresh report on or before 15th February 2012. There was no report submitted by Respondents No. 1 and 2. Under these circumstances, the Tribunal directed the following:

- Respondents No. 1 and 2 to consider the representation dated 26th June, 2010 made by the applicant and take appropriate

decision after inspecting the unit within a period of six weeks from the date of this order and communicate the decision to the matter on or before 10th April, 2012.

- If for any reason, Respondents No. 1 and 2 do not act upon and take a decision as directed above, the applicant is at liberty to operate the Unit. If the decision made is against the applicant, he may work out remedies as available under the law.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7886/Ms-Maharaja-Minerals-Vs-Tamil-Nadu-Pollution-Control-Board

M/s Amman Plastics v. Tamil Nadu Pollution Control Board & Ors.

APPLICATION NO. 25 OF 2011

CORAM: Justice Shri C.V. Ramulu and Dr. Prof R. Nagendran
Key words: Plastic Recycling Unit, Re-inspection

Application Allowed

Date: 28th February, 2012
This application was filed seeking a direction to Tamil Nadu Pollution Control Board (Respondent No. 1) and the District Environmental Engineer (Respondent No. 2) to inspect the plastic recycling unit of the Applicant and consider the representations made by him dated 27th August, 2010 and consider granting consent to operate the Unit.

The Tamil Nadu Pollution Control Board (TNPCB) officials had inspected and found certain defects in the functioning of the Unit and directed the applicant to comply with the measures suggested. Since the applicant had not followed the directions issued by the Tamil Nadu Pollution Control Board, the unit was sought to be closed down. However, no action was taken. In the meanwhile, the applicant filed another application seeking inspection and orders on 27th September, 2011. This application was filed seeking consideration of the representation purported to have been filed by the applicant on 27th September, 2011.

The Tribunal ordered that the application be disposed of with directions to Respondents No. 1 and 2 to re-inspect the unit of the Applicant and pass appropriate orders expeditiously.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7887/Ms-Amman-Plastics-Vs-Tamil-Nadu-Pollution-Control-Board

Mahameghabahan Aira Kharable Sawin v. Ministry of Environment and Forests & Ors.

APPEAL NO. 12 OF 2011 (T)

CORAM: Justice Shri C.V. Ramulu and Dr. Devendra Kumar Agrawal
Key words: Environmental Clearance
Appeal Dismissed

Date: 28th February, 2012

This appeal was directed against Environmental Clearance (EC) and Coastal Regulation Zone (CRZ) clearance granted by Ministry of Environment and Forests (MoEF) on 16th April, 2010 for the construction of Vedanta University at Pune by Anil Agrawal Foundation. The appeal was filed before National Environment Appellate Authority (NEAA) and subsequently stood transferred to the National Green Tribunal. It was brought to the notice of this Tribunal on 5th July 2011 during the first hearing that the MoEF had kept the EC granted earlier in abeyance with effect from May, 2010.

Even as on the day of pronouncement of judgment, as per the response of counsel for Anil Agrawal Foundation, the MoEF had not taken any decision after keeping the Environment Clearance in abeyance.

The Tribunal did not wish for the matter to be kept pending by this Tribunal indefinitely because of the lack of decision of the MoEF. The matter was disposed of at this stage leaving liberty to the Appellant to approach this Tribunal whenever any decision was taken by the MoEF, if necessary.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7888/Mahameghaban-Aira-Kharabela-Sawin-Vs-Ministry-of-Environment-and-Forest-and-Others

Utkal Bikas Yuva Parishad v. Ministry of Environment and Forests & Ors.

APPEAL NO. 13 OF 2011 (T)

CORAM: Justice Shri C.V. Ramulu and Dr. Devendra Kumar Agrawal
Key words: Environmental Clearance

Appeal Dismissed

Date: 28th February, 2012
This appeal is directed against Environmental Clearance (EC) and Coastal Regulation Zone (CRZ) clearance granted by Ministry of Environment and Forest (MoEF) on 16th April, 2010 for the construction of Vedanta University at Pune by Anil Agrawal Foundation. The appeal was filed before National Environment Appellate Authority (NEAA) and subsequently stood transferred to the National Green Tribunal (NGT). It was brought to the notice of this Tribunal on 5th July 2011 during the first hearing that the MoEF has kept the Environment Clearance granted earlier in abeyance with effect from May, 2010.

Even as on the day of pronouncement of judgment, as per the response of counsel for Anil Agrawal Foundation, the MoEF had not taken any decision after keeping the Environment Clearance in abeyance.

The Tribunal did not wish for the matter to be kept pending by this Tribunal indefinitely because of the lack of decision of the MoEF. The matter was disposed of at this stage leaving liberty to the

Appellant to approach this Tribunal whenever any decision was taken by the MoEF, if necessary.

Link for the original judgment

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7889/Utkal-Bikas-Yuva-Parishad-Vs-Union-of-India-Ministry-of-Environment-and-Forest-and-Others

Shiva Cement Ltd. v. Union of India & Ors.

APPEAL NO. 3 OF 2012

CORAM: Justice A.S. Naidu and Dr. G.K. Pandey
Key words: Mini Cement Plant, Environmental Clearance, Delay

Appeal Allowed
Date: 1st March, 2012

The Appellant Company was running a Mini Cement Plant and operating Lime Stone Mines at Khatkurbahal and Kulenbahal in the District of Sundargarh (Odisha). It intended to enhance its plant capacity vis-à-vis the capacity of the mining operation and filed an application before the Ministry of Environment and Forests (MoEF) for granting necessary approval in the year 2009. On the basis of such application Terms of Reference (TORs) were issued by the MoEF by letter dated 15th December, 2009.

While matter stood thus, the period of mining lease of the Appellant in respect of lime stone mines was about to expire on 14th January, 2012. The Appellant had filed an Application for renewal of the lease but the Mining Authorities intimated the Appellant that the lease could not be renewed in the absence of environment clearance (EC) to be granted by the MoEF. Appellant thereafter approached this Tribunal, aggrieved that the concerned State Authorities were using dilatory tactics in completing the procedure, subjecting the Appellant to insurmountable hardship.

The Tribunal opined that delay in complying with the mandatory provisions of the statute not only causes prejudice but also throttles the aims and objectives meant to be achieved. In the case in hand, the grievance of the Appellant not being complex, the Tribunal felt

that the ends of justice and equity would be served if this case was disposed of *inter alia* with the following directions:

a) The public consultation which was scheduled to be held on 16th March, 2012, to be conducted on the said date without fail. The Collector, Sundargarh was directed to take adequate steps in this regard. The report of the Public Consultation was to be sent to the MoEF within 8 days by OSPCB as laid down in Appendix IV of Environmental Impact Assessment (EIA) Notification, 2006.
b) Based on the Public Consultation report, the Project Proponent (Respondent No. 4) was to finalize the EIA/EMP report and submit the Final EIA/EMP report to MoEF for environmental appraisal within a period of one month.
c) The renewal of the mining lease would be subject to the final outcome of the EC.

With the aforesaid observations the Appeal was disposed of.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7900/Shiva-Cement-Ltd-Vs-Union-of-India-and-Others

Janajagrithi Samithi (Regd.) v. Union of India & Ors.

APPEAL NO. 10 OF 2012

CORAM: Justice A.S. Naidu and Dr. G.K. Pandey
Key words: Forest Clearance

Appeal Allowed

Date: 7th March, 2012
By this Appeal, the diversion of forest land for construction of transmission lLines from the power generation station at Udupi District, to the receiving stations situated at Hassan, in favour of the Karnataka Power Transmission Corporation Ltd. (Respondent No. 3),

by the Ministry of Environment and Forest (MoEF) under Section 2 of the Forest (Conservation) Act, 1980 was assailed.

Environment Clearance (EC) for establishing the power plant was granted by the MoEF in the year 1997. Some modification, addition and alternations, were made by the MoEF in 2011. The order granting EC was challenged before the then National Environment Appellant Authority (NEAA). The Appeal was dismissed by the NEAA and the said order was then the subject of a writ petition before the Karnataka High Court. Thus, this Appeal was confined only to the question of Forest Clearance (FC).

What needed to be considered by the Tribunal in this Appeal was the determination of the potential impact of de-reservation of forest land for the purpose of the project and the impact thereof on wild life and biodiversity in light of the Forest (Conservation) Act, 1980.

It was stated that the doctrine of sustainable development has been accepted as an answer to balance on one hand the various developmental activities aimed at ensuring better living, and improving social and economic conditions of human beings. On the other hand ensuring that the consequence of development does not exceed the carrying capacity of the ecosystem but are compatible with the need to protect and improve the environment is also equally important.

The Tribunal found that the major portion of the power line passed through waste land and land of relatively low biodiversity value, but certain sections of the line passed through areas of rich wild life and biodiversity, and of greater ecological value. Out of the said lands, a certain portion evident from the map produced before the bench, passed through Vallur reserve forest. In its opinion, drawing overhead lines over the said section may cause significant adverse impacts not only on wild life and biodiversity but also would lead to restrictions in habitat connectivity and corridor values of the forest.

At the same time, the Tribunal was conscious of the fact that the project in question was of great economic importance not only for the state of Karnataka but also for the entire country, and that there is a sense of urgency in view of the shortage of power. Considering all these facts, and in order to meet the ends of justice, applying the principles of sustainable development, the Tribunal disposed of this Appeal *inter alia* with the following directions:

I) That Respondent No. 3 was not to fell any trees nor destroy the biodiversity in the stretch of Vallur Reserve Forest land.
II) It was to fell minimum number of trees in rest of the forest lands for which clearance had been granted and shall adopt the procedure of trimming the branches rather than uprooting the trees, wherever possible.
III) It was to ensure maximum height of the towers in the forest area which should be 70 m or above, following the contour of the terrain.
IV) Below the conductor, width clearance of 3 m would be permitted for taking the tension stringing equipment. The trees on such strips would have to be felled as and where required but after stringing work was completed, the natural regeneration of vegetation should be allowed to come up. Felling/pollarding/pruning of trees was to be done with the permission of the local forest officer whenever necessary to maintain the electrical clearance.
V) Steps were to be taken to promote and nourish the undergrowth and for afforestation with endemic species.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7901/Janajagrithi-Samithi-Vs-Union-of-India-and-Others

Real Gem Ors. v. State of Maharashtra

APPEAL NO. 1 OF 2012

CORAM: C. V. Ramulu and Dr. Devendra Kumar Agrawal
Key words: Environmental Clearance
Application Dismissed

Date: 15th March, 2012

The Appellant filed an affidavit on 7th March, 2012 stating that State Level Environment Impact Assessment Authority had granted the requisite environment clearance (EC) in February, 2012. Thus, this matter had *prima facie* become infructuous. However, the counsel for the Appellant stated that the Appellant was entitled for grant of approval for 3 basements (from the current amended proposal of 2 basements), as its original proposal was for 3 basements, and various other projects in the vicinity of the appellant project had

also been granted EC for 3 basements. The EC that had been granted was only for 2 basements.

The Tribunal held that this question was not for it to decide. The Appellant was at liberty to work out remedies as available under law by way of filing representation before the appropriate authority, if any. The matter was disposed of as infructuous.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7902/Real-Gem-Buildteach-Vs-State-of-Maharashtra

Hindustan Coca Cola Beverages Pvt. Ltd. v. West Bengal Pollution Control Board & Ors.

APPEAL NO. 10 OF 2012

CORAM: Justice A.S. Naidu and Dr. G.K. Pandey
Key words: Consent to operate, Direction, Effluent treatment

Appeal Allowed

Date: 19th March, 2012
The Appellant was a private company engaged in the business of manufacturing and sale of carbonated soft drinks and had a plant at Jalpaiguri district, West Bengal.

The directions issued by West Bengal Pollution Control Board (WBPCB) to the Appellant Company by letter dated 2nd May, 2011 were sought to be assailed in this Appeal, mainly on the following grounds:

i) The WBPCB had no power / jurisdiction to impose pollution cost or direct the Appellant to furnish a Bank Guarantee as penal measure.
ii) The Appellant's right of hearing was denied before issuance of the said directions, thus there was violation of principle of natural justice and equity.
iii) The order was an afterthought, and the same had no nexus with the last analysis report of the discharged effluent.

It was also contended that the procedure prescribed under the Air Act and Water Act and Rules made thereunder were not followed by the WBPCB before imposing the fine/penalty.

The dispute arose mainly when the WBPCB issued a notice for collection of samples from the Appellant's plant. In consonance with said notice, samples were collected by the officials of WBPCB from the premises of the Appellant's plant on 6th August, 2010. According to the Appellant the specific procedure stipulated under Section 21 of the Water Act for collection of the samples was not followed, in as much as neither were the samples divided into two parts in the presence of the occupier or his agent of the Appellant, nor were they sealed, and nor was the signature of the occupier or his agent taken by the officers of WBPCB while collecting the samples. Another set of samples were also collected from the premises of the Appellant on 9th December, 2010 – allegedly,

On 16th December, 2010, WBPCB on the basis of the analysis report of the samples issued a show-cause notice alleging violation of regulatory standards, and asked the Appellant to take necessary steps to comply with the prescribed standards. The Appellant was also asked to inform the office of the action taken in that regard. It is averred that necessary cause was shown by the Appellant, within the time prescribed indicating the measures taken for eradicating the deficiencies. WBPCB, on 29th December, 2010 once again took samples from the Appellant's plant and got the same analyzed. The analysis report dated 11th February, 2011 revealed that the samples collected on 29th December, 2010 were within the prescribed parameters.

While matter stood thus, on 14th February, 2011 the WBPCB issued another notice and directed personal appearance of the Appellant before the Board, at Kolkata. The grievance of the Appellant is that without properly appreciating the fact that the effluents of the plant met the standards prescribed, the WBPCB mechanically issued the impugned order dated 2nd May, 2011 in purported exercise of the power conferred upon it under Section 33A of the Water Act, and as such the said order was bad in law.

The Tribunal opined that section 20 of the National Green Tribunal (NGT) Act, 2010 clearly laid down the principle upon which this Tribunal should function. Thus it was no more *res integra,* with regard to the legal proposition that a polluter is bound to pay and eradicate the damage caused by him and restore the environment

to its antecedent condition. He is also responsible to pay for the damages caused due to the pollution caused by him.

According to the Tribunal, the most crucial issue which required to be determined was with regard to the power of the WBPCB to issue directions under Section 33A of the Water Act. According to the Appellants, the power under the said section could not be construed to be an unbridled one and should always be subject to other provisions of Act and Rules. As per the WBPCB, exercising the powers under Section 33A, the WBPCB could issue any direction in writing and such powers cannot be restricted or curtailed.

Section 33A of the Water Act, stipulates that notwithstanding anything contend in any other law, but subject to the portions of the said Act, and to any direction issued by the Central Government, a Board may, in exercise of the powers and performance of its functions under the Act, issue any directions. It is well settled that a direction issued by an Authority should be not only fair, legitimate and above-board, but also should be without any affection or aversion. It can be, therefore, safely concluded that Section 33A of the Water Act does not vest an unbridled power upon the Board and the said power is always subject to reasonable restrictions prescribed by the provisions of Act and Rules.

In view of the above, the Appeal was allowed, and the direction dated 2nd May, 2011 issued by the WBPCB set aside. The Tribunal also directed the Central Pollution Control Board (CPCB), New Delhi / Zonal office at Kolkata, West Bengal to collect the effluent discharged from the Appellant's plant following the procedure laid down under law, analyze the same in all aspects, particularly with regard to presence of heavy metals (Pb, Cd etc.) and prepare a report. The renewal of the consent to operate the plant would be dependent on the report of the CPCB.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7903/Hindustan-Coco-cola-Beverages-Pvt-Ltd-Vs-Member-Secretary-West-Bengal-Pollution-Control-Board-and-Others

Jeet Singh Kanwar v. Ministry Of Environment and Forests & Ors.

M.A NO. 45 OF 2012
arising out of
APPEAL NO. 10 OF 2011(T)

(NEAA APPEAL NO. 11 OF 2010)

CORAM: Justice A.S. Naidu and Dr. R. Nagendran
Key words: Coal Based Thermal Power Plant, Condonation of delay

Application Allowed

Date: 22nd March, 2012
The order passed by the Ministry of Environment and Forests (MoEF) granting environmental clearance (EC) to a Coal Based Thermal Power Plant at Korba Distt., in Chhattisgarh was assailed in this Appeal.

It was brought to the notice of the Tribunal that the Appeal was presented beyond the time prescribed under the NGT Act. The Appellants had filed an application for condonation of delay. Dheeru Powergen Pvt. Ltd. (Respondent No. 3), the project proponent, had filed an affidavit repudiating the stand taken in said application.

There was a delay of 88 days in filing the Appeal. After perusing the averments made in the application for condonation of delay, and keeping in mind that protection of the environment was more important than barring approach to this Tribunal on technical objections; and also that the Appellants belonged to remote villages of Chhattisgarh; the Tribunal felt that the ends of justice and equity would be best served if the delay was condoned.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7904/Jeet-Singh-Kanwar-and-Another-Vs-Ministry-of-Environment-and-Forest-and-Others

KIOCL Ltd. v. Union of India & Ors.

APPEAL NO. 38/2011

CORAM: Justice A.S. Naidu and Dr. G.K. Pandey
Key words: Power supply

Appeal Dismissed

Date: 23rd March, 2012

Kudremukh Iron Ore Company Ltd. has filed this Appeal invoking jurisdiction under Section 18(1) read with Section 16 of the National Green Tribunal Act, 2010, *inter alia* seeking to declare that a certain condition of the direction of the Ministry of Environment and Forests (MoEF) issued to the Karnataka Power Transmission Corporation Ltd. (Respondent No. 3) to dismantle the existing line and power supply bay from Kemmar to Kudremukh, was untenable and illegal.

This Tribunal did not interfere with the Forest Clearance (FC) granted for deviation of the forest land for non-forest activities, but then imposed certain conditions as well as restrictions following the principles of sustainable development. The issue of FC was thus settled.

KIOCL Ltd. (the Appellant) challenged condition No. 12 of the FC mainly on the ground that removal or dismantling of the older power line supplying power to the Appellant mine had nothing to do with laying down of fresh power line as per the FC granted in favour of Respondent No. 3, and as such the said condition was liable to be deleted.

It was contended that the Appellant was being provided with electricity by Respondent No. 3 by a separate line, and thus the power lines existing on the forest land were no longer needed for supply of electricity. In view of the decision of the Supreme Court, the Appellant's mine was liable to be closed down permanently, which obviated the necessity to retain the electricity line - and in the process lose valuable forest corridor, causing hindrance to forest growth and affecting biodiversity.

The Tribunal accepted the above, and was not inclined to grant any relief to the Appellant. It accordingly dismissed the Appeal. Respondent No. 3 was directed to comply with Condition No. 12 of the FC Order, and to provide the required power to KIOCL Ltd., till the closure of the mines, without causing any adverse impact on the forests.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7905/Ms-KIOCL-Limited-Vs-Union-of-India-and-Others

K. G. Mathew v. State of Kerala & Ors.

ORIGINAL APPLICATION NO. 1 OF 2011
CORAM: Justice C. V. Ramulu and Prof. R. Nagendran
Key words: Solid Bio Waste treatment plant, Environment Impact Assessment

Application Dismissed

Date: 26th March, 2012
This Application was filed under section 15(i)(c) & 15(3) of the National Green Tribunal Act, 2010, seeking a direction to the State of Kerala (Respondent No. 1), Kozencherry Grama Panchayat (Respondent No. 2), The Kerala State Pollution Control Board (Respondent No. 3) and the Environmental Engineer (Respondent No. 4) to take immediate steps, for the removal of the entire Solid Bio-waste Treatment Plant set up, in the public stadium, Pathanamthitta District, Kerala State, for the restitution of the public stadium to its original state and to award adequate compensation to the petitioner for the damages caused to public health and environment due to the erection of the plant.

According to the Applicant, erection of the Solid Bio-waste Treatment Plant in the public stadium, which was very close to his residence, was in blatant violation of Rules 6 and 7 of the Municipal Solid Wastes (Management and Handling) Rules, 2000. His contention was that Respondent No. 4 issued consent to operate for the Solid Bio-waste Treatment Plant. The site of the plant selected was in violation of the specification for “landfill site” as per Article 8, Schedule III of the Municipal Solid Waste (Management and Handling) Rules, 2000. Moreover, the Respondent had not obtained views of the Town Planning Department and Ground Water Board, while applying for site clearance for setting up the plant. The site of the plant fell within the vicinity of a residential area, water bodies, wetlands and was situated inside the stadium, a place of local cultural importance.

In the considered opinion of the Tribunal, after examination of the District Environmental Engineer’s report, it was clear that none of the environmental parameters were under threat. Moreover, no substantial legal questions were raised by the Applicant. Thus, the Application was devoid of merits both on legal and technical aspects; and therefore, dismissed.

However, the District Environmental Engineer, Pathanamthitta District was directed to monitor the environmental parameters in

respect of the Solid Bio-waste Management Plant once a month and maintain the records for a period of one year. Further, the District Environmental Engineer was to take appropriate steps as required under the law, whenever there were found violations by the project in maintaining the environmental standards in an around the plant.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7940/K-G-Mathew-Vs-State-of-Kerala-and-Others

A.S. Mani v. State Level Environment Impact Assessment Authority, Tamil Nadu

M.A NO. 12 OF 2012
arising out of

APPEAL NO. 5 OF 2012

CORAM: Justice A.S. Naidu and Dr. G.K. Pandey
Key words: Environment Clearance, Condonation of Delay, Limitation

Application Dismissed

Date: 27th March, 2012
The Appellant was aggrieved by the Environmental Clearance (EC) granted by the State Level Environment Impact Assessment Authority (SEIAA), Tamil Nadu to Sri Raasi Industries India Pvt. Ltd. (Respondent No. 6) for establishment and production of Ingots and TMT bars and rods at Namakkal District, in Tamil Nadu. In the Appeal the Appellant prayed *inter alia* for calling for the records of The SEIAA culminating in the order dated 9th February, 2011, and quashing of the same.

This Miscellaneous Application was filed along with the Memorandum of Appeal, for condonation of delay in filing the Appeal.

The impugned order was passed on 9th February, 2011. The time prescribed for preferring an Appeal as per Section 16 of the NGT Act is 30 days. The Appellant filed a writ petition before the Madras High Court on 18th March, 2011. The said writ petition was disposed of on 24th August, 2011 and the brief was returned to the Appellant. The Appellant presented the Appeal before this Tribunal on 20th January,

2012. The expression of sufficient cause is found in various statutes including in Section 16 of the NGT Act, 2010. The said expression essentially means to be “adequate or enough”. In the instant case, the explanation offered by the Appellant was that he approached the Madras High Court and the case was pending before the said High Court from August, 2011 till January, 2012.

Be that as it may, the Tribunal interpreted the words of Section 16 strictly: that the language used made the position very explicit to the extent that the legislature intended the Tribunal to entertain the Appeal by condoning the delay only up to sixty days after the expiry of thirty days, which is the normal period for preferring an Appeal. It held that there was complete exclusion of Section 5 of the Limitation Act. The proviso to Section 16 of the NGT Act unambiguously made the position crystal clear that the Tribunal had no power to allow the Appeal to be entertained beyond the period of thirty plus sixty days on any account.

In the case in hand, after excluding the period spent by the Appellant before the Madras High Court, and the time spent for obtaining the copies, there was still a delay of more than ninety days. The Miscellaneous Application was accordingly dismissed. Consequently, the Appeal also stood dismissed.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7941/Mr-AS-Mani-Vs-State-Environment-Impact-Assessment-Authority-Tamil-Nadu-and-Others

Janajagrithi Samiti v. Union of India & Ors.

CORAM: Justice A.S. Naidu and Dr. G.K. Pandey

Key words: Environment Clearance

Appeal Allowed

Date: 27th March, 2012

Janajagrithi Samithi filed this Appeal, assailing the order of the Ministry of Environment and Forests (MoEF) allowing amendment of environment clearance (EC) for installation / expansion of a coal based Thermal Power Plant, at Udupi in Karnataka.

In 1997 EC was accorded by the MoEF to Udupi Power Corporation Ltd. (Respondent No. 4) for establishing a Power Project. On the

basis of a further application filed by the Respondent No.4, the MoEF amended the earlier EC on two occasions, permitting enhancement of the capacity of the said Power Plant twice. While matter stood thus, on the basis of further representation made by Udupi Power Corporation, the MoEF once again modified the EC and allowed certain amendment to the conditions of EC, by another order dated 1st September, 2011.

Since, the order impugned before this Tribunal was only the amendment to the EC granted in 1997, and as the order dated 20th March, 1997 was the subject matter of an ongoing dispute before the Karnataka High Court in a writ petition, the present Appeal was not maintainable before this Tribunal. Therefore, to avoid conflicting decisions, and also for effectual adjudication of the entire controversy, the Tribunal disposed of this Appeal accordingly.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7942/Janajagrithi-Samiti-Vs-Union-of-India-and-Others

Suresh Banjan v. State of Maharashtra & Ors.

MISCELLANEOUS APPLICATION NO. 20/2012

arising out of

APPEAL NO. 35 OF 2011

CORAM: Justice A.S. Naidu and Dr. G.K. Pandey
Key words: Environmental Clearence, Slum rehabilitation

Application disposed of by consent of parties

Date: 27th March, 2012
The State Environment Impact Assessment Authority (SEIAA) had granted Environment Clearance (EC) to a project of slum rehabilitation at Mumbai in favour of the project proponent. The order granting EC was the subject matter of this Appeal. It was ultimately disposed of by a mutually agreed order with certain directions.

The present Miscellaneous Application was filed on behalf of the proponent (Respondent No. 4) for modification of condition V,

mainly on the ground that unless the builder was permitted to sell the flats constructed under the scheme, it would not be viable for it to construct further. The original Appeal was on the correctness or otherwise of the EC granted by SEIAA in favour of Respondent No. 4 for aforesaid construction project. In order to curtail the pollution caused by the construction work which had been delayed for years together, by consent of parties, the Tribunal disposed of the appeal without interfering with the EC, but then directing the parties to abide by the conditions imposed in the judgment, and protect the environment.

The Tribunal was of the opinion that there was no reason to modify the conditions imposed on the basis of consent given before them. It noted that the liabilities of the parties flowed from an agreement mutually entered *inter se* between the builder and Indira Nagar Hutment Dwellers Cooperative Housing Society Ltd. The Tribunal did modify condition no. IV to the extent that Respondent No. 4 was directed to ensure that all members who had been found eligible for flats and were staying in transit accommodation, were provided with flats as early as possible. He was permitted to sell the flats to outsiders strictly as per the terms of the agreement entered *inter se* between Respondent No. 4, and the Society as well as conditions imposed by the Slum Rehabilitation Authority and not otherwise.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7943/Suresh-Banjan-Vs-State-of-Maharashtra-and-Others

Ramana Industries v. Tamil Nadu Pollution Control Board & Ors.

APPLICATION NO. 19 OF 2011
CORAM: Justice Shri C.V. Ramulu and Prof. R. Nagendran
Key words: Coastal Regulation Zone

Application solved externally

Date: 29th March, 2012
This application was filed challenging the order of the Chairman, Tamil Nadu Pollution Control Board (Respondent No. 1), directing the concerned authority to stop power supply to the unit of the

Applicant with immediate effect. This was preceded by an order to close down the unit with immediate effect.

The question which arose for consideration in this matter was whether the location of the unit fell within the Coastal Regulation Zone (CRZ) or not. The matter came up for hearing on 4th January, 2012.

Thereafter the matter was examined by the First Respondent, by whose order the direction issued earlier to close down the industry and stop electricity supply was revoked with immediate effect, and the unit directed to comply with all the conditions stipulated in the consent orders. Further, the Chairman, TNPCB, directed the Assistant Environmental Engineer, TNGEDCO (TNPCB), to restore power supply to the applicant unit with immediate effect. Thus, no cause of action remained to be adjudicated. The Applicant who was present in court also stated that the license of the unit had been renewed on 1st March, 2012. The Application was accordingly resolved externally.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7944/Ramana-Industries-Vs-Tamil-Nadu-Pollution-Control-Board

Prafulla Samantray v. Union of India & Ors.

APPLICATION NO. 8 OF 2011

CORAM: Justice C.V. Ramulu and Prof. R. Nagendran

Key words: Steel-cum-captive power plant, Environmental Clearance, Public Hearing, Environment Impact Assessment, Forest Clearance

Application disposed of with directions

Date: 30th March, 2012

This Appeal was filed against the final order dated 31st January, 2011 of the Ministry of Environment and Forests (MoEF), imposing additional conditions to the Environmental Clearances (ECs)

granted in respect of steel cum captive power plant project and captive minor port project of POSCO India, (Respondent No. 1) in 2007. The Forest Clearance granted for the project by the MoEF was under challenge in a writ petition before the High Court of Orissa, Cuttack and was pending at the time of this decision.

With regard to the impugned project, the First Appellant had sent detailed objections in writing to the Orissa State Pollution Control Board (OSPCB), even prior to the Public Hearing (PH) held on 15th April, 2007.

Appellant No. 2 claimed to be directly affected by the proposed project as the same would require a takeover of his land on which he and his family carried out paddy and betel vine cultivation. He apprehended loss of livelihood and adverse impact on environment and agriculture and water resources as a result of setting up of the project.

As per the MoU, the Government of Orissa agreed to facilitate POSCO in obtaining a no-objection certificate through the OSPCB in minimal time. It was the case of the Appellant that the manner in which the entire appraisal, starting from preparation of the Environment Impact Assessment (EIA) report, to PH to examination by the respective Expert Appraisal Committee (EAC) was done, including the reappraisal in the year 2010 based on the findings of Review Committee, showed violation of the provisions of EIA Notification 2006 in both letter and spirit.

It first required to be considered whether the Appeal had been filed within the period of limitation in so far as challenging the ECs granted in May/June, 2007 and whether appeal could be entertained to that extent. The Tribunal opined that administrative review could not be equated with judicial review to say that the original order merged with the final order. Here, it was observed that the Terms of Reference (TOR) were to examine the conditions already attached and the effect, the compliances with the statutory provisions and ascertainment of status of implementation of the rehabilitation and resettlement provisions in respect of the projects compliance with EIA, Coastal Regulation Zone (CRZ) and other clearances/ approvals granted by the MoEF and other authorities. This was in the nature of a legal audit vis-à-vis the applicability of EIA Notification, 2006. Thus, this Appeal was held to be maintainable only to the extent of challenging the final 2011 order and its immediate background i.e. the Review Committee reports and not the appeal in respect of the original ECs granted in May/July, 2007.

It was then required to be considered whether the PH was properly conducted following the prescribed procedure applicable at the relevant point of time and was valid in law. The PH for the project was also held in April, 2007 as per the prescribed procedure at the relevant point of time. The District Magistrate prepared the summary at the end the PH proceedings and made it known to the public. Thus, procedurally, there was not seen to be any substantial error committed by the authority in conducting the PH. Therefore, though it did not fall within the ambit of challenge of this appeal, as discussed above, the Tribunal found that there had been no irregularity with the conduct of the PH.

The Tribunal then looked into whether the MoEF had rightly accepted the review report submitted by Ms. Meena Gupta - who participated in the issue of grant of original ECs since she was then Secretary, MoEF - and whether the Government was right in rejecting the majority report of the Review Committee. It saw that the executive summary submitted by Ms. Meena Gupta was not endorsed by the majority members. Of course, the report submitted by majority members was also not endorsed by Ms. Meena Gupta. The report submitted by Ms. Meena Gupta was a minority one and the report submitted by other members was majority i.e. 1:3. The Tribunal also noted that there was a clear bias to defend her previous acts as Secretary, MoEF. Whether the her methodology was fair or not, it was definitely coloured by personal/official/departmental bias, inasmuch as she supported the decision made by her earlier. This was in gross violation of principles of natural justice. Therefore, the entire process of review stood vitiated under law.

A close scrutiny of the entire scheme of the process of issuing final order in the light of the facts placed before the bench and material placed on record, together with the observations made by the Review Committee, revealed that this project of had been dealt with quite casually, without any comprehensive scientific data being provided regarding all possible environmental impacts.

The Tribunal, keeping in view the need for industrial development, employment opportunities, etc. but not prepared to compromise on environmental and ecological concerns, disposed of this Appeal *inter alia* with the following directions:

1. The MoEF was directed to make review the Project afresh, with specific reference to the observations/apprehensions raised by the Review Committee in both the reports by issuing fresh TOR accordingly.

2. The final order dated 31st January, 2011 of the MoEF stood suspended till such fresh review, appraisal by the EACs and final decision by MoEF was completed,
3. The MoEF was to constitute the said fresh review committee by engaging subject matter specialists for better appreciation of environmental issues.
4. The MoEF was directed to define timelines for compliance of the conditions in the ECs and, considering the nature and extent of the project, to establish a special committee to monitor the progress and compliance on regular basis.
5. The MoEF was directed to establish clear guidelines/directives for project developers to apply for a single EC alone if it involves components that are essential part to the main industry such as the present case where main industry was the steel plant, but involved major components of port, captive power plant, residential complex, water supply, etc.
6. The MoEF was to undertake a study on Strategic Environmental Assessment for establishment of number of ports all along the coastline of Orissa with due consideration to the issues related to biodiversity, risks associated, etc.
7. It was also directed that MoEF should take a policy decision for large projects like POSCO, where MOUs are signed for large capacities and up scaling is to be done within a few years, the EIA right from the beginning, should be assessed for the full capacity and EC granted on this basis.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7945/Praffula-Samantra-Vs-Union-of-India-and-Others

M/s Om Shakthi Engineering Works v. The Chairman, Tamil Nadu Pollution Control Board

M.A. NO. 27 OF 2012

arising out of

APPEAL NO. 11 OF 2011

CORAM: Justice C.V. Ramulu and Prof. R. Nagendran
Key words: Noise pollution,

Application Allowed

Date: 10th April, 2012

This Appeal had been dismissed for default earlier on 23rd November, 2011. This Application was filed by the Appellant seeking quashing of the order dismissing the Appeal for default. The Appellant was running an engineering work shop in Chennai, Tamil Nadu. On a complaint made by Mr. E. Sivanathan (Respondent No. 3) herein, the Tamil Nadu Pollution Control Board (TNPCB) officials visited the unit on 7th June, 2010 and carried out a noise level survey and directed the Appellant to take certain precautionary measures to reduce the noise levels, else the unit would be directed to be closed.

The Appellant, however, did not take measures as suggested by the TNPCB in its order dated 7th June, 2010 for reduction of the noise levels. Therefore the TNPCB passed a final order directing the closure of the unit and also directing the electricity authority to cut the supply of electricity. The contention of the Appellant herein was that when TNPCB officials visited the unit and conducted noise level survey, he had no notice of any kind as to the inspection of the officials; nor was he present when the noise levels were recorded on 7th June, 2010. The Tribunal disposed of the Application *inter alia* with the following directions:

1. The TNPCB officials were to conduct a fresh noise level survey, while the unit of the Respondent No. 3 was in operation, in the presence of both the parties, after issuing a notice indicating the date of inspection etc. Respondent No. 3 shall be at liberty to submit any written objections and the same shall be taken into consideration and appropriate action taken as per law. This exercise was to be completed within a period of six weeks from the date of the order.
2. Till a final decision was taken by the TNPCB officials, the Appellant was permitted to operate the unit by restoring the electricity supply forthwith.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7946/Ms-Om-Sakthi-Engineering-Works-Vs-Tamil-Nadu-Pollution-Control-Board-and-Others

Mayur Karsanbhai Parmar v. Union of India & Ors.

APPLICATION NO. 28 OF 2011

AND

APPLICATION NO. 9 OF 2012

CORAM: Justice A.S. Naidu and Prof. R. Nagendran

Key words: Environmental Clearance, Public Hearing, Jurisdiction

Applications Dismissed

Date: 20th April, 2012

Both these Applications were filed by the same Applicants, seeking more or less identical reliefs. In Application No. 28/2011, apprehending, likelihood of being affected by the proposed Greenfield Port (Seema Port) proposed to be established on the sea coast of Village Chhara, the Applicants invoked the jurisdiction of this Tribunal under Section 18(1) & (2) read with Section 14 of the National Green Tribunal Act, 2010 (NGT Act). The same Applicants apprehending damage by the thermal power plant proposed to be installed by Shapoorji Paloonji and Company Ltd. (Respondent No. 4), preferred Application No. 9/2012.

According to the Applicants, the port had been proposed to import coal from Indonesia. The said coal was proposed to be transported by a conveyer belt to be used in the thermal power plant. According to the Respondent, the above said two projects were not composite; they were separate and independent.

According to the Applicants, the Environment Impact Assessment (EIA) reports prepared for both the projects did not disclose the correct facts and there was deliberate suppression of vital information. The same also contained false or misleading information with respect to material facts. Further, there was vitiation of the process of public hearing, as prescribed under the EIA Notification, 2006 as well as the Office Memorandum dated 19th April 2010 issued by the MoEF. The granting of environmental clearance (EC) ignoring the aforesaid infirmities, would be bad in law – such was submitted.

Section 16 of the NGT Act, authorizes a person aggrieved by an order granting EC for any project to file an appeal before this Tribunal within a period of thirty days from the date on which the order or decision is communicated to him. In the case in hand, the Ministry of Environment and Forests (MoEF) admittedly had *not taken any decision with regard to granting EC* to either of the project and as such, the jurisdiction conferred upon this Tribunal under Section 16 of the Act could not be invoked at this stage. According to the Applicants, a combined reading of Section 14 and Section 2 (m) would lead to a conclusion that violation of any specific statutory obligation which had direct nexus to the cause and which was likely to affect the community at large could be raised before this Tribunal invoking jurisdiction under Section 14 of the Act. It was further submitted that the appellate power of the Tribunal under Section 16 (h) being specific, under the said provision the order granting environmental clearance can be assailed only by a person aggrieved, On the other hand, the jurisdiction under Section 14 is much broader and deals with cases where substantial question relating to the environment, which arises out of implementation of the enactments listed in schedule 1 of the Act, are concerned.

According to the Tribual, there was no dispute that granting of EC to both the projects was still under consideration by the authorities, and till date the MoEF had neither taken any decision nor passed any order.

It is well settled that unless prior environmental clearance is granted in accordance with the objectives of National Environment Policy, no new project can commence. Environmental Impact Assessment Authority is constituted by the Central Govt. in consultation with the State Govt. or Union Territory Administration concerned under Section 3(3) of the Environment (Protection) Act 1986 (EPA), for conducting the assessment of impacts.

The grievances which were made out before this Tribunal were the suppression of vital facts by the project proponent, the furnishing of erroneous and concocted materials, and improper conduct of the public hearing.

The jurisdiction of the NGT under Section 14 of the NGT Act, can be invoked only if the matter in controversy is not under consideration of any Competent Authority and/or by efflux of time a project is likely to cause harm to the environment. None of the aforesaid

eventualities were satisfied in the present case, according to the Tribunal. It, therefore, declined to entertain these applications and disposed of the same *inter alia* granting liberty to the Applicants to file detailed objections before the Expert Appraisal Committee (EAC) and/or before the MoEF, as the case may be.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7947/Mayur-Karsanbhai-Parmar-and-Another-Vs-Union-of-India-and-Others

Mayur Karsanbhai Parmar v. Union of India & Ors.

APPLICATION NO. 28 OF 2011

AND

APPLICATION NO. 9 OF 2012

CORAM: Justice A.S. Naidu and Prof. R. Nagendran

Key words: Coast, Port, Thermal power plant, Environmental Clearance, Public Hearing, Environment Impact Assessment

Applications Dismissed

Date: 20th April, 2012

Both the aforesaid applications were filed by the same Applicants, seeking more or less identical reliefs. In *Application No. 28/2011*, apprehending, likelihood of being affected by the proposed Greenfield Port (Seema Port) going to be established at the sea coast of Village Chhara, the Applicants invoked the jurisdiction of this Tribunal under Section 18 (1) & (2) read with Section 14 of the National Green Tribunal Act, 2010 (NGT Act). The same Applicants apprehending to be affected by the Thermal Power Plant proposed to be installed by Shapoorji Paloonji and Company Ltd. (Respondent No. 4) preferred *Application No. 9/2012*.

According to the Applicants, the port was proposed to be set up to import coal from Indonesia. The said coal was proposed to be transported by a conveyor belt to be used in the thermal power plant; therefore, the said port was to be construed as a captive port for the thermal power plant. According to the said Respondent, the above said two projects are not composite to one another; they are separate and independent projects.

According to the Applicants, the Environment Impact Assessment (EIA) reports prepared for both the projects did not disclose the correct facts and there was deliberate suppression of vital information. The same also contained misleading information with respect to material facts. Further, there was violation in the process of public hearing, as prescribed under EIA Notification, 2006. It was submitted that in the event environmental clearance (EC) was granted ignoring aforesaid infirmities, there was a strong likelihood of infringement of legal rights.

Section 16 of the NGT Act, authorizes a person aggrieved by an order granting EC for any project to file an appeal before this Tribunal within a period of thirty days from the date on which the order or decision is communicated to him. In this case, the Ministry of Environment and Forests (MoEF) had not taken any decision with regard to granting EC to either of the projects and therefore, the jurisdiction conferred upon this Tribunal under Section 16 of the Act could not be invoked. According to the advocate for the Appellant, a combined reading of Section 14 and Section 2(m) would lead to the conclusion that violation of any specific statutory obligation which has direct nexus to the cause and which is likely to affect the community at large can be raised before this Tribunal invoking jurisdiction under Section 14 of the Act.

It is well settled that unless prior EC is granted in accordance with the objectives of National Environment Policy, no new project can commence. EIA Authority is constituted by the Central Govt. in consultation with the State Govt. or Union Territory Administration concerned under Section 3(3) of the Environment (Protection) Act 1986, for conducting the assessment of impacts.

The grievances made out before this Tribunal were the suppression of vital facts by the project proponent, the furnishing of erroneous and concocted materials, and improper conduct of the public hearing.

The jurisdiction of the NGT under Section 14 of the NGT Act, can be invoked only if the matter in controversy is not under consideration of any Competent Authority and/or by efflux of time a project is likely to cause harm to the environment. None of the aforesaid eventualities were satisfied in the present case, according to the Tribunal. It, therefore, declined to entertain these applications and disposed of the same *inter alia* granting liberty to the Applicants to

file detailed objections before the Expert Appraisal Committee (EAC) and/or before the MoEF, as the case may be.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7947/Mayur-Karsanbhai-Parmar-and-Another-Vs-Union-of-India-and-Others

Adivasi Majdoor Kisan Ekta Sangthan & Anr. v. Ministry of Environment and Forests

M.A. NO. 36 OF 2011

(ARISING OUT OF APPEAL NO. 3 OF 2011)

CORAM: Justice A.S. Naidu and Dr. G.K. Pandey
Key words: Environment Clearance, Interim application
Application Dismissed

Date: 30th November, 2011
The Appellants inter-alia assailing the environmental clearance (EC) order dated 18th May, 2009 granted by Ministry of Environment and Forests (MoEF) filed an appeal before the erstwhile National Environment Appellate Authority (NEAA), the said appeal was registered as NEAA *Appeal No. 26 of 2009*. The NEAA while admitting the appeal passed an interim order to the effect that Respondent No.3 shall maintain *status quo* in the field activities.

Jindal Steel Power Ltd. resisted hearing of the appeal by NEAA on several grounds one of them being that there was no Judicial Member and filed an application to stay the proceedings till a Judicial Member joined. The said application having been rejected by NEAA, Jindal Steel Power Ltd. approached the High Court of Chhattisgarh through a writ. The High Court by order dated 20th July, 2010 admitted the writ petition and stayed further proceedings of the appeal pending before the NEAA. After constitution of the NGT, the Appeal stood transferred to this Tribunal. The present Application was filed by Jindal Steel Power Ltd., with a prayer to continue the interim order dated 20th July, 2010 and allow Jindal Steel Power Ltd. to carry on activities for acquiring land by way of acquisition or negotiation and also to carry out activities in favour of

the environment like plantation of trees etc., till the disposal of the Appeal.

The Applicant submitted that no prejudice whatsoever would be caused to any of the parties if it was permitted to acquire land by negotiation. The Appellants argued that they had made out a *prima facie* case, and thus the Tribunal should not grant an interim order. On consideration of the Application, liberty was granted to Applicant-Respondent to acquire lands from private persons at its own risk. Such activities, however, would not confer any equity on the said Applicant-Respondent. It may also carry on plantation and other environment friendly activities but was not to make any construction or development or extract coal without obtaining prior permission of this Tribunal.

With the aforesaid observations, this Miscellaneous Application was disposed of.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7768/Adivasi-Majdoor-kisan-Ekta-Sangathan-and-Another-Vs-Ministry-of-Environment-and-Forest-and-Others

Thervoy Gramam Munnetra Nala Sangam v. Union of India Ministry & Ors.

APPEAL NO. 14 of 2011

CORAM: Justice C.V. Ramulu and Dr. Devendra Kumar Agrawal
Key words: Reserved forest, Environmental clearance

Appeal Dismissed

Date: 26th April, 2012
The Ministry of Environment and Forests, Government of India (MoEF) granted environment clearance (EC) in its file dated 9th August, 2010 to State Industries Promotion Corporation of Tamil Nadu (SIPCOT), the Respondent No. 3 herein, for the development of Industrial Park at SIPCOT, Thiruvallur District, Tamil Nadu. Against the said order, an appeal was available under Section 11 of the National Environmental Appellate Authority (NEAA) Act to the NEAA,

within 30 days from the date of such an order. Though, the impugned order was passed on 9th August, 2010, no appeal under Section 11 of the NEAA Act was filed within 30 days or on or before 17th November, 2010.

According to the Appellant, the project of the Respondent No. 3 was being established adjacent to reserved forests of Pallavakam and Peria Pulyur. Adjoining the reserved forests, there was about 250 ha of land classified as *Meikkal paramboke* (grazing land), which was being used traditionally for several hundred years as such, and the landscape was almost similar to the adjacent reserved forest area. The local people also collected minor forest produce and medicinal herbs from this area, and it was a source of livelihood to them.

On 13th November, 2011, the Revenue Department of Tamil Nadu ordered transfer of title lands in the said village measuring 1127 acres, to SIPCOT. The Appellant raised many procedural and environmental issues against this order. The Respondent No. 3 filed a preliminary reply and raised an objection as to the maintainability of this Appeal before this Tribunal. Therefore, with the consent of the parties, the preliminary issue as to the maintainability of the Appeal was taken up first.

The impugned order was passed by the MoEF on 9th August, 2010 and no appeal, as available under Section 11 of the NEAA Act, was filed before the NEAA on or before 17th October, 2010 (i.e. after 70 days). The National Green Tribunal (NGT) Act came into force on 18th October, 2010. The Appellant filed a writ petition on 26th April, 2011. Thus, the remedy of Appeal available under Section 11 of NEAA Act was not availed.

In the NGT Act, 2010, under Section 16, it is categorically emphasized that an Appeal lies to this Tribunal only against the orders that are passed on or after 18th October, 2010. Further, Section 38(2) provides that anything done or any action taken under the repealed Act shall be deemed to have been done or taken under the corresponding provisions of the present Act and Section 38 (5) protects all the Appeals filed before the NEAA before 18th October, 2010 and stand transferred to the NGT, which shall dispose of such cases as if they were cases filed under the NGT Act. According to the Counsel for the Appellant, the implicit meaning of these two Sections read with Section 38 (8) does not debar filing of an Appeal, against an order made before 18th October, 2010, to the NGT.

It was argued on behalf of the Appellant that Section 6 of the General Clauses Act, 1897 provided that repeal would not affect any right acquired or accrued under any enactment so repealed unless a different intention appears. The Appellant acquired the right of appeal under Section 11 of the repealed Act (NEAA Act) *before* its repeal. Thus, unless a different intention appeared, he would be entitled to maintain the Appeal.

The Tribunal observed that the words 'anything done or any action taken' under Section 38(2) of the NGT Act, 2010 could be, if construed most liberally, applied to an appeal preferred before NEAA, which was not processed or not admitted or the condonation of delay application was pending, or a decree passed for compensation, restoration of environment, etc. was not executed as on 17th October, 2010. Section 38(2) could not be stretched to mean more than this.

Under Section 38(5) of NGT Act, the Appeals already filed and pending at the time of repeal, at any stage, were protected and stood transferred to this Tribunal. The language of Section 16 made it clear that appeals are available only against the orders passed on or after 18th October, 2010. If the intention was otherwise, nothing prevented the legislature to say that an appeal lay against any order made in granting/rejecting environmental clearances by the Central/state Governments. Thus, it was deemed that the appeal against an order made on or before 17th October, 2010 to which none had been filed before the NEAA, were implicitly excluded in view of Section 16, 38(2) and 38(5) since no right had accrued under Section 6(c) of the General Clauses Act, 1897.

This matter pertained to the environment and this Tribunal was specially constituted to deal with all environmental disputes, and throwing away the Appeal as not maintainable *prima facie* appeared unreasonable. But, being a statutory Tribunal, it was bound by the language of the statute. Had there been a direction from the High Court of Madras, to entertain the Appeal and dispose of the same on merits, the Tribunal could have done so, as it is also bound by the orders passed by Constitutional Courts. The Appellant sought withdrawal of the Writ Petition from the High Court of Madras, to enable him to approach this Tribunal and papers were returned. Without there being any order from the High Court of Madras, to entertain and dispose of the Appeal, the Tribunal could not *suo moto* assume jurisdiction and deal with the matter on merits.

For all the above reasons, the Appeal was not maintainable and was dismissed on this ground.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7950/Thervoy-Gramam-Munnetra-nala-sangam-Vs-Union-of-India-and-Others

Consumer Federation Tamil Nadu v. Ministry of Environment and Forests, Union of India & Ors.

MISC. APPLICATION NO. 21 OF 2012

arising out of

APPEAL NO. 33 OF 2011

CORAM: Justice A.S. Naidu and Dr. G. K. Pandey

Key words: Coal Based Thermal Power Plant, Condonation of delay

Application Dismissed

Date: 30th April, 2012

The order dated 18th May, 2011, granting environmental clearance (EC) to SRM Energy Ltd. for installation of a coal based thermal power plant, at certain, of Chidambaram Taluk, in Cuddalore District, in Tamil Nadu was assailed herein. The application for condonation of delay is the subject matter of this miscellaneous case.

After coming to know or the order granting EC, it was stated that the Appellant filed an application under the Right to Information Act, seeking certain information. According to the Appellant, Respondent no. 1 adopted dilatory tactics in furnishing the information sought for. Due to lack of information, the Appellant submitted he was prevented from preferring an appeal within the time prescribed. It appears that the Appeal was initially filed in the month of November, 2011 but then the same was not registered as the fees required Under Section 12 or the National Green Tribunal Act, 2010 (NGT Act), were not deposited apart from some other defects. After receiving notice from the Registry, the defects were removed and finally the appeal was registered on 29th November, 2011. According

to the Appellant, there was a delay of 69 days and the same could not be attributed to he - who pursued the *lis* diligently.

The impugned order was passed on 18th May, 2011; and the time prescribed for preferring an appeal as per Section 16 being thirty days, the same should have been filed on or before 17th June 2011. In consonance with the proviso of Section 16, if the Appellant was able to satisfy that he was prevented by sufficient cause from filing the appeal within the said period, this Tribunal can allow the appeal to be filed within a further period *not exceeding sixty days*. Thus, the last date for filing of the appeal was 5th September, 2011. The appeal was however, filed on 14th September, 2011: a delay of almost eight days beyond ninety days.

The Tribunal being a creature of statute could not act beyond the provisions contemplated in the statute. This Tribunal does not possess the extra ordinary power vested under Article 34 of the Constitution nor could it exercise the powers under Article 226 or 227 of the Constitution. The language of Section 16 of the NGT Act, 2010 is very explicit and clearly stipulates the period of limitation for filing an appeal. The Tribunal can condone delay only up to sixty days after expiry of thirty days, if it is satisfied with the reasons assigned, as per the mandate of the legislature. Thus, by this specific provision, there is a complete exclusion of Section 5 of the Limitation Act.

Accordingly, this application for condonation of delay was dismissed, and so also the Appeal.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7951/Consumer-Federation-Vs-Union-of-India-and-Others

Nirma Ltd. v. Ministry of Environment and Forests & Ors.

MISC. APPLICATION NO. 27 OF 2012

IN

APPEAL NO. 4 OF 2012

CORAM: Justice A.S. Naidu and Dr. G.K. Pandey

Key words: Captive power plant, Environmental clearance

Application Allowed

Date: 1st May, 2012

Order dated 1st December, 2011 passed by the Ministry of Environment and Forests (MoEF) revoking the environmental clearance (EC) granted to Nirma Ltd. for the proposed Cement Plant (1.91 MTPA; 1.50 Clinker), Coke Oven Plant (1.5 MTPA) and Captive Power Plant (50 MW) at Village Padhiyarka of Taluka Mahuva, District Bhavnagar, in the State of Gujarat, in exercise of the power conferred under Section 5 of the Environment (Protection Act) 1986; is assailed in *Appeal No.4/2012* by the Project Proponent i.e. Nirma Limited.

The MoEF after consideration of all the objections grantedEnvironmental Clearanceto the project by order dated 11th December, 2008. It appears that the villagers and farmers constituted an Associate with the name of Shri Mahuva Bandhara Khetiwari Paryavaran Bachav Samitee and got it registered as a Society under the Bombay Public Trust Association and they knocked the portals of High Court of Gujarat inter-alia challenging theEnvironmental Clearancegranted in favour of M/s Nirma Ltd., by filing a writ petition which was registered as *Special Civil No.3477 of the 2009*. It appears that Gujarat High Court dismissed the said writ application on 26th April 2010. The order of dismissal was assailed before the Supreme Court in *Special Leave Petition No. 15016 of 2010*. A number of other SLPs were also filed by other persons interested. All the SLPs were heard together by the Supreme Court. In course of hearing on 18th March, 2011, solicitor general submitted that the Ministry would like to revisit the Environment clearance in respect of the project undertaken by Nirma Ltd., particularly in view of the conflicting stands taken in the affidavits from time to time. All the cases finally came up for hearing on and were disposed of by the Supreme Court by order dated 9th December, 2011. Pursuant to the leave obtained from the Supreme Court, *supra*, Nirma Ltd., has filed the present appeal assailing the decision taken by the MoEF cancelling theEnvironmental Clearancegranted to the project, impleading the MoEF, Revenue Department and Gujarat Pollution Control Board only Respondents.

The present controversy is limited only with regard the revocation of the order which has been passed by the MoEF and thus the

petitioners association does not have any right to take part in the proceedings.

Section 16 of the National Green Tribunal Act, 2010 (for short “NGT Act”) stipulates that the person aggrieved by an order passed under any of the Acts set forth as (a to j) thereof can prefer an Appeal. Accordingly, Nirma Ltd. has assailed the order passed by the MoEF under Environmental (Protection) Act, 1986. It is needless be said that as the Applicant is not aggrieved by the order cancelling theEnvironmental Clearanceit has no right to prefer an Appeal but then being a party to the entire proceeding culminating in the order cancelling the EC, it has a right to file an application to be impleaded as an Respondent, and pray for granting opportunity of hearing. The dispute and controversy arising out of the seven acts enumerated in Schedule 1 of the NGT Act, 2010 are not adversary in nature. In other words in such type of litigation neither there is a plaintiff nor a defendant. The controversy is more in the nature of litigations involving public interest. The procedure adopted for considering an application filed for grantingEnvironmental Clearancefor any proposed project, has to be dealt with in consonance with the provisions of Environment Impact Assessment (for short EIA) Notification, 2006 coupled with the provisions of Environment (Protection) Act, 1986 and rules framed thereunder. The provisions of the said Act Rules and Notifications grant extensive access to the public in general to take part and participate in the decision making process. Perusal of the report submitted by the Expert Body constituted by the MoEF in accordance with the direction of the Supreme Court also reveals that the applicant and many others took active part and raised objections to the proposal of grantingEnvironmental Clearanceto the project. The orders passed by the Supreme Court also reveal that the Applicant was immensely interested in the subject matter. It has not only raised objections but also moved the Gujarat High Court and thereafter Supreme Court, for redressal of its grievances. Thus it is clear that the members of the applicants Associations are not strangers to the ‘lis’ on the other hand they have taken part in all stages of the decision making process.

It is no more *res integra* that where the Court finds that addition of a new party is absolutely necessary to enable it to adjudicate affectively and completely the mater in controversy, it will permit addition of the party. In the case in hand, as would be evident from the discussions made, the applicant Association and its members all along took keen interest in the controversy in issue and they took

active part, by filing objections and otherwise. They had also approached the Gujarat High Court and Supreme Court in pursuit of their grievances. That apart, by order dated 18th March, 2011, the Supreme Court specifically directed the Expert Body to give hearing to Nirma Ltd., as well as to all objectors. It is needless to say that the applicant and or its members were among the objectors. Thus, they have vested interest in the subject matter of the Appeal and unless an opportunity is granted to them, to put forth their grievance, great prejudice shall be caused, which cannot be mitigated otherwise. The Judges therefore, allow the application for impletion of party and direct that the applicant be added as a Respondent No. 5 to the Appeal.

The appellant is directed to serve a copy of the memorandum of appeal along with other documents on the applicant within a period of two weeks hence. The newly added respondent shall file its reply within a period for three weeks from the date of the service of the Appeal memorandum. The mater being very urgent this Tribunal directs the same is listed for hearing on 30th May, 2012. It is made clear that the Judges have not examined the merits of the case and the observations made above are only *prima facie* passing remarks and shall not be binding and the Appeal shall be disposed of strictly in accordance with law. Miscellaneous Application is accordingly allowed.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7952/Nirma-Ltd-Vs-Ministry-of-Environment-and-Forest-and-Others

Husain Saleh Mahmad Usman Bhai Kara v. M/s. OPG Power Gujarat Private Limited

APPLICATION NO. 8 OF 2012

CORAM: Justice A.S. Naidu and Dr. G.K. Pandey

Key words: Gujarat State Level Environment Impact Assessment Authority, Gujarat Pollution Control Board, Coal Based Thermal Power Plant, Environmental Clearance, Forest Clearance, Coastal Regulation Zone Clearance

Application Disposed with Directions

Date: 10th May, 2012

The Applicant, Shri Husain Saleh Mahmad Usman Bhai Kara, filed an application under Section 14 read with Section 26 of the National Green Tribunal (for short NGT) Act, 2010 drawing attention of this Tribunal to the order dated 8th February, 2012, and alleged that the said order is being violated by the Project Proponent M/s. OPG Power Gujarat Private Limited, which is carrying on construction unauthorized by violating the directions issued.

It appears that M/s. OPG Power had obtained Environmental Clearance (EC) for setting up of proposed 300 MW (2x150 MW) Coal Based Thermal Power Plant for which State Level Environment Impact Assessment Authority (SEIAA), Gujarat had accorded clearance on 11th June, 2010. The said order was assailed by Husain Saleh Mahmad Usman Bhai Kara (the present Applicant) in *Appeal No. 19 of 2011(T).*

Another Appeal bearing *Appeal No. 37 of 2011* was filed assailing grant of Coastal Regulation Zone (for short CRZ) clearance for the proposed intake and outfall of Sea water for the proposed project. The said clearance was granted vide letter dated 16th September, 2011 by the Ministry of Environment and Forests (for short MoEF).

The present Applicant had also approached the Tribunal in *Application No. 32 of 2011inter alia* alleging violation of the provisions stipulated in Schedule 1 of the National Green Tribunal Act, 2010 in general, and violation of Environment (Protection) Act, 1986 in particular. It was alleged that the Project Proponent violating the guidelines issued under the Forest (Conservation) Act, 1980 is continuing construction though Forest Clearance (for short FC) had not been granted.

In course of arguments of the aforesaid three Appeals / Application, it was brought to the notice of this Tribunal that MoEF returned the Application filed by the Project Proponent for grant of FC. It was also brought to the notice of this Tribunal that MoEF had called upon the Project Proponent to show-cause as to why the permission granted under the CRZ Notification for the project shall not be kept in abeyance and /or cancelled.

After hearing parties this Tribunal felt that as FC has not been granted and a notice has been issued to Show Cause why the permission granted under the CRZ Regulation shall not be cancelled, it would not be necessary to hear the matter on merits, more so because, in the absence of the FC and in the event the permission

granted under the CRZ Regulation is withdrawn theEnvironmental Clearancegranted to the project would become automatically redundant. The Project Proponent however, had an option to approach the SEIAA, Gujarat, for change of technique and under such event the MoEF shall reconsider the application.

The Judges heard the counsel for the parties at length, perused the replies filed by the parties diligently. Also, they perused the contents of the site visit report prepared in accordance with the direction issued by this Tribunal, by seven responsible officers of SEIAA / SEAC, Gujarat, GPCB and MoEF. Starting construction work without obtaining FC is violation of the terms and conditions stipulated in Clause 12 and 30 of the Environment Clearance. It appears from the site visit report that construction work was in progress till a day before the visit of the Committee and it was stopped on 9th April, 2012. The report further indicates that RCC foundation work for boilers and turbines was in progress. It is alleged that a part of River Khari which belongs to the community, has been illegally occupied and enclosed within the boundary of the project land.

In view of the discussions made, the Judges direct the State Government / SEIAA, Gujarat to initiate necessary proceedings against the Project Proponent, issue Show Cause to them and on perusal of the cause shown, if satisfied that in fact the Project Proponent has violated the terms and conditions of theEnvironmental Clearanceor had committed any other omission or commission, and / or encroached upon the river un-authorized, take such action as deemed just proper and in accordance with the law, without being prejudiced by any of the observations made by the Judges in the preceding paragraph, which are only *prima facie.* The entire exercise shall be completed within a period of four months hence.

The application is disposed of accordingly.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7953/Husain-Saleh-Mahmad-Usman-Bhai-Kara-Vs-Ms-OPG-Power-Private-Limited

T. Mohana Rao v. Ministry of Environment and Forests & Ors.

APPEAL NO. 23 OF 2011

(NEAA Appeal No. 1 of 2010)

CORAM: Justice A.S. Naidu and Dr. G.K. Pandey

Key words: Andhra Pradesh State Pollution Control Board, M/s Nagarjuna Construction Company Ltd, Coal Based Thermal Power Plant, wetland, Environmental Clearance, Public Hearing, Environment Impact Assessment

Appeals partly allowed

Date: 23rd May, 2012

1. **APPEAL NO. 23/2011 (NEAA Appeal No. 1/2010): T. Mohana Rao Vs MoEF and Others**
2. **APPEAL NO. 24/2011 (NEAA Appeal No. 2/2010): Maddu Raja Rao Vs MoEF**
3. **APPEAL NO. 25/2011 (NEAA Appeal No. 3/2010): Forum for Sustainable Development Vs MoEF and Others**
4. **APPEAL NO. 26/2011 (NEAA Appeal No. 4/2010): Paryavarana Parirakshana Sangham Vs MoEF and Others**
5. **APPEAL NO. 27/2011 (NEAA Appeal No. 5/2010): Donnu Behara Vs MoEF and Others**
6. **APPEAL NO. 28/2011 (NEAA Appeal No. 6/2010): Sandhi Kamaraju Vs MoEF and Others**

All these appeals involve same question of facts and point of law. Even the order impugned and proposed Project is one and the same, therefore by consent of Parties all the six appeals were heard together and are disposed of by this common Judgment.

M/s Nagarjuna Construction Company Limited,(hereinafter referred to as NCC for the sake of brevity) Respondent in all the appeals proposed to set-up a Coal Based Thermal Power Plant at Villages Golagandi and Baruvaappertaining to Sompeta Mandal, Srikakulam District of Andhra Pradesh. The Project was proposed to be implemented in two phases i.e. Phase I – 2x660 MW and Phase II –

2x660 MW. The Project Report revealed that the Power Plant would be based on Super-Critical Technology and would be using coal as the main feed stock. For the purpose of the project, approximately 762 hectare of land was the estimated requirement.

The Project Proponent in consonance with the prevailing Rules approached the Ministry of Environment and Forests (MoEF) seeking prior Environment Clearance (EC) in accordance with the provisions of Environment Impact Assessment (EIA) Notification, 2006. The MoEF after examining the viability from environmental angle of the project and other pros and cons vide order dated 9th December, 2009 granted EC to the project.

The said order dated 9th December, 2009 issued by the MoEF granting EC to NCC was assailed by the appellants before the National Environment Appellate Authority (NEAA). The then, Member of the Authority conducted a site visit and on the basis of the impressions gathered by him during the said site inspection allowed all the appeals by order dated 14th July, 2010 and set aside the order of the MoEF dated 9th December, 2009 granting EC. The respondent not being satisfied with the judgment dated 14th July, 2010 filed six Review Petitions before the NEAA, inter-alia, praying to review / recall the order dated 14th July, 2010. While matter stood thus the National Green Tribunal Act was promulgated in the year 2010 and the National Environment Appellate Authority Act got repealed. Consequently, the NEAA was abolished and all the Review Petitions stood transferred to this Tribunal.

In course of hearing of the Review Petitions, the Tribunal noticed that no opportunity was granted to the respondent to answer or clarify the impression gathered by the Member of NEAA in course of site inspection thus there was gross violation of principle of natural justice and equity. Further, the NEAA relying upon the inspection report alone disposed of the Appeals. On the basis of aforesaid conclusions, the Review Petitions were allowed and the judgment dated 14th July, 2010 was recalled, consequently all the six cases were once again posted for hearing.

The first and foremost contention of the Project Proponent is that the site over which the project is proposed to be constructed is not WETLAND. That apart, 400 acres of land which sometimes become water logged have been left out of the layout plan, thus, the apprehension is neither justified nor tenable under law. The allegation that the project would affect ground water level is also

stoutly denied. The main contention of the Appellant is that the Power Plant should not be permitted to be located on the swamp / wet land, as the same would create adverse impact on fisheries, agriculture, horticulture, ground water recharging, availability of drinking water, irrigation facilities etc. and also create other hazards to the environment and ecology.

The controversy in the present six appeals centers on mainly on three issues:

i. The Project Site, being Wetland and would cause environment hazards apart from ecological imbalance, and hence not proper to set up TPP.

In course of hearing, this Tribunal was informed that an exercise in this respect was initiated in the year 2009 but then till date MoEF has not arrived at a logical conclusion. It should be kept in mind that the updated guidelines for setting up TPPs would not only avoid unnecessary litigation but would also go a long way in providing proper selection of environmentally compatible sites. Further, the principles of sustainable development and precautionary principles mandate that the guidelines should clearly spell out “GO” and “NO GO” areas for locating Thermal Power Plant so that the environmental issues can be internalized right from the beginning of project formation stage. Therefore, the Judges direct the MoEF to frame new guidelines and sitting criteria with the observations made in this paragraph for TPPs and file a copy thereof before this Tribunal within a period of three months hence. However, it is made clear that the proposal of the present Project Proponent has rightly been dealt with in view of the citing criteria guidelines which were prevailing at the relevant time.

ii. The Expert Appraisal Committee (EAC) has not properly dealt with the proposal submitted by the Project Proponent and has violated and / or by passed certain mandatory requirements stipulated under the EIA Notification, 2006 basing on false data submitted by the Project Proponent.

Scrutiny of the EIA report filed before this Tribunal reveals that the Terms of Reference (ToR) was issued on 14th May, 2009 basing on the minutes of discussions of the EAC meeting held on 15-16th April, 2009. Surprisingly, it appears that the same was based upon environmental data which was collected on a much earlier date i.e. on or from 1st March, 2009 i.e. earlier to the grant of ToR. That apart, dates for sampling period of water quality monitoring with

respect to ground water and sea water are not clearly reflected in the EIA report. Dates for soil sampling have also not been indicated in the EIA report. So also no dates with regard to noise survey have been indicated in the EIA report. All the aforesaid errors and inadequacies could have been avoided by EIA consultant, but then it appears that there was a callous attitude which created unnecessary hurdles in appreciation of the report. Further, it appears that EIA report did not contain the findings of the special studies carried out by the various agencies at the time of Public Consultation. As the EIA Report is the key on which the EIA process revolves, it is important that EIA report prepared should be scientific and trustworthy and without any mistakes or ambiguity. MoEF may ensure that the quality of the EIA report remains fool proof and any consultants whose EIA reports are not found satisfactory, should be blacklisted.

iii. The Public Hearing was not conducted in proper manner. Consequently, the entire procedure culminating in grant of EC has become vitiated and a nullity in the eye of law.

Public Hearing / consultation is based on the principles of participatory democracy and ensures community participation and is aimed to ensure that the affected persons have a say and their voice is heard and respected. It is important to note that the information about the project and particulars about the EIA report were not made available to anyone in the public till the time of the public hearing. The same was available only with the Project Proponent and the MoEF. After going through the entire EIA report *vis-a-vis* the manner in which the Public Hearing / Public Consultation was carried on, the Judges feel that the public was deprived of the relevant information of different reports and other materials basing upon which the EC was granted. Therefore another opportunity should be given to the public for tendering their views /suggestions on the basis of the materials and the updated EIA report. The Tribunal, therefore, directed the MoEF to revisit the EIA report from the stage of Public Hearing.

MoEF may also finalise and notify the important wetlands in the country as early as possible so that location of developmental projects in and around such ecologically sensitive areas could be avoided in future. In the light of the observations made above, the Judges direct that the MoEF to finalise the guidelines and citing criteria for Thermal Power Plant urgently and file a copy thereof before this Tribunal as early as possible but not later than three

months as the same is the most important component of EIA process and cannot be delayed any more. All the six Appeals are partly allowed.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7954/T-Mohana-Rao-and-Others-Vs-Ministry-of-Environment-and-Forest-and-Others

T. Murugandam v. Ministry of Environment and Forests & Ors.

APPEAL No. 17 OF 2011(T)

(NEAA Appeal No. 20 of 2010)

CORAM: Justice A.S. Naidu and Dr. G.K. Pandey

Key words: Tamil Nadu Pollution Control Board, M/s IL&FS Tamil Nadu Power Company Ltd., Coal Based Thermal Power Plant, Environmental Clearance, Environment Impact Assessment

Appeal partly allowed

Date: 23rd May, 2012

The Appellants sought to assail the Environmental Clearance (EC) granted by the Ministry of Environment and Forests (MoEF) for the proposed Coal Based Thermal Power Plant (2 x 600 MW+ 3 x 800 MW) by M/s IL&FS Tamil Nadu Power Company Ltd., at Chidambaram Taluk, Cuddalore District, Tamil Nadu. According to the Appellants the project has been granted EC despite serious objections concerning environment raised during the public hearing. It is alleged that though the above issues and many others were raised during public hearing, they were not given due consideration by the Expert Appraisal Committee (EAC) and MoEF and assessment was done in spite of incomplete data and inadequate EIA report. Perusal of the records reveal that the project is located at a distance of about 8 kms from Pichavaram mangroves, as such location of site is in violation of MoEF's Citing criteria for Thermal Power Plant. On the basis of above facts, and circumstances, the Appellants pray to quash the EC granted on 31st May, 2010 to the Project in question.

In short, according to the Appellants the following main issues were not properly considered by EAC and MoEF before granting EC to the Power Project and as such the order is liable to be quashed:

(a) Power Plant location is violating the citing criteria for Thermal Power Plants, being within 25km of the ecologically sensitive area e.g. Pichavaram Mangroves.
(b) Lack of cumulative impact assessment.
(c) Lack of consideration of the views and objections raised during public hearing by EAC and MoEF.
(d) Non-publication of all the materials, studies and reports, thirty days before public hearing.

In response the Counsel for MoEF, that is Respondent No. 1, submitted that the proposed Thermal Power Project, Desalination plant and a Captive port at Cuddalore do not fall in any of the critically polluted areas. The project is located more than 13.5 km. away from SIPCOT industrial area. Further, the EAC had prescribed the Terms of Reference (ToR) after a site visit was made by a Sub-Committee of EAC. The Project Proponent submitted a final EIA report after the public hearing was held on 5th February, 2010 along with the proceedings of the public hearing. EAC considered the project based on the final EIA report and the proceedings of the public hearing during its 67th meeting held on 19-20th March, 2010. Ms. Neelam Rathore, Counsel for Respondent No. 1 further submitted that the ToR given to Project Proponent (Respondent No. 3) included the cumulative impact on the environment (Air, Water, Noise, Soil, Socio- economic aspects etc.) inclusive of the impact of the existing units located within 10 kms radius on the recommendations of the EAC for the preparation of the EIA report and Environment Management Plan. It is submitted by Respondent No. 3 that there is no mandatory legal requirement under EIA Notification 2006 or other applicable Indian law for carrying out "cumulative impact assessment" of projects, MoEF while granting EC has applied its mind and took into account the concerns raised during the public hearing etc.

In course of hearing, it was submitted by the Counsel for Respondent No. 3 that due to non-availability of adequate data in respect of the proposed / existing industrial activities, cumulative impact assessment could not be done. The Tribunal did not subscribe to the submission of Counsel as it is quite possible to work out likely cumulative impacts based on the capacity of the Coal based Power Plant (2x660 MW), Nagarjuna Refinery etc.,

theoretically by applying mathematical models. The cumulative impact assessment exercise is considered necessary in this particular case, as Pichavaram Mangroves are located at a distance of 8 km from the Southern boundary of the proposed Power Plant, added to it the issues pertaining to the cumulative impacts were raised during the public hearing. As such, the Tribunal felt, keeping in view the precautionary principle and sustainable development approach, cumulative impact assessment studies are required to be done in order to suggest adequate mitigative measures and environmental safeguards to avoid any adverse impacts on ecologically fragile eco-system of Pichavaram Mangroves and to the biological marine environment in the vicinity. The Tribunal, therefore, directs that cumulative impact assessment studies be carried out by the Project Proponent especially with regard to the proposed Coal Based Power Plant (2x660 MW) of Cuddalore Power Company Ltd. and the Nagarjuna Oil Refinery and other industrial activities within a radius of 25 km from the Power Project of M/s. IL&FS Tamil Nadu Power Co. Ltd. (3600 MW) and be submitted to MoEF for review of EC accorded on 31st May, 2010 in order to stipulate any additional environmental conditions and safeguards required for the protection and preservation of Pichavaram Mangroves and Marine environment.

It appears number of major projects have been proposed in the close proximity of Cuddalore Industrial Area (SIPCOT) and Pichavaram Mangroves, the Tribunal directed MoEF to initiate a Carrying Capacity Study taking into account the assimilating and supportive capacity of the region.

The Judges also feel that there is need to have more transparency in the EIA process and as such, whatever relevant information regarding the projects are used during the time of the appraisal of the project from environmental angle by the EAC and MoEF should also be made available in public domain including the executive summary of specific studies. Therefore, the court directs MoEF to make available the relevant information other than EIA report and report of the public hearing considered during the appraisal of the project through its website. Similarly, the concerned State Pollution Control Board (SPCB) should also make available in their website the pertinent information regarding the public hearing proceedings, “Consent to Establish” and “Consent to Operate”, compliance status etc. The MoEF should also upload from time to time the compliance status of the various stipulated conditions during the grant of EC to projects so as to bring compliance status in public domain in case of

all the projects granted EC under EIA Notification, 2006. The project proponent must also upload the compliance status of EC conditions including the Executive Summary of the specific studies done in respect of the project and update the same periodically.

As the Tribunal was convinced that EC to the proposed project was granted by and large in consonance with the EIA process as required under EIA Notification, 2006, they do not feel any necessity to quash the EC granted by MoEF. However, the Tribunal directs MoEF to review the EC based on the cumulative impact assessment study and stipulate any additional environmental conditions, if required. Updated EIA report may be shared with the Appellants and they may be invited in the EAC meeting and may be heard before a decision is taken by EAC/MoEF, till then the EC shall remain suspended.

The Appeal is partly allowed.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7955/T-Murugandam-and-Others-Vs-Ministry-of-Environment-and-Forest-and-Others

Dyaneshwar Vishnu Shedge v. Ministry of Environment & Forests

MISC. APPLICATION NO. 19 OF 2012

ARISING OUT OF

APPEAL NO. 9 OF 2012

CORAM: Justice A.S. Naidu and Prof. Dr. R. Nagendran

Key words: Maharashtra Pollution Control Board, M/s Lavasa Corporation, Velhi Talukas, District Pune, Maharashtra, development of hill station, township, condonation of delay

Application Allowed

Date: 24th May, 2012

The Environment Clearance (EC) dated 9th November, 2012, issued by the Ministry of Environment and Forests (MoEF) to M/s Lavasa Corporation Ltd., Respondent No. 3 for the development of hill station, township at Village Munshi appertaining to Velhi Talukas,

District Pune, Maharashtra is sought to be assailed in *Appeal No. 9 / 2012*.

In the case in hand, the Appeal was filed on 6th February, 2012 assailing the order granting EC dated 19th November, 2011. Thus the same was filed after lapse of 30 days but then within ninety days. The Appellant being conscious of the said fact filed a petition for condonation of delay which has been registered as Misc. Case and is the subject matter of the present order.

According to the Appellant, the delay of 59 days in filing the Appeal was unintentional. The delay had occurred as the project affected persons were not aware of the impugned order and its impact.

Admittedly, the Appeal has not been filed within thirty days of the impugned order. But then it has been filed within ninety days, thus, in consonance with the provision of Section 16 of the NGT Act, this Tribunal, if it is satisfied that the Appellant was prevented by sufficient cause from filing the Appeal, entertain the same, if the same is filed within 60 (sixty) days after 30 (thirty) days from the date of the order sought to be impugned.

On consideration of the submissions advanced *inter se* by the parties, the Judges feel in a case like the present one, where the Environmental impact of the project on local population in terms of their environmental harm, has to be assessed, the approach of this Tribunal, especially set up for the said purpose, should be liberal and not “hyper-technical”.

In view of the discussions made above, the delay being less than ninety days, this Tribunal after appreciating the pleadings and documents referred is satisfied that there was sufficient reasons and that deliberate latches cannot be attributed to the Appellant. The law as on date mandates that the EC granted under the Environment (Protection) Act, 1986 can only be challenged before this Tribunal; the Judges condone the delay and allow the petition for condonation of delay.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7956/Dyaneshwar-Vishnu-Shedge-Vs-Union-of-India-and-Others

Janahit Seva Samiti v. Ministry of Environment & Forests

MISC. APPLICATION NO. 59/2011

arising out of

APPEAL No. 16 of 2011

CORAM: Justice A.S. Naidu and Prof. Dr. R. Nagendran

Key words: Maharashtra Pollution Control Board, M/s Nuclear Power Corporation of India Ltd., Nuclear Power Park, delay

Application Dismissed

Date: 24th May, 2012

Invoking jurisdiction Under Section 16 (h) of the National Green Tribunal Act, 2010, the Environment Clearance (EC) granted to M/s Nuclear Power Corporation of India Limited (Respondent No. 3) for setting up Jaitapur Nuclear Power Park (6x1650 MW) at village Madban, Taluka Rajapur, District Ratnagiri in the Maharashtra State by order dated 26th November, 2010, passed by the Ministry of Environment and Forests (MoEF) is assailed in *Appeal No. 16 of 2011*.

In the case in hand, admittedly the order sought to be impugned was passed on 26th November, 2010 and the appeal was filed on 12th September, 2011. Thus, there is a delay of 289 days.

The Judges heard the counsel for the parties diligently. The provisions of Section 16 of the National Green Tribunal Act, 2010 (NGT Act) are very clear and specific, the said provision circumscribe the discretionary power of this Tribunal. The language of Section 16 of the NGT Act is also very explicit, and clearly stipulates the period of limitation for filing of an appeal to be thirty days and further mandates that the Tribunal may, on given circumstances, extend the time for filing for a further period not exceeding sixty days. The language used thus, leaves no ambiguity that the legislature intended the Tribunal to entertain the Appeal by condoning the delay only up to sixty days after the expiry of thirty days, which is the normal period for preferring an Appeal.

Admittedly, in the case in hand the order impugned was passed on 26th November, 2010, the NGT was established on 18th October, 2010, thus an appeal against the order was required to be filed

before this Tribunal within the time prescribed by NGT. However, the NGT started functioning in a full-fledged manner from the month of June 2011, thus there was no embargo for filing any appeal in June 2011. That apart, the Supreme Court further extended the period for filing an appeal by sixty days commencing from 30th May, 2011, thus the last date for filing an appeal extended till 30th July, 2011. The appellant failed to avail the opportunity granted by the Supreme Court and did not file the appeal within extended period too. The appeal was filed only in the month of September, 2011. Thus, the same is grossly barred by time.

"...we are not inclined to condone the delay and dismiss this petition."

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7957/Janahit-Seva-Samiti-Madban-and-Another-Vs-Union-of-India-and-Others

Madheshwaran G. v. M/s Chemplast Sanmar Pvt. Ltd.

M. A. NO. 78 OF 2012

in

APPEAL NO. 4 OF 2011

CORAM: Justice C.V. Ramulu and Dr. R. Devendra Kumar Agrawal
Key words: Withdrawal
Application Dismissed

Date: 30th May, 2012

"It is unfortunate that M.A 78/2012 in Appeal No. 4/2011 filed seeking to implead certain parties as respondents to the appeal. We found them to be not necessary parties to the appeal, except 5 and 9. Even this was not done in a proper form.

The Counsel however, after pointing out defects seeks withdrawal of M.A 78/2012. Therefore, the M.A. 78/2012 in appeal 4/2012 stands dismissed as withdrawn.

However, the applicant/appellant is at liberty to file an appropriate application seeking to implead parties as directed on 26th April, 2012."

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7958/Madheshwaran-G-Vs-Ms-Chemplast-Sanmar-Pvt-Ltd

Ossie Fernandes Coastal Action Network v. Ministry of Environment and Forests & Ors.

APPEAL NO. 12 OF 2011

CORAM: Justice C. V. Ramulu and Dr. Devendra Kumar Agrawal

Key words: The Tamil Nadu Pollution Control Board, Nagapattinam District, Thermal Power Plant, Environmental Clearance, Public Hearing, Environment Impact Assessment

Appeal disposed of with directions

Date: 30th May, 2012

This appeal is filed being aggrieved by the order dated 20th January, 2011, on the file of the Ministry of Environment and Forests, Government of India (Respondent No. 1) (MoEF), where under Environmental Clearance (EC) in favour of M/s Chettinad Power Corporation Private Limited (Respondent No. 6) was granted for establishing 1200 (2X600) MW Thermal Power Plant at Erukkattanchery, Kazhiappanallur and Manickapangu villages, Tarangambadi Taluk, Nagapattinam District, Tamil Nadu.

Appellant No. 1 is the Co-convenor of Coastal Action Network, which consists of group of organizations, fishing communities, environmental activists and lawyers. The objective of the network is to ensure protection of the environment and bio-diversity in coastal area and protection of livelihood of the persons living in the area. Appellant No. 2 is a trade union and it has nearly 3005 members on its rolls and appellant No. 3 is a fisherman from Nambiar Nagar Village, which is considered as head village of 64 fishing villages, in Nagapattinam and Karaikal Districts. Fishing is the sole source of livelihood for 90% of the population in these villages. Appellant No. 4 is a resident of Vellakkovil which is a fishing village near Tarangambadi, Nagapattinam District and is situated near the

proposed Power Plant. Appellant Nos. 3 and 4 had appeared before the Public Hearing (for short PH) panel constituted to conduct PH under the Environment Impact Assessment (for short EIA) Notification, 2006.

The following points arose for consideration:

1. Whether the PH was conducted as per the procedure prescribed under EIA Notification, 2006 or not?

May be there was some commotion in the meeting due to slogans raised by both sides and that resulted in using force by the police - but that does not mean that there was no PH at all. No substantial point is made out to say that this resulted in any substantial procedural irregularity which might result in environmental threat, requiring this Tribunal to hold that the PH conducted was not in accordance with the EIA Notification, 2006.

2. Whether there is any inconsistency in the draft EIA report and final EIA report which resulted in denial of opportunity to the public that participated in the PH and whether it resulted in threat to the environment and ecology?

The discrepancies pointed out by the appellants, may not have any substantial impact on the environment. So far as these discrepancies that ought not to have been committed, are concerned, it would have not caused prejudice to the appellants or the public to the extent that these would cause severe threat to ecological and environmental imbalance and would result in unsustainable development. Each and every procedural lapse need not result in setting aside the grant of EC.

3. Whether the EAC has committed any error in recommending the grant ofEnvironmental Clearancewhich might result in environment and ecological threat?

The main contentions in the present appeal (based on draft and final EIA reports including marine ecology EIA report) pertain to:

i. Modalities of data collection and EIA reports (terrestrial and marine ecology) preparation;
ii. Archaeological importance of vicinity area;
iii. Fly ash Pollution and Health hazards with respect to coal quality (clarity on use of imported or domestic coal);
iv. Sea water requirement, use and disposal mechanism;
v. Impact of Olive Ridley Turtles;

vi. Impact on Marine Ecology;
vii. Violation of CRZ notification;
viii. Cumulative impact of large number of thermal power projects coming in the area, and
ix. Option assessment of port facility or common jetty for cluster of thermal power projects

It appears that a separate CRZ permission was needed to be obtained by the project proponent and practically there was no data furnished with the draft as well as the final EIA report, except a generic executive summary. However, it appears that the CRZ clearance has been obtained subsequently based on the comprehensive report on marine ecology.

Keeping the principles of Sustainable Development, Precautionary measures and Polluter Pay (section 20 of National Green Tribunal Act) into consideration, instead of scrapping the EC under challenge, the Judges propose to dispose of the Appeal with the following directions.

(a) The EIA report (final) both on terrestrial and marine ecology shall be updated as per the suggestions made against point no. 3.
(b) After updating the EIA report, the same shall be uploaded on the website of the MoEF and invite written objections/suggestion, if any, from the public giving clear 30 days' time. This may also be given wide publicity in the local newspapers of the project area.
(c) Thereafter, the MoEF/EAC shall appraise the project along with the objections/suggestions received, if any in this regard.
(d) The recommendation of the EAC/MoEF shall be placed in the public domain (on the website of the MoEF).
(e) The above exercise shall be completed within a period of 6 months from the date of this judgment.
(f) In the meanwhile, the EC granted on 20th January, 2011 shall stands suspended till the final decision is taken by the MoEF as required above.

The EAC/MoEF to commission Cumulative Impact Assessment study of all the proposed thermal power projects in the area within a period of one year from the date to this judgment and impose additional conditions as may be necessary as a precautionary measure in the establishments of the project.

The MoEF may consider in granting all the clearances together, against a particular project, that are required under the Environment Protection Act instead of making a piecemeal

approach, which may result in fragmented and incomplete/lopsided evaluation of the project, both environmentally and ecologically.

(Refer to the original judgment for suggestions for preparing and publication of draft EIA and final EIA and in conducting public hearing.)

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7959/Ossie-Fernandes-and-Others-Vs-The-Ministry-of-Environment-and-Forest-and-Others

Ossie Fernandes Coastal Action Network v. Ministry of Environment and Forest & Ors.

M.A. NO. 52 OF 2012

in

APPEAL NO. 12 OF 2011

CORAM: Justice C. V. Ramulu and Dr. Devendra Kumar Agrawal

Key words: M/s Chettinad Power Corporation, Manickapanngu, Nagapattinam District, Coal Based Thermal Plant

Application Dismissed

Date: 30th May, 2012

This appeal was filed challenging the order dated 2nd June, 2011 by the Ministry of Environment and Forests, Government of India (MoEF), where under M/s Chettinad Power Corporation (Respondent No. 3) was granted Coastal Regulation Zone (CRZ) Clearance for setting up of jetty, intake and outfall facility for 1200 MW (2X600) Coal Based Thermal Plant at Manickapanngu, Nagapattinam District.

There is a delay of (58) days in filing the appeal, the present Miscellaneous Application has been filed seeking condonation of delay in filing the appeal against the order dated 2nd June, 2011.The Respondent No. 3, filed a counter opposing the condone delay

application. Therefore, the matter was taken up with the consent of both the parties for deciding the preliminary issue of limitation.

The Judges are not in agreement with the arguments advanced by the counsel for the appellant. This Tribunal can entertain an appeal filed within 30 days from the date of communication and it may condone a further delay of 60 days in presenting the appeal in an appropriate case, if sufficient cause is shown. The assertion made by the appellant and the Standing Counsel for MoEF that the CRZ Clearance dated 2nd June, 2011 was very much available on the website of the MoEF and the same was further published in the local newspapers both in English and vernacular (Tamil) on 8th June, 2011 could not be met with properly, by the applicant/appellant except making a vague denial. The publication of the grant of CRZ clearance dated 2nd June, 2011 in the local and vernacular (Tamil) newspaper on 8th June, 2011 is part of the record placed before the bench.

Therefore, the present *MA no. 52 of 2012* seeking condonation of delay is liable to be dismissed and is accordingly dismissed. In the result the appeal also is liable to be rejected and accordingly rejected.

Link for the original judgment:
http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7960/Ossies-Fernadas-Vs-Ministry-of-Environment-and-Forest-and-Others

Ramesh Agrawal v. Member Secretary, State level Environment Impact Assessment Authority

APPEAL NO. 20 OF 2011 (T)

CORAM: Justice C. V. Ramulu and Prof. R. Nagendran
Key words: M/s. Salasar Steel and Power Ltd., Chhattisgarh Environment Conservation Board, Expansion Steel melting shop and CFBC-based 65 MW Power Plant, Environmental Clearance, Public Hearing, Environment Impact Assessment, Cumulative Environment Impact Assessment

Appeal Dismissed

Date: 31st May, 2012
Initially, an appeal was filed under Section 11 of the NEAA Act before the National Environment Appellate Authority, New Delhi, aggrieved by the grant of Environment Clearance (EC) for the installation of Steel Melting Shop with a capacity of 97,000 TPA and CFBC-based 65 MW Power Plant at village Gerwani, District Raigarh by M/s Salasar Steel & Power Ltd (SSPL) on 21st August, 2010 by State Level Environment Impact Assessment Authority (SEIAA) of the State of Chhattisgarh. On repeal of the NEAA Act and disbanding the National Environment Appellate Authority with effect from 18th October, 2010, the appeal stood transferred to this Tribunal under Section 38 (5) of the National Green Tribunal Act, 2010.

According to the appellant, he is working in the field of environment and has been involved in raising issues relating to environment. He also asserted that he lives near the project area and his residence is within 10 km of the project area. He had participated in the public hearing (PH) conducted on 29th November, 2009 and raised issues concerning environment and they were not considered by the State Level Environment Impact Assessment Authority.

The following points arise for consideration in this appeal -

1. Whether the PH was properly conducted following the procedure as prescribed by EIA Notification, 2006:

The Judges are of the opinion that there is no irregularity or illegality in conducting the PH. In fact, while considering the legality or otherwise of the conduct of Public Hearing the material which was placed on the website as a draft Environment Impact Assessment (EIA) alone can be looked into. May be the project proponent is supposed to prepare the draft EIA in consonance with the Terms of Reference (ToR) awarded. If there is any deviation in the preparation of draft EIA and concealment of some information which might result in the environmental and ecological threat the matter must be viewed seriously by the MoEF and the project proponent as well as the consultant shall be punished suitably. Unfortunately there is no mechanism evolved to check as to whether the draft EIA is strictly in consonance with the ToR awarded which gives scope to the project proponent/ his EIA consultant to conceal certain information or furnishing incomplete information which fact was not within the reach of public before the PH could be conducted. Therefore, merely because the draft EIA was not in consonance with the ToR, the PH conducted cannot be faulted with.

2. Whether EIA report was in accordance with the ToR prescribed:

We are satisfied that though there are some discrepancies in the draft EIA report when compared to ToR, all the deficiencies pointed out have been adequately addressed and included with data support in the final EIA report. Thus, the allegation that contour map with the plant site is not shown, plant coordinates not properly marked, TCLP test results are lacking in the EIA report, impact of raw materials, fuel, solid wastes are not given, generation of fugitive emission is not properly projected, storage yards are not delineated properly etc., are baseless and deserves to be rejected. No substantial irregularities were brought to notice to hold that the EIA report was not in accordance with law or the same conceals any potential environmental threat, due to the implementation of the project.

3. Whether the authority granting Environmental Clearance (EC) ought to have called for a Cumulative Impact Study of the several Steel & Power plants on the ground water:

At the outset, there is no plea for conducting cumulative impact study on air pollution and other environmental parameters. The only cumulative study sought for is the exploitation of ground water by the cluster of industries located in and around the proposed project. It is unfortunate that such an issue without any basis has been raised. Firstly, there is no proposal for drawl of ground water. The proponent categorically stated that the surface water alone will be used drawing from the Gerwani Nala by constructing an anicut, that too at a distance of 7 km from the project site. Practically there was no reply to this by the appellant. Therefore, the Judges are of the opinion that there was no necessity for conducting a cumulative study with regard to the usage of ground water. We are in full agreement with the submission made by respondent that this issue is irrelevant and misconceived.

4. Whether there are any serious environmental lapses committed by the project proponent in relation to the existing unit which would result in environmental threat.

So far as this issue is concerned it is in a way irrelevant for the purpose of this appeal. However, the reply filed by the Chhattisgarh Environmental Conservation Board (CECB) reveals that a case was registered against the project proponent along with others in relation to the existing unit in the year 2005 and the same is pending.

However, the Judges cannot ignore certain lapses being committed by the authorities and the project proponent in the preparation of the draft EIA and final EIA reports. Therefore the Judges are of the considered opinion that unless and until the MoEF (the rule making authority) takes steps to follow the suggestions made below, the situation may not improve -

i. The MoEF shall evolve a mechanism to check the correctness or otherwise of the draft EIA prepared by the project proponent in consonance with the ToR awarded by EAC.
ii. The MoEF shall also ensure that after evaluating the draft EIA and if the same is inconsonance with the ToR awarded, may permit it to be placed on the website for the information of the general public before conducting the PH.
iii. If the draft EIA report prepared by the project proponent is not in consonance with the ToR awarded, it may reject the same and ask for fresh draft EIA.
iv. After conducting the PH and submission of the final EIA the MoEF may again evaluate the same as to whether the same is in tune with the ToR and the proceedings of the PH.
v. The MoEF may consider displaying the final EIA in public domain before the grant of EC – this may enable in making representations before the EAC in a given case.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7961/Ramesh-Agrawal-Vs-Member-Secretary-Level-Environment-Impact-Assessment-Authority-and-Others

Verinder Singh v. Land Acquisition Collector-Cum-DRO, Haryana

APPLICATION NO. 24 OF 2012

CORAM: Justice A.S. Naidu and Dr. G.K. Pandey

Key words: Disputed land, Village Kambopura, Karnal, Land Acqusition Act 1894, Environment (Protection) Act, Environment (Protection) Rules

Application Dismissed

Date: 13th July, 2012
This application was filed invoking jurisdiction under Section 14 and 15 read with Section 18 of the National Green Tribunal Act, 2010, inter-alia, seeking certain reliefs (*refer to the original judgment*).

According to the Applicant, late Brig. Verinder Singh was allotted a portion of the disputed lands situated at 119/6 km Stone G.T. Road, Village Kambopura, Karnal. In the year 2006, the Government of Haryana issued a notification under Section 4 of the Land Acquisition Act, 1894 for acquisition of different partial of the lands, including the disputed lands, for development of Phase-3 Industrial Estate for HSIIDC, Karnal, Haryana. The said notification was assailed in *Civil Suit No. 303 of 2005* in the Court of Civil Judge, Karnal.

While matter stood thus, Government of Haryana issued notification under Section 6 of the Land Acquisition Act, 1894 on 26th April, 2007, followed by notification under Section 7 and another notification under Section 9(1) of the said Act. After completion of the paraphernalia, the land was acquired and compensation was awarded.

Thereafter, the applicant filed an application for amendment of the plaint under Order 6, Rules 17 read with Section 151 of the Civil Procedure Code in *Civil Suit No. 159 of 2011* and sought to include a prayer regarding violation of the provisions of the Environment (Protection) Act, 1986. Civil Judge, Junior Divison, Karnal by order dated 30th May, 2012 rejected the application. Thus, it appears that the cause of action for approaching this Tribunal is the order dated 30th May, 2012 passed in the Civil Suit. There is no dispute with regard to the legal position that in consonance with the provisions of the National Green Tribunal Act, 2010, this Tribunal has no jurisdiction to sit over appeal or otherwise deal with any order passed in a Civil Suits arising out of Land Acquisition Act.

Admittedly, the lands belonging to the applicant and / or his predecessor in interest have been acquired under the Land Acquisition Act and compensation has been received by the applicant with protest. Further litigations arising out of land acquisition proceedings are pending before the Civil Court. The allegation that the State Government is acting contrary to the provisions of the Environment (Protection) Act, 1986 by handing over possession to HSIIDC for industrial purpose and the latter is trying to set-up industries without obtaining prior permission, are to be dealt under the Environment (Protection) Act, 1986 or acts

dealing with the subject, cannot be adjudicated in this application as HSIIDC has not been impleaded as a party in this application.

That apart, Section 5 of the Environment (Protection) Act, 1986 read with Rule 5 of the Environment (Protection) Rules, 1986 deal with prohibition for setting up any industries without following the provisions of law. If the applicant has any grievances he has to work out his remedies under the said provisions and/or any procedure available to him under law. Section 5A of the Environment (Protection) Act, 1986 provides for an appeal before this Tribunal against the order passed by the Government. Thus, according to the Judges the present application assailing transfer of lands to HSIIDC vis-a-vis attempt to set-up Industries without Environmental Clearance is premature.

That apart, the applicant has also not impleaded the Ministry of Environment and Forests or the concerned State Government. In the absence of the said authorities, no effectual adjudication can be made.

In view of the aforesaid discussions, the Judges are not inclined to entertain the present application at this stage and dismiss the same giving liberty to the applicant to work out his remedies in accordance with law.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7962/Verinder-Singh-Vs-Land-Acquisition-Collector-Cum--DRO-Haryana

Swami Gyan Swarup Sanand & Ors. v. Union of India & Ors.

APPLICATION NO. 26 OF 2012

CORAM: Justice A.S. Naidu and Dr. G.K. Pandey

Key words: Indian Institute of Technology, Roorkee, Wildlife Institute of India, Ganga river, cumulative environmental impact, hydro electric projects

Application disposed with observations

Date: 17th July, 2012

This application was filed invoking jurisdiction Under Section 14 read with Section 18 of the National Green Tribunal Act, 2010, inter-alia, seeking certain reliefs (*refer to the original judgment*).

The Applicant it appears is aggrieved by the study conducted by the Indian Institute of Technology, Roorkee with regard to cumulative impact of hydropower dam on the Ganga river.

As per the directions issued both IIT, Roorkee and Wildlife Institute of India constituted separate teams comprising of very senior and scientific officers and conducted the study confining to the cumulative environmental impacts likely to be caused by various hydro-electric projects in general, and on the riverine eco system, and land as well as aquatic bio-diversity in particular.

The grievance of the applicants before this Tribunal is that the study, though entrusted to IIT, Roorkee, the same was conducted on individual capacity by Dr. Arun Kumar who is the head of Alternate Hydro Energy Centre, Indian Institute of Technology (IIT), Roorkee and as such the same should not be treated to be that of IIT, Roorkee. Several acts of omissions and commissions said to have been committed by Dr. Arun Kumar in course of his study are enumerated in the application.

Fact remains the report prepared by IIT, Roorkee as well as the report submitted by WII have already been forwarded to the Competent Authority for due consideration. That apart in the meanwhile by order dated 15th June, 2012 an office memorandum has been issued by the Ministry of Environment and Forests (MoEF) constituting an Inter Ministerial Group on issues related to Ganga river.

It appears that the relief sought for in this application was also before the Supreme Court, more or less on the same grounds, though at the relevant time the study was in progress, whereas, in the meanwhile, after completion of the study the report has been submitted.

In course of hearing, it further appears that on behalf of the applicant’s representations / objections to the studies have already been filed before the Competent Authorities. Fact remains the report prepared by IIT, Roorkee and WII are yet to be considered by the High Level Committee constituted on 15th June, 2012 and other authorities, and the same has not been accepted till now. In the

aforesaid scenario, the Judges are not inclined to grant any of the reliefs prayed for in the application and dispose of the same with an observation that the MoEF or the Committee constituted, may examine the suggestions / objections / representations, if any, said to have been filed by the applicants, along with the other materials available while dealing with the Reports / Study conducted by the IIT, Roorkee and WII. This application was accordingly disposed of.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7963/Swami-Gyan-Swarup-Sanand-and-Others-Vs-Union-of-India-and-Others

Vinod R. Patel v. Gujarat State Level Impact Assessment Authority & Ors.

APPEAL NO. 25 OF 2011

CORAM: Justice V. R. Kingaonkar and Dr. Devendra Kumar Agrawal

Key words: Environment Clearance,Specialty Alumina Chemical manufacturing unit, village Reladi, District Kutch, State Level Environment Impact Assessment Authority, Rapid Environment Impact Assessment Report, water consumption land use, emission calculation,hazardous red-mud, Public Hearing, Comprehensive Report

Application disposed with directions

Date: 18th December, 2012

This Appeal is filed, under Section 18(1) read with Section 14(1) and Section 16 (h) of the National Green Tribunal Act, 2010, challenging Environmental Clearance (EC) granted by the State Level Environment Impact Assessment Authority (SEIAA) of Gujarat for setting up of the Alumina Refinery Plant in Gujarat on 19th February, 2012.

The Appellants claim to be farmers in the proximity of proposed project who apprehend adverse impact due to the setting up of the Refinery project. The Project involves setting up of a Specialty Alumina Chemical manufacturing unit at village Reladi in Taluka Bhuj, District Kutch to manufacture Alumina Trihydrate, Activates alumina, Calcined Alumina and Sodium Aluminate.

The Appeal was filed seeking quashing of the EC on main ground that despite participation by the Appellants in the public hearing and raising concern regarding likely adverse environmental impact due to the Project, the SEIAA had gone ahead and granted EC to the said Project. The brief facts about the Project are that the Terms of Reference (ToR) for preparation of Rapid Environment Impact Assessment Report (REIA Report) were prescribed by the SEIAA on 4th June, 2010 and EIA Report was prepared on 27th March, 2010, by Unistar Environment and Research Land Pvt. Ltd., a non-accredited consultant based on rapid assessment carried out in 5 kms radius. The public hearing for the Project was conducted on 21st June, 2011 and accordingly appraisal by SEIAA was done in meetings held on 18th August, 2011 and 15th November, 2011 before recommending the Project for grant of EC.

The Appeal had been filed on the other grounds that the REIA has been carried out in 5 kms radius only, the socio-economic data in the REIA Report is incorrect, water consumption is under-estimated, impact due to increase of traffic, waste generation has not been done properly, and views expressed during public hearing were not properly considered at the appraisal.

After elaborate hearing to all the parties, the Tribunal proposed to dispose of this appeal by examining the following main questions:-

I. Whether the categorization of the Project in Category 3(a) instead of Category 2(b) of the schedule to EIA notification, 2006 by the SEIAA is proper or not?

Given the understanding and explanation by the counsel, the Judges are of the considered opinion that the Project Proponent’s Industry is certainly a non-metallurgical one and squarely falls under Category B2 against entry no. 2(b) of schedule to EIA notification as decided by the SEIAA.

II. Whether rapid REIA Report was prepared in accordance with the EIA Notification 2006?

The Appellants also argued that the REIA Report was prepared by a non-accredited consultant and is strangely predated even to the grant of ToR and that the Report presents baseline data for 5 km radius only. The respondents argued that the REIA Report was prepared by Unistar Environment and Research Land Pvt. Ltd., which is an accredited EIA Consultant Organization; therefore the allegations of the Appellants are not true. Upon giving due

consideration to the facts placed before the bench, the Judges are of the opinion that except contention of the Appellant regarding socio-economic profiling, which they have dealt subsequently, there is not much substantive force regarding any environmental threats from the proposed project.

(a) Whether water consumption for the Project is grossly under-stated?

The Appellants argued that the water requirements of 100 KLD as provided in the REIA Report is incorrect. Considering the need for water for other uses, the water requirement would be 190 KLD per day. A perusal of the records and the arguments put forth provides a clear understanding and the Judges are of the view that the averments made by the Appellants are incorrect. However, Respondent No. 1 and Respondent No. 2 should carryout periodic monitoring to ensure the compliances with respect to ban on use of ground water.

In the instant case, it is expected that M/s Gujarat Infrastructure Ltd. is laying down its pipeline and this shall be examined as per the provisions of law; therefore, clubbing the environmental impacts of laying this pipeline of 100 KLD only with the present project would only cause more confusion.

(b) Whether land use / classification of the study area is incorrect?

The Appellants allege that REIA Report grossly underestimates the extent of prime agricultural land around the project area. It is alleged that total number of farmers in 10 km area of influence is around 40,000. It is their main contention that the REIA Report totally overlooks latest technological developments in agricultural lands adopted by the farmers of surrounding area. The Judges are of the opinion that the data provided regarding land use/ land cover using satellite imagery is acceptable. However, the data regarding number of people residing in even 5 km area of influence zone, and that of agricultural practices, totally rely upon the secondary data collected from various Government Departments. It is expected that during preparation of REIA Report, the Environmental Consultants should gather some primary material with respect to the socio-economic data in the Project area and do carry out some preliminary survey to understand the basic needs of the people in the Project area so that appropriate environmental management plan is formulated. In the instant case, nothing of this sort appears

to have been conducted. Therefore, they propose to give certain directions as given infra.

(c) Whether emission calculation for particulate matter, Sox and NOx emissions are incorrect?

The Appellants state that the REIA air quality impact assessment grossly under-estimate the particulate matter and SOx/NOx emissions from lignite combustion. The Judges are of the opinion that of course the Project Proponent has made efforts to indicate that particulate matter and SOx/NOx emissions would be in the range as suggested in the REIA Report. However, there is nothing available on record except the literature of the manufacture of the imported ceramic filters to suggest that the proposed measures for emission control would be effective to the tune being projected. In this direction, they have made suggestion infra.

(d) Whether impact of hazardous red-mud is properly considered?

The main contention of the Appellants in this regard is that the REIA Report fails to provide adequate details regarding the chemical characteristics of high volume waste (red-mud) likely to be generated from the Alumina Plant. It is their case that Project Proponent claims that 100% red-mud will be utilized for manufacture of bricks or cement. The Appellants submit that the REIA Report fails to provide adequate details of design and location of storage facilities for the red-mud and also that the REIA report fails to provide details of disposal facilities for contaminated runoff emanating from red-mud disposal facilities. Based on the perusal of records, arguments of all the parties, the Judges are of the opinion that the contention of the appellant is based on mis-conception. However, in view of limited space availability for storing red-mud cakes, it is very important to have continuous tie-up with brick/cement industry. Respondent No.1 and Respondent No. 2 should ensure this by incorporation of the same as one of the pre-conditions in the EC apart from carrying out regular monitoring of waste/leachate generation, if any.

III. Whether the views expressed in the public hearing were taken into account while granting the EC and proper appraisal of the Project was carried out by SEIAA?

A bare perusal of the records of public hearing and the minutes of meeting for appraisal of the project by SEIAA on various dates

clearly reveal that the SEIAA did not merely accept the statements/ documents produced by the Project Proponent and sought for various clarifications and imposed several conditions, as felt appropriate, except the issue of concerns raised by progressive farmers to the extent that proper remedial measures/ Management Plan shall be carved out for them.

In view of the discussions made above, except the issue of concerns of progressive farmers of area of influence all the issues raised by the Appellant are based on their mis-understanding. Accordingly, the Appeal is dismissed with following directions:-

1. GPCB should carry out periodic monitoring to ensure the compliances of:-
(a) A ban on use of ground water for the Project;

(b) Particulate matter, SOx and NOx emissions levels in different directions at different distances on seasonal basis during operation of the project at the cost of Project Proponent for submission to SEIAA for imposing additional conditions, if necessary;

(c) Monitor the efficacy of ceramic filters by drawing sample from emissions before and after filtration; and submission to SEIAA for imposing additional conditions, if any;

(d) Monitor the utilization and storage of red-mud cake on at least monthly basis; and submission to SEIAA for imposing additional conditions, if any;

(e) Regular monitoring of waste/ leachate generation, if any, from the red-mud cake storage facility; and submission to SEIAA for imposing additional conditions, if any;

2. The Project Proponent shall engage environmental consultant based on ToR approved by SEIAA for conducting primary socio-economic survey in the area of influence wherein special attention shall be paid to cover details of progressive farmers and their cultivation practices. Consultative meetings in the villages/settlements of the area of influence would be held with the farmers to understand their concerns and suggest appropriate measures for not only environmental protection but for also their socio-economic upliftment such that the industry is seen as a Socially Responsible enterprise. The comprehensive report so prepared along with the Management Plan with financial provisions shall be placed before the SEIAA for modifying additional conditions in the EC.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7964/Vinod-R-Patel-Vs-Gujarat-State-Level-Impact-Assessment-Authority-and-Others

Antarsingh Patel v. Union of India & Ors.

APPEAL NO. 26 OF 2012

CORAM: Justice A.S. Naidu and Dr. G.K. Pandey

Key words: Hydro Power Project, Narmada River, Madhya Pradesh, implementation of rehabilitation and resettlement plan, Principle of sustainable development

Appeal dismissed with directions

Date: 9th August, 2012

The controversy in this Appeal is with regard to the decision dated 1st May, 2012 taken by the Ministry of Environment and Forests (MoEF) to permit the Project Proponent of Maheshwar 400 MW Hydro Power Project constructed over Narmada River in Madhya Pradesh to fill-up the reservoir up to 154 meter, on the ground that there would be no submergence up to that level. The decision is assailed in this appeal on several grounds.

Before traversing into the controversy, it would be proper to refer to the background of the case. The MoEF initially accorded Environmental Clearance (EC) in favour of Narmada Valley Development Authority, an instrumentality of State of Madhya Pradesh, way back on 7th January, 1994, for construction of Maheshwar Hydro Power Project on river Narmada. It appears that the said EC was later transferred in favour of Shree Maheshwar Hydel Power Corporation Limited (SMPHCL) on 1st May, 2001.

One of the pre-conditions for construction of the project was that rehabilitation and resettlement of project affected people should be in conformity with the Rehabilitation Policy for the oustees of Narmada Projects evolved by Narmada Valley Development Department, Government of Madhya Pradesh, and that the rehabilitation and resettlement work should be completed by December 2003 or six months prior to commencement of submergence, whichever is earlier.

Though several contentions have been raised the main issue appears to be regarding unsatisfactory implementation of rehabilitation and resettlement plan *pari pasu* with the construction work.

In the process of development, the State cannot be permitted to displace local inhabitants, a vulnerable section of our society, suffering from poverty and ignorance, without taking appropriate remedial measures of rehabilitation. The Court is not oblivious of the fact that social and economic reasons had caused disaffection, and thus, the village areas are today in deep trouble and have become victim of modernization in the grab of social and industrial development.

Section 20 of the National Green Tribunal Act, 2010, vests an onerous duty upon this Tribunal to apply the principles of sustainable development while passing an order or decision. In the case in hand the environment clearance was granted by the MoEF to the project as long back as in the year 1994. The said environment clearance was not assailed and Maheshwar Hydro Power Project was constructed over Narmada River incurring huge cost. All the machineries have been installed and even there was a successful trial run for generating electricity. While dealing with this type of controversies, this Tribunal is required to take a pragmatic approach and strike a balance between the development and environment. While considering the loss and harassment expected to be caused to land oustees, to their property as well as to ecology and environment in particular, this Tribunal should provide ways and means to mitigate such loss. The protection of the land oustees or the villagers whose lands are going to be sub-merged is the paramount lookout of the Government.

It appears that steps were taken and directions were issued to the Project Proponent to go ahead with the construction work *pari-pasu* with the rehabilitation and resettlement work.

After going through the ToR the Judges are satisfied that adequate measures have been taken by the MoEF for protection of the villagers. In the aforesaid scenario of facts and circumstances, applying principles of sustainable development, the Judges feel ends of justice and equity would be better served, if the Project Proponent is permitted to fill up the reservoir at the dam site up to 154 mtr. and commence generation of 40 MW electricity on trial basis for a period of three months. The Committee constituted by

the MoEF shall remain vigilant and assure that the conditions imposed in the ToR are observed sacrosanctly without any deviation whatsoever. It is needless to say that if there is any likelihood of submergence of abadi lands, then the process will be stopped / discontinued forthwith.

The Government of Madhya Pradesh (Respondent No. 2) is directed to keep their officers on alert to meet any untoward incidence. They are also further directed to complete the entire process of rehabilitation and resettlement work, supply of drinking water and electricity to the affected persons within three months.

Realizing the gravity of the situation, the Judges feel it would be prudent to monitor the same for the protection of environment and proper implementation of rehabilitation and resettlement plan to the affected persons, therefore this case is listed after three months. All the parties are directed to file further affidavits and status reports in the meanwhile.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7965/Antarsingh-Patel--Vs-Union-of-India-and-Others

IL & FS Tamil Nadu Power Company Ltd. v. Ministry of Environment and Forests & Ors.

APPLICATION NO. 25 OF 2012

CORAM: Justice A.S. Naidu and Dr. G.K. Pandey

Key words: Chidambaram Taluk, Tamil Nadu, coal based thermal power plant, environment clearance, cumulative impact assessment, Expert Appraisal Committee

Application disposed with directions

Date: 9th August, 2012

This application was filed with a prayer to modify the Tribunal’s order directing suspension of Environment Clearance (EC) for the project and to allow the Project Proponent to resume the civil works at the project site.

The EC granted in favour of the applicant for installing a Coal Based Thermal Power Plant at Chidambaram Taluk in Tamil Nadu was

assailed in *Appeal No. 17/2011(T)*. The said Appeal was disposed of by Judgment dated 23rd May, 2012. While directing the Ministry of Environment and Forest (for short MoEF) to review the EC based on cumulative impact assessment study and to impose any additional environmental conditions, if required, this Tribunal directed that till a decision is taken by the MoEF the impugned EC shall remain suspended.

The Judges heard the counsel for the parties at length. Fact remains, the decision of the Expert Appraisal Committee has already been forwarded to the Ministry (MoEF) and the same is under consideration. At this juncture, according to the Judges, it would not be proper to make any observations and thereby prejudice the decision making authorities. They therefore, refrain from examining the objections raised before the Tribunal and dispose of this application with a direction to MoEF to consider the report and take decision within a period of 25 days from the date of communication of this order.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7966/IL--FS-Tamil-Nadu-Power-Company-Ltd-Vs-Ministry-of-Environment-and-Forest-and-Others

Rana Sen Gupta v. Union of India & Ors.

APPEAL NO. 32 OF 2011

CORAM: Justice A.S. Naidu and Dr. G.K. Pandey

Key words: M/s Rashmi Metalika Limited, West Bengal Pollution Control Board, Ministry of Environment and Forest, steel plant, expansion, Environment Clearance

Appeal disposed of on merits

Date: 24th August, 2012

Rana Sen Gupta (the Appellant) claims to be a public spirited citizen having experience in working with Steel and Iron industries. He has knowledge with regard to the impact caused by the aforesaid industries in the ecology, environment and human lives. He has approached this Tribunal, inter-alia, assailing the Environmental Clearance (EC) dated 1st June, 2012, granted by the Ministry of

Environment and Forests (MoEF) to M/s. Rashmi Metaliks Limited (Respondent No. 3) for expansion of its existing steel plant by adding 1.5 mtpa Beneficiation cum Pellet Plant which would enable it to produce 1.2 mtpa pellets with Producer Gas Plant. The Appellant in this Appeal seeks certain reliefs. (*Refer to the original judgment for a detailed list of the reliefs sought*)

In course of hearing, it appears that a proposal for expansion had been forwarded to MoEF and the said proposal was still under consideration. In other words, no decision had been taken by the competent authority on the date on which this appeal was presented.

First relief sought for by the Appellant is to restrain Respondent No. 3 from making further expansion of its present plant. Law is well settled that expansion of existing plant can only be made after obtaining necessary environmental clearance from the Competent Authority. It appears that no clearance has been granted when the Appeal was filed for expansion and the matter was pending before the Competent Authority. According to Respondent No. 3, he has clearly submitted that without obtaining prior permission, no extension shall be made.

The Appellant prays to quash the EC granted by the West Bengal Pollution Control Board (Respondent No. 2) on 9th January, 2009. In consonance with Section 16 of the National Green Tribunal Act, 2010, an order passed, has to be assailed before this Tribunal within a period of thirty days. Thus, the said relief is grossly barred by time and cannot be entertained. Other reliefs sought are more or less consequential to such prayer also cannot be entertained at this stage.

Counsel for the Appellant, in course of hearing, submitted that the appellant has preferred another Appeal assailing the EC said to have been granted by the MoEF on 1st June, 2012. The said submission clearly reveals that by afflux of time this appeal has become infructuous. Considering the facts and circumstances narrated above, the Judges dismiss this Appeal. It is needless to be said that the appeal said to have been filed assailing the alleged EC granted on 1st June, 2012, shall be disposed of on its own merits in accordance with law.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7967/Rana-Sen-Gupta-Vs-Union-of-India-and-Others

Rudresh Naik v. State of Goa & Ors.

APPEAL NO. 23 OF 2012

CORAM: Justice A.S. Naidu and Dr. G.K. Pandey

Key words: Goa Coastal Zone Management Authority, survey no. 41/2 of Vaghurme Village, Ponda Taluka, Goa, geological and ecological loss

Appeal Allowed

Date: 27th August, 2012

The order dated 11th April, 2012 passed by Goa Coastal Zone Management Authority (GCZMA), in exercise of powers conferred upon it under Section 5 of the Environment (Protection) Act, 1986 is assailed in this Appeal. By the said order, GCZMA directed Rudresh Naik (the Appellant) to make good of the Geological and Ecological loss caused at the site, by back filling the cut portion and the cavity formed to lands appertaining to survey no. 41/2 of Vaghurme Village, Ponda Taluka and restore the area back to its original status and carry out plantation in the area, within thirty (30) days from the date of receipt of the said order. According to the Appellant, the order suffers from non-consideration of vital and important materials and is based on errors of facts which are apparent on the face of the record.

The Appellant is the proprietor of “Sudarshan Dry Docks” and also claims to be the partner of the Firm commonly known as “M/s. Swastik Cruises”. The said firm is involved in tourism business, mainly in the State of Goa, which includes boat cruises in the rivers of Goa. That in order to carry out the business the firm, it is averred, had engaged three vessels which are routinely used in organising boat cruises.

The perusal of the impugned order dated 11th April, 2012 reveals that several overt acts said to have been committed by the Appellant, but then in the Memorandum the Appellant has denied all the allegations. The averments made in the Appeal Memorandum are not controverted by filing any reply, though opportunity was

given to the respondents to controvert the same. Thus, the facts stated and averments made in the writ application have to be *prima-facie* accepted, applying the principles of non-traverse.

Be that as it may, this Tribunal is conscious with regard to any danger caused to the environment by felling of trees and digging portions of sandy hill, thereby affecting the coastal eco system. Felling indiscriminately trees and bushes also have great impact on the ecology.

After going through the records meticulously and hearing the counsel for the Appellant in the absence of any counter submissions, the Judges feel that the order dated 11th April, 2012 passed by the GCZMA (Respondent No. 2) which is impugned in this appeal, cannot be sustained, more so because the respondents have failed to appear and controvert the allegations made in the memorandum of Appeal.

It appears that the dispute has a checkered career, in as much as it has travelled to the High Court twice and is prolonging for quite some time. Protection of environment being the paramount concern/ duty of this Tribunal while setting-aside the impugned order dated 11th April, 2012, the petitioner is directed to deposit a sum of Rs. 1 lakh without prejudice to his rights, and the contentions raised and submissions advanced within a period of three weeks from the date of this order before Respondent No. 2. The said amount shall be kept in Fixed Deposits by Respondent No. 2 in a Nationalized Bank. On depositing the said amount, Respondent No. 2 authorities shall afford an opportunity of hearing to the Appellant and decide the matter once again in accordance with law on its own merits without being influenced by any of the observations made in this judgment. It is needless to say that if the contentions of the Appellant are accepted the amount of one lakh shall be refunded with interest. On the other hand, if the Appellant is found guilty, the amount shall be utilised for restoration of the Environment.

The entire exercise shall be completed within three weeks from depositing of the amount, as directed above. It is made clear that, if the amount of Rs. 1 lakh is not deposited within one month, it would be open for the respondents to implement the impugned order. With the aforesaid observations, this appeal is allowed with cost of Rs. 3,000/- (Rupees Three Thousand).

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7968/Rudresh-Naik-Vs-State-of-Goa-and-Others

K. Karthi v. Tamil Nadu Pollution Control Board & Ors.

APPEAL NO. 42 OF 2012

CORAM: Justice V. R. Kingaonkar and Prof. Dr. R. Nagendran

Key words: condonation of delay, Tamil Nadu Pollution Control Board, Steel Rolling factory in Perunkurukhi, Village, Paramthi TK, Namakkal District, Environmental Clearance

Appeal Dismissed

Date: 28th August, 2012

This application is filed for condonation of delay.

Briefly stated, the case of K. Karthi (the Applicant) is that his agricultural land is situated in the proximity of the site of the proposed project pertaining to establishment of Steel Rolling factory in Perunkurukhi, Village, Paramthi TK, Namakkal District. The project was objected to by the villagers. At public hearing, such objections were raised. The Environmental Clearance (EC) was granted by order dated 19th February, 2011 by the Tamil Nadu Pollution Control Board (Respondent No. 2). The order was not known to him. He gathered information about the said order when he came across the work of the leveling the ground at the site of the proposed project. He thereafter obtained copy of the EC order. The order was challenged by filing a writ petition in the High Court of Madras. The Writ Pettion no. *13443 of 2011* came to be dismissed with observation that the applicant may approach the Green Tribunal for redressal of his grievances. According to the Applicant, the time spent in the High Court of Madras could be condoned under Section 14 of the Limitation Act 1963. It is stated that the Applicant bonafidely filed such writ petition as he laboured under the impression that the said petition was maintainable. It is further stated that he immediately filed the present appeal after the order of the High Court which was rendered on 2nd July 2012 and therefore there are sufficient reasons to condone the delay.

It appears from the record that the EC order was passed by the Respondent No. 2 on 19th February, 2011. It is obvious that the time started running from the date of such order. It is well-settled that once time started running, the same cannot be arrested unless there is specific provision in the law which may permit exclusion of time spent in a bona fide litigation. The Applicant has made an attempt to seek filing of the said writ petition as a lee-way to claim exclusion of time spent in filing of writ petition before the Madras High Court. The Tribunal is of the opinion that the applicant has made an attempt to resurrect life in the litigation which has become lifeless much earlier.

"We may point out at this juncture that the Division Bench in earlier Appeal No. 5/2012 gave a categorical finding that the delay cannot be condoned beyond a period of 60 days after the initial prescribed period of 30 days. The statutory provision cannot be eroded by claiming exclusion. We are of the opinion that the appeal is filed after considerable delay which is not properly explained nor can be condoned."

Consequently, the Application was dismissed and so also the appeal was dismissed.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?7969/K-Karthi-Vs-Tamil-Nadu-Pollution-Control-Board-and-Others

M/s Diana Infrastructure Ltd. v. State Level Environment Impact Assessment Authority, Maharashtra & Anr.

APPEAL NO. 28 OF 2012

CORAM: Justice V. R. Kingaonkar and Dr. Devendra Kumar Agrawal
Key words: State Level Environment Impact Assessment Authority, environmental safeguards
Appeal disposed off on mutually agreed terms

Date: 29th August, 2012
By consent of counsel for the contesting parties, this Appeal was disposed of on following terms -

1. The State Level Environment Impact Assessment Authority (Respondent No. 1) shall reconsider the issue regarding the comprehensiveness of the project after taking stock of the situation and examine the question of totality of the tenements in relation to the project.
2. The Respondent No. 1 shall also reconsider the issue regarding requirement of the environmental safeguards needed for clearance of the project and may put appropriate conditions if the project is to be granted clearance.
3. The Respondent No. 1 to take final decision at the earliest in the next meeting or at the most within a period of couple of months.
4. The Respondent No. 1 shall communicate the next date of meeting to the appellant prior to at least one week of such meeting and may consider any fresh representation that may be filed by the appellant.
5. The parties to bear their own costs. The appeal is disposed of in above terms. It is made clear that the Judges have not considered the matter on merits and the same is remanded on aforesaid terms, after setting aside the impugned order.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/?7980/Ms-Diana-Infrastructure-Ltd-Vs-State-Level-Environment-Impact-Assessment-Authority-SEIAA-Maharashtra-and-Another

Jesurethinam & Ors. v. Ministry of Environment and Forests & Ors.

APPEAL NO. 13 OF 2011

CORAM: Justice V. R. Kingaonkar and Dr. Devendra Kumar Agrawal

Key words: Appeal, Maintainable

Appeal Dismissed

Date: 30th August, 2012

A preliminary objection is raised by counsel for M/s. MSL Nagapatnam Power and Infratech Pvt. Ltd. (Respondent No. 5) i.e. Project Proponent. The tenor of the objection is that the appeal is not maintainable in as- much- as the order impugned is dated 13th October, 2010 which was rendered prior to commencement of the

National Green Tribunal Act, 2010. It is argued that the order passed before commencement of the special enactment cannot be challenged by way of an appeal in the Tribunal which did not exist as on the date of such order. The counsel for the Respondent No. 5 invited attention to Judgment of this Tribunal in *Appeal No. 14/2011*. By the said Judgment, a Division Bench of this Tribunal categorically held that the appeal against order passed prior to commencement of the National Green Tribunal Act, 2010 is not maintainable. The National Green Tribunal Act, 2010 came into force on 18th July, 2010. A combined reading of relevant provisions, particularly Section 16 of the National Green Tribunal Act, 2010 will make it amply clear that the appeal cannot be filed against any order passed prior to 18th October, 2010.

In the opinion of the Judges, the appeal is governed by specific provision (Section 16) of the special enactment. It is well -settled that there is no inherent right to prefer an appeal. It is also well-settled that an appeal is creature of statute. It follows, therefore, that unless there is specific right available under an enactment to prefer an appeal, the same cannot be filed as a matter of right.

In result, the Tribunal holds that the appeal is not maintainable for the reasons discussed and also for the reasons enumerated in the Judgment rendered by the Coordinate Bench in *Appeal No. 14/2011*. In this view of the matter, the appeal is dismissed as it is not maintainable. No costs.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/?7981/Jesurethinam-and-Others-Vs-The-Ministry-of-Environment-and-Forest-and-Others

Intech Pharma Pvt. Ltd. v. Goa Pollution Control Board

APPEAL NO. 35 OF 2012

CORAM: Justice M. Chockalingam and Prof. R. Nagendran
Key words: Show-cause notice, Natural Justice

Appeal allowed

Date: 4th September, 2012

This Appeal was preferred from the order dated 8th June, 2012 made by the Goa State Pollution control Board.

Short facts necessary for the disposal of this appeal can be stated thus: The Appellant is an industry carrying on business in production of Fumigant (a class of Insecticide) Methyl Bromide which is used for quarantine and pre-shipment fumigation. The respondent board by its order dated 7th August, 2008 granted consent to the appellant to operate under the Water (Prevention and Control of Pollution) Act 1974 and under the Air (Prevention and Control of Pollution) Act 1981. Pursuant to the said order the Appellant established its unit and operate the same in accordance with the law.

While so, on 12th April, 2012 an accident had taken place and the Member Secretary of the Respondent who is presently residing at house No. 70/1 Arabo Dhargal Pernem Goa which is situated near the Appellant’s industry personally visited the place and challenged that he would not allow the Appellant to run the industry because it would cause damage to the health of his family members.

While 15 days notice should have been given, the show-cause notice dated 21st May, 2012 was served on the Appellant on 23rd May, 2012 calling upon him to appear and show cause on the hearing dated 25th May, 2012 and thus it was a case of denial of reasonable opportunity of being heard. Apart from that, after granting a month’s time on 8th June, 2012 the passing of the impugned order would clearly indicate the personal grudge of the Member Secretary of the Respondent and also illegal.

The points that arose for consideration in this appeal were:

1. Whether the impugned order dated 8th June, 2012 made by the Respondent had to be set aside for not following the principles of natural justice?
2. Whether the proceedings dated 25th May, 2012 and the impugned order dated 8th June, 2012 were vitiated on the ground that they were based on the unfounded show-cause notice as alleged by the appellant.
3. To what relief was the Appellant entitled?

The Tribunal paid its anxious consideration on the submission made on both sides and made a scrutiny of the document available in particular relied on by the parties.

A perusal of the order under challenge will make it abundantly clear that the reply put forth by the Appellant was not considered by the authority while passing the order. Except making a comment that the reply placed by the Appellant was not satisfactory, the authority had neither discussed nor considered the contents of the reply. While the inspection was made on 24th April, 2012 by the official of the Board, the report was submitted on 2nd May, 2012. Though the show-cause notice dated 21st May, 2012 was served on Appellant on 23rd May, 2012 and the proceedings before the Chairman were minuted on 25th May, 2012, the impugned order cancelling the consent to operate order was made only on 8th June, 2012. If really there was any immediate necessity to stop operation of the industry due to the leakage of bromide gas during inspection from the unit as found in the show-cause notice, there was no reason for the authority to wait till 21st May, 2012 to issue a show-cause notice. Having given a day's time to the Appellant to submit its reply, the Respondent Board has made an impugned order after an interval of 15 days. The above factual situation as could be seen from the records would indicate that there was no immediate need or imminent danger to heath or degradation of environment. It remains to be stated that pursuant to the directions by the Member Secretary, the Board officials conducted an inspection on 25th April, 2012 in order to ascertain on-site status of the plant activity. After making the inspection, the Board officials categorically observed that the unit was not in operation and only maintenance such as painting of the portion of the plant was in progress and empty barrels were seen. Nowhere in the said report was there any indication of pollution. If really there was any act of pollution like gas leakage there was no impediment for the officials who conducted inspection to state the same. Contrarily, the inspection report dated 2nd May, 2012 referred to the gas leakage reported in newspapers and on inspection the inspection officials reported "the inspection of protective clothing and safety equipment was carried out. Both the inspection report dated 2nd May, 2012 and the proceedings dated 25th April, 2012 do not indicate anything about the gas leakage or air pollution. The Tribunal is at a loss to understand the basis for the said show-cause notice stating that there was leakage of bromine gas from the unit on 12th April, 2012 due to the poor maintenance of the unit and thus the appellant has not complied with the conditions as stipulated in the consent to operate order issued by the Board. Hence the show-case notice was not only to be termed as defective but also unfounded. No doubt all

the proceedings which followed the same get vitiated and have to be declared as unsustainable in law.

The order under challenge has been made not only- not adhering to, and in violation of principles of natural justice but also an outcome of non-application of mind. It is quite evident that the show-cause notice and the pursuant proceedings were prepared so hurriedly without caring about the contents of the same. The authorities not exercising the due care made an order with a drastic decision of closing the industry. In view of the above circumstances and for the reasons stated above the impugned order has to be set aside and is set aside accordingly. Appeal is allowed leaving the parties to bear the costs.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?8000/Intech-Pharma-Pvt-Ltd-Vs-Goa-Pollution-Control-Board

M/s Siddartha Enterprises v. The NCT of Delhi & Ors.

APPEAL NO. 32 OF 2012

CORAM: Justice M. Chockalingam and Dr. Devendra Kumar Agrawal
Key words: Consent to Operate

Appeal devoid of merits and dismissed

Date: 4th September, 2012
This appeal challenged a judgment of the Karnataka State Appellate Authority at Bangalore dated 11th June, 2012 whereby an order originally passed by the Karnataka State Pollution Control Board (Respondent No. 4) was sustained by dismissing the appeal preferred by the Appellant herein.

Short facts necessary for the disposal of this appeal can be stated thus- M/s Siddhartha Enterprises (Appellant) is a proprietary concern engaged in engineering industry of lathes. The industry has been running for 3 years without any complaint what so ever. As an existing industry, Consent to operate was required and also upon knowledge applied for the same in the month of May 2011. There was a dispute between the landlord of the Appellant and his

neighbour. The neighbour with a mala-fide intention gave a complaint to the authorities that there was air and water pollution.

The case of the Respondent in short is that the appeal is not maintainable due to the misjoinder of parties and apart from that there was no cause of action for the Appellant.

The only point arising for consideration in the appeal is: Whether the order of the Karnataka State Appellate Authority made in *Appeal No. 60/2011* and *68/2011* requires any interference by the Tribunal for the reasons stated by the appellant herein?

The Tribunal heard the contentions put forth by the both sides and had thorough scrutiny of the available material.

The contention put forth by the respondent that the appellants industry is situated in residential area is not disputed by the appellant side. Apart from that the Chairman of the Respondent Board along with the officials made an inspection and had found that the industry is situated in a residential locality. Following the inspection made, as admitted by the Appellant, a notice was served upon the Appellant on 23rd November, 2010 and the same was replied by the Appellant. A show-cause notice dated 23rd November, 2010 was served and the same was also replied. Under such circumstances, it cannot be stated that an opportunity was not given or denied to the Appellant. It is well admitted by the appellant that before the commencement of the industry, he has not obtained the consent to operate which was a condition precedent. The consent to operate from the Karnataka State Pollution Control Board is a condition under both enactments namely Water Act 1974 and also Air Act 1971. The contention put forth by the counsel for the Appellant that the consent to operate was applied for upon knowledge and there was a delay on the part of the Respondent Board in issuing same cannot be countenanced for 2 reasons. Firstly, the law mandates that the consent to operate under the Water and Air Acts should have been obtained earlier and that secondly, having commenced the industry in a residential area the Appellant was operating the same for years, without either the consent to establish or to operate, as required by law. The further contention put forth by the counsel that already an application was made for allotment of land for the purpose of the industry of the Appellant and the same was allotted in an industrial area but the possession has not been handed over and if handed over the Appellant would shift the industry to that area can neither be

accepted nor can it satisfy the legal requirement. Even assuming that there was delay on the part of the KIADB in handing over the possession of the allotted plot, it cannot be accepted by any imagination to be a legal act of the Appellant. It is well admitted by the Appellant that the industry was commenced without getting the consent as required under Section 25(1) of the Water Act, which is mandatory. As rightly pointed out by the Karnataka State Appellate Authority, the setting up of the industry by the Appellant without prior consent, a mandatory one under section 25(1) of the Water Act, itself was illegal and making an application later for consent can neither cure or make it legal. Under such circumstances and for the reasons stated above, the Tribunal is unable to find any reason to interfere with the orders of the State Appellate Authority and the said orders has got to be sustained.

It is a matter of surprise to notice that the Karnataka State Pollution Control Board has not made any inspection or taken any action in a given case like this, where the industry was being run illegally for number of years. From the point of environmental degradation, this attitude and inaction on the part of the authorities of Karnataka State Pollution Control Board is viewed by the Tribunal seriously.

The appeal was found to be devoid of merits and dismissed accordingly.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?8001/Ms-Siddartha-Enterprises-Vs-The-State-of-NCT-and-Others

Dileep Namdeo Dherange & Ors. v. Ministry of Environment and Forests & Ors.

APPEAL NO. 24 OF 2012

CORAM: Justice V. R. Kingaonkar and Dr. Devendra Kumar Agrawal

Key words: Limitation, Condonation of delay, Environmental Clearance

Appeal dismissed

Date: 5th September, 2012

By this order the Tribunal proposed to decide the preliminary objections raised for maintainability of the Appeal as well as applicability of Section 14 of the Limitation Act for the purpose of condonation of the delay.

The Appellants filed an application for condonation of delay on the ground that the knowledge about establishment of the National Green Tribunal was gathered from news which was published on 15th March, 2012. The appellants, admittedly, had filed *WP (PIL) No. 37/2010* in the High Court of Bombay, challenging acquisition of lands and also seeking cancellation of the Environmental Clearance Certificate (ECC) due to violation of the provisions of the Environment (Protection) Act, 1986. The Appellants submit that they received information regarding the grant of ECC on 20th May, 2010 during pendency of the *WP (PIL) 37/2010*. Thereafter, they moved the High Court of Bombay for amendment of the petition memo. The Appellants further alleged that the writ petition was withdrawn with liberty to file an Appeal in this Tribunal.

According to the Appellants, the Appeal could not be filed within prescribed period of limitation due to lack of knowledge regarding establishment of the National Green Tribunal and due to the pendency of the said writ petition filed by them before the High Court of Bombay. Consequently, they seek condonation of the delay and urge that the appeal may be heard on merits.

The Tribunal heard the counsel for the parties *in extenso*. They have also gone through the relevant orders of the High Court of Bombay. It is pertinent to note that the High Court of Bombay by order dated 7th August, 2012 clarified the fact situation under which liberty to withdraw the Writ Petition (PL) No. 37/2010 was granted. - “We want to make it clear once the writ petition (PIL) is disposed of by this Court, it is for the Green Tribunal to consider the aspect of delay etc. in accordance with law and procedure stipulated in the National Green Tribunal Act, 2010 as well as the Rules made there under…”

What emerges from the record is that the ECC was granted to the project proponent on 20th May, 2010 and that order could be challenged by the appellants by filling an appeal under the Repealed enactment, namely, the National Environmental Appellate Authority Act, 1997. The appellants did not prefer any such appeal before the National Environmental Appellate Authority. They chose to file draft amendment application to the writ petition which was already pending before the High Court of Bombay.

To clear the deck, it is worthy to note that *Writ Petition (PIL) 37/2010* was withdrawn by the appellants on 15th March, 2012. The High Court of Bombay allowed withdrawal of the said Writ Petition and granted liberty to the appellants to approach the National Green Tribunal.

So far as the question of exclusion of period spent by the appellants before the High Court of Bombay is concerned, there are two significant aspects of the matter. First, the previous order of this Court made it explicit that the appeal is barred by limitation in view of absence of any specific direction of the High Court of Bombay to entertain the same notwithstanding legal bar of limitation. Secondly, it cannot be said that the High Court of Bombay had no jurisdiction to entertain the Writ Petition (PIL) under Article 226, of the Constitution. The exclusion of period may be required to be considered only when period is sought to be excluded because the earlier litigation was pending before the Court having no jurisdiction. Still, however, the period which was spent before the Court having jurisdiction cannot be excluded by taking aid to Section 14(2) of the Limitation Act. In the Judges' opinion, the Appellants are not entitled to seek exclusion of the period spent before the High Court of Bombay, particularly, when the writ petition filed by them could have been entertained and decided by the High Court.

Coming to the question of maintainability of the appeal, it may be gathered that the Appellants having failed to file an appeal before the authority under the earlier enactment, now the present appeal is incompetent. It is well -settled that view of Coordinate Bench cannot be overruled by another Coordinate Bench. Judicial discipline requires the same to be followed unless there are substantial reasons to make a reference to the larger Bench.

For the reasons stated hereinabove, the Judges find it difficult to entertain the appeal and hold that the appeal is barred by limitation. The application for delay condonation is therefore dismissed and the Appeal is also dismissed.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?8002/Dileep-Namdeo-Dherange-and-Others-Vs-Ministry-of-Environment-and-Forest-and-Others

Mr. Joseph Coutinho v. Goa State Pollution Control Board

APPEAL NO. 22 OF 2012

CORAM: Justice M. Chockalingam and Prof. R. Nagendran
Key words: No Objection Certificate, Natural Justice

Appeal allowed

Date: 6th September 2012
This Appeal challenged the directions dated 12th April, 2012 issued by the Goa State Pollution Control Board (the First Respondent) herein under Section 33A of the Water (Prevention and Control of Pollution) Act, 1974 and under Section 31 of the Air (Prevention Control Pollution) Act 1981. Thereby the First Respondent has cancelled/revoked consent to operate dated 24th February, 2012 and further directed the Appellant to stop business activities forthwith and report compliance within a period of seven days.

Necessary facts for the disposal of this appeal can be stated thus. Mr. Joseph Coutinho (the Appellant) purchased a plot measuring 510 sq. m in survey No. 202/1A of village Calangute along with an existing house therein and converted the said old house into a small guest house consisting 20 rooms. After obtaining “No Objection Certificate” from the Village Panchayat, the Appellant commenced a Guest House business under the name and style of Sea Shore Hotels. There was a strange incident of discharge of sewage from the septic tank of the Appellant. On the complaint of D’Souza, a neighbour who was running another Guest House, the Health Officer issued a Show Cause Notice dated 9th July, 2011 and the first respondent issued a notice on 12th August, 2011. Both notices were replied. After carrying out the necessary repairs and rectifying the overflow, the appellant informed the authorities on 25th July, 2011 and 18th August, 2011 and there was no discharge of sewage thereafter. Both the Health Officer and the officials of the first respondent made a site inspection in the presence of D’Souza and recorded that there was no overflow of sewage from the septic tank of appellant. Pursuant to the communication from the First Respondent, the Appellant applied for consent to operate on 21st September, 2011 by paying necessary fees. Despite the application, the first respondent issued directions to the Appellant under Section 33A of the Water Act dated 20th January, 2012. The Appellant informed to the First Respondent that steps were taken for getting

consent to operate and hence the directions could be withdrawn. Following the necessary inspection and also examining the application made by the appellant as well as the detailed plans submitted by the appellant and being satisfied, the first Respondent issued the consent to operate dated 24th February, 2012 under Water Act and also Air Act and the said consent to operate dated 24th February, 2012 was granted for a period up to 20th October, 2014 and the same was in force.

While the matter stood as above, to the shock of the Appellant, impugned directions dated 12th April, 2012 were served on 13th April, 2012 cancelling/revoking the consent to operate and further directing the Appellant to stop the business activities forthwith. The directions referred to a communication dated 12th March, 2012 made by the Second Respondent to the First Respondent calling upon the First Respondent to keep the consent to operate issued to the Appellant in abeyance.

The following questions arise for consideration in this appeal:

1. Whether the impugned directions are liable to be set aside since they have been issued in gross violation of the principle of natural justice?
2. Whether the impugned directions are to be quashed as they are arbitrary and legally not sustainable?

In the instant case the First Respondent has not acted independently or has exercised powers vested upon it by following the procedure envisaged in Law. On the contrary, it has acted on the dictation and direction of the Goa Coastal Zone Management Authority (Second Respondent) which was not expected of. The Second Respondent was neither the Appellate nor the Superior authority of the First Respondent.

It is made explicit that the First Respondent, who on being satisfied issued consent to operate order dated 24th February, 2012 had no reason to cancel the same but has acted pursuant to the directions of the Second Respondent. The first respondent thus has not only violated the principles of natural justice in passing the order but was also arbitrary. It is pertinent to point out that the First Respondent was not the authority to decide the legality or otherwise of the structure of the Appellant.

The fact that the Second Respondent had received a complaint against the Appellant cannot by itself vest an authority or power on

the second Respondent to issue such a direction as found in its letter dated 14th March, 2012 to the First Respondent. The First Respondent at no stretch of imagination can issue such directions revoking or cancelling the Consent to Operate. The Second Respondent had already issued directions disconnecting electricity and water supply in the year 2004. Though the said Notice was set aside by the High Court of Bombay in the year 2005 itself the second respondent had not pursued the same. Even the Show Cause Notice referred to in the directions to the First Respondent was dated 13th September, 2011. After a period of nearly six months, the Second Respondent has addressed a letter to the First Respondent in the month of March 2012. If really, there was any violation of the CRZ Notification there was no impediment for the second respondent to proceed against the Appellant. But the Second Respondent has not done so. Instead it has directed the First Respondent to keep the Consent to Operate the Order in abeyance which was highly illegal.

This will be quite suggestive that the Second Respondent who could not proceed on the Show Cause Notice dated 13th September, 2011 to the Appellant for lack of grounds has attempted to achieve its end of cancellation indirectly through the First Respondent. All the above would adumbrate that both the Authorities have acted arbitrarily. The impugned order was an outcome of the non-application of mind and the mechanical approach of the First Respondent. The Second Respondent as a statutory authority, despite service of Notice a number of times has not cared to appear. The Second Respondent cannot have any reason for non-appearance. It is a statutory Body which is expected to strictly apply and follow law. Having issued directions to the First Respondent arbitrarily to cause consent to operate order in abeyance, that too after number of months of show cause notice, the nonappearance of the Second Respondent before the Tribunal would show its reluctance, carelessness and the recalcitrant attitude of the officials of the Second Respondent which has got to be viewed seriously.

For all the reasons stated above the impugned directions of the First Respondent are to be set aside as legally unsustainable and accordingly they are set aside.

In the result, Appeal is allowed along the direction to Respondents to pay a cost of Rs. 10,000/- each to the Appellant towards the costs of this Appeal.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?8003/Mr-Joseph-Coutinho-Vs-Goa-State-Pollution-Control-Board

Rohit Choudhary v. Union of India & Ors.

APPLICATION NO. 38 OF 2011

CORAM: Justice A.S. Naidu and Dr. G.K. Pandey

Key words: Kaziranga National Park, Eco-Sensitive Zone, village Bokakhat, Ministry of environment and forest, Environment (Protection) Rules, 1986, unregulated quarrying and mining activities, stone crushers, brick kilns, tea factories, Assam Pollution Control Board

Application allowed

Date: 7th September, 2012

The Applicant is a resident of village Bokakhat. According to the Applicant, unregulated quarrying and mining activities permitted in and around the area of "Kaziranga National Park", not only threatens the Eco-Sensitive Zone, but also the survival and existence of Rhinos, Elephants and other wildlife species. It is submitted that Kaziranga National Park harbours the largest population of the Indian One Horned Rhinoceros and that its survival is critically dependent on the protection of the boundaries of the Kaziranga National Park as well as the adjoining areas including the Karbi-Anglong hills, from pollution.

The Ministry of Environment and Forests (MoEF), it is alleged, showed an apathy to the irregularities, overt acts and several omissions and commissions committed by the Authorities and acted as a mute spectator, to the rampant violation of the provisions of the Environment (Protection) Act, 1986 as well as Rules framed thereunder, in as much as the prohibition and restriction on the location of industries and carrying on processes and operations in different areas prescribed under the Environment (Protection) Rules, 1986 has been given a complete go by. The restrictions imposed under Rule-5 of the Environment (Protection) Rules, 1986 is also followed more on its breach than its compliance.

The grievance of the Applicant before this Tribunal is that, in flagrant violation to the Notification dated 5th July, 1996 issued by the MoEF, mushrooming of stone quarries were installed indiscriminately within the “No Development Zone” (NDZ) thereby causing immense adverse impact on the environment, wildlife and ecology.

On the basis of the pleadings and arguments only three issues arise for the Tribunal’s consideration.

(i) Whether the Kaziranga National Park and / or its vicinity have been declared as No Development Zone in consonance with Rule-5 of the Environment (Protection) Rules, 1986?

So far as issue no. 1 (one) is concerned, there is no dispute that the Ministry of Environment and Forests (MoEF) by Gazette Notification dated 5th July, 1996 has declared an area of 15 km around the Numaligarh Refinery, adjoining the Kaziranga National Park, more specifically described in the Index appended to the Notification as an NDZ. The Notification declaring NDZ within the radius of 15 km around the Numaligarh Refinery so as to protect Kaziranga National Park was issued in the year 1996. The said Notification was issued in exercise of the powers conferred under Section 5 of the Environment (Protection) Rules, 1986, and is still in vogue and is not only binding but also enforceable. Issue no. 1 (one) accordingly stands answered.

(ii) Whether industries and other processing units which would lead to pollution and congestion thereby affecting ecology exist in the NDZ?

After meticulous perusal of documents filed and the submissions made by Counsel for parties, the Judges come to a conclusion that a number of industrial units, some of which are hazardous and creating pollution, exist in or about the NDZ. Protection of environment, ecology, biodiversity and adverse impacts on *flora* and *fauna* vis-a-vis conservation of forest and other natural resources including enforcement of legal rights relating to environment, being the paramount objective of the National Green Tribunal, to maintain healthy environment and eradicate the pollution, and to protect ecology in Kaziranga National Park and in its vicinity, which is highly eco-sensitive and the Judges feel certain directions are necessary to be issued for protection and preservation of environment.

(iii) What steps should be taken to eradicate the hazards created by expansion of industrial areas and / or installation of industrial units in the NDZ?

The Tribunal directs the Authorities to take following actions:

(a) The 11 stone crushers which according to the CPCB report, are located within the NDZ are non-functional at present. The State Government is directed to take immediate steps to remove all those illegal stone crushers except 1 (one) M/s Assam Stone Crusher from the NDZ area forthwith. It appears Assam Stone Crusher was installed before 1996 i.e. prior to the notification. The State of Assam is, therefore, directed to take steps to relocate the said unit outside the NDZ.
(b) The Government shall take appropriate steps not to allow operation of the 23 stone crusher units existing in the vicinity of NDZ (outside the NDZ) till necessary pollution control equipments and other measures are installed to eradicate the pollution, to the satisfaction of Assam Pollution Control Board and Central Pollution Control Board (CPCB).
(c) According to the CPCB report 34 Brick Kilns are operating within NDZ out of which only 1 unit was set up before 1996. Brick Kilns being the main pollution causing units are hazardous to environment. The said 33 Brick Kilns should be closed down immediately. So far as 1 Brick Kiln which was established before 1996, is concerned steps should be taken to either relocate it outside the demarcated zone or steps should also be taken to insist stricter air pollution control devices. The unit should be inspected by the SPCB, Assam regularly and CPCB occasionally.
(d) The CPCB report further reveals that 11 miscellaneous industries are existing within NDZ. Out of the aforesaid industries, except for 4, petrol pumps and the restaurant all other units generate lots of pollution, therefore, they should not be allowed to operate in their present locations and action should be taken to shift them immediately out of NDZ.
(e) The CPCB report further reveals that there are 25 Tea Factories out of which 22 are located within the NDZ and 3 are within 500 m of outer periphery of NDZ. The report reveals that only 1 unit has made arrangements to treat its effluent. The SPCB and other Authorities are directed to ensure that no tea processing units having boiler using fossil fuel operates within the NDZ and take immediate steps to stop their operation. The 3 tea leaf processing units located within 500 m of the outer periphery of NDZ should be allowed to operate only if necessary pollution

control measures as may be stipulated by State Pollution Control Board (SPCB), Assam are adhered to by those units. Further, all the tea processing units must provide acoustical enclosures in their electrical generators for providing alternative electricity.

These are only some remedial measures, it was left open to MoEF, CPCB and SPCB to adopt any other appropriate measure and take any other steps permissible under law to remove all the industrial units from NDZ and prescribe stringent standards to eradicate pollution so far as industrial units situated outside NDZ but in its close proximity, say within 500 meters.

The MoEF and the State Government were directed to prepare a Comprehensive Action Plan and Monitoring Mechanism for implementation of the conditions stipulated in the 1996 Notification specifying “No Development Zone” and for inspection, verification and monitoring of the prohibitions imposed in the notification referred to above, as well as the provisions of Rule-5 of the Environment (Protection) Act, 1986.

The Tribunal was satisfied that this was a clear case of infringement of law. They, therefore, had no hesitation in directing the MoEF and the Government of Assam to deposit Rupees one lakh each, with the Director, Kaziranga National Park for conservation and restoration of *flora* and *fauna* as well as biodiversity, eco-sensitive zone, ecology and environment of the vicinity of Kaziranga National Park in general and within the No Development Zone in particular. The said amount shall be utilised exclusively by the Director, Kaziranga National Park for conservation, protection and restoration as well as for afforestation of suitable trees of the local species in and around the No Development Zone.

With the aforesaid observations/direction, the Application was allowed.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?8004/Rohit-Choudhary-Vs-Union-of-India-and-Others

Golden Seam Textiles Pvt. Ltd. v. Karnataka Pollution Control Board

APPEALS NO. 17 AND 18 OF 2012

CORAM: Justice V. R. Kingaonkar and Dr. Devendra Kumar Agrawal

Key words: Karnataka State Appellate Authority, T.G. Halli Reservoir Catchment area, Limitation Act, 1963, doctrine of alternative remedy

Appeal dismissed

Date: 18th September, 2012

According to the Appellant the time spent in litigating before the Karnataka State Appellate Authority in *Appeal Nos. 22/2010 and Appeal No. 23/2010* was required to be excluded to calculate the period of delay, if any. It was further stated that there was marginal delay of 2 days in filling of the appeal which needs to be condoned. The second application was for exclusion of time under Section 16 of the National Green Tribunal Act, 2010 whereas the first application was for exclusion of time under Section 14(2) of the Limitation Act, 1963.

It may be noted that Karnataka State Pollution Control Board passed an order dated 1st August, 2010 whereby several industries including appellant's industry was directed to be relocated. The Pollution Board came to the conclusion that the industry is situated within T.G. Halli Reservoir Catchment area (TGR) which is the industrial zone wherein activities are restricted. The appellant challenged that order of the State Pollution Board by filling two appeals (*Appeal No. 22/2010 and Appeal No. 23/2010,* separately). Both the appeals were decided by common order dated 26th April, 2011. They were dismissed by the Karnataka State Appellate Authority.

The Appellant filed present appeals on 9th April, 2012. The appellant seeks exclusion of 308 days under Section 14(2) of the Limitation Act, 1963 and also seeks condonation of two days delay which appears to have been committed in filling of the appeals.

So far as exclusion of the time under Section 14(2) of the Limitation Act, 1963, is concerned, even though it is accepted that such exclusion is permissible under the law, then also it is difficult to countenance the argument of Counsel for the Appellant. The background facts of the present appeals will show that the appellant

sought review of the order passed by the State Appellate Authority though there was no provision under the enactment to prefer filling any review application. It is difficult to say that there was no concession given to the Appellant. It is well settled that the fact finding of the Court or Tribunal, as reflected from the judgment or order (*refer to original order*), will have to be given due sanctity.

Another limb of the contention of the Appellant was that the litigation was being fought before wrong forum and therefore that time spent has to be excluded. The doctrine of alternative remedy is a self-imposed restriction while exercising power under Article 226 of the Constitution. So, unless the High Court had expressed any opinion that because of alternative remedy available to the appellant, the Writ Petitions were likely to be dismissed, withdrawal of the writ petitions will be no avail to the Appellant to seek exclusion of the time spent before the High Court. Therefore, the time spent by the Appellant in pursuing the remedy for review of the order of the State Appellate Authority and also the time spent before the Karnataka High Court cannot be excluded under Section 14(2) of the Limitation Act, 1963. Considering the fact that pursuing litigations before the State Appellate Authority as well as the Karnataka High Court were not before the wrong forum, the Judges find no substantial reason to allow exclusion of the period spent in the said litigations. The Applications were accordingly dismissed.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?8005/Golden-Seam-Textiles-Pvt-Ltd-Vs-Karnataka-Pollution-Control-Board

Union of India v. Goa Foundation & Ors.

REVIEW APPLICATION NO. 8 OF 2012

CORAM: Justice A.S. Naidu and Dr. G.K. Pandey
Key words: Review

Application is disposed of with modifications

Date: 20th September, 2012
Invoking jurisdiction under Section 19 of the National Green Tribunal Act, 2010, this Petition was filed by the Ministry of Environment and

Forest (MoEF) with a prayer to review the order dated 25th July, 2012 (*refer to original order*).

On perusal of the Review Petition, the Tribunal found some force in the submissions made by counsel appearing for The Goa Foundation (the Respondent). The only ground upon which the order is sought to be reviewed is that there was lack of communication and Ms. Rathore, counsel for the MoEF, was not conscious about the observations made in the order and she could know about the order only after downloading the same from the web-site. In course of hearing, Ms. Rathore expressed that the averments were made in the Review Petitions due to certain inadvertent reasons and lack of communication and such the same may be ignored.

After hearing counsel for parties the Tribunal found that the Review Petition does not satisfy any of the mandatory requirements and that the reasons assigned for reviewing the order are unacceptable.

However, after going through the order the Judges feel that it is fit case where the order needs to be clarified/modified to certain extent. Therefore, they modified the Green Tribunal's order dated 25th July, 2012 and directed that while taking decisions, the Ministry shall adhere to the WGEEP Report, if the same has not been varied till date. With the aforesaid modifications/clarification, the Review Application is disposed of.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?8021/Union-of-India-Vs-Goa-Foundation-and-Others

Girdhars International Pvt. Ltd. v. Delhi Pollution Control Committee

APPEAL NO. 44 OF 2012

CORAM: Justice A.S. Naidu and Dr. G.K. Pandey
Key words: Consent to operate, Small-scale industry

Appeal is disposed of at admission stage

Date: 20th September, 2012

By consent of parties this Appeal was disposed of at admission stage.

Girdhars International Pvt. Ltd., has filed this Appeal assailing the directions issued by Delhi Pollution Control Committee (DPCC), vide letter dated 21st August, 2012, in exercise of powers conferred under Section 33(A) of the Water (Prevention & Control of Pollution) Act, 1974 and Section 31(A) of the Air (Prevention & Control of Pollution) Act, 1981 directing closure of the unit of Appellant as well as disconnection of electricity and water supply.

The Appellant was manufacturing candles at its unit located at F-16, Udyog Nagar, Peera Garhi, New Delhi since 2005. The unit is a small scale industry and is 100% export oriented. It had obtained necessary consent from the Delhi Pollution Control Committee and the said consent was valid up to 6th June, 2009. The Appellant applied to DPCC for renewal of the consent on 4thSeptember, 2009 in the prescribed Form. According to the Appellant, the Respondent DPCC did not issue any Show Cause Notice before issuing the order refusing to extend permission, and as such great prejudice was caused to the Appellant.

The Tribunal heard both the counsel and considered the materials placed before them, including the direction issued by DPCC on 26th March, 2012 temporarily revoking the order directing closure of the unit and permitting the unit to function for a period of 45 days. By the said order DPCC had directed the Appellant to apply afresh for consent to operate the unit. In view of the direction of DPCC issued on 26th March, 2012, the Tribunal felt ends of justice would be better served, if the Appellant was permitted to apply afresh and seek permission to operate, within a period of two weeks hence. If the Appellant files an application within two weeks in proper format, enclosing all documents and fulfilling all requirements prescribed under law, the DPCC shall consider the same and take a decision within three weeks from the date of receipt thereof. Till a final decision is taken by the DPCC on the said application, no coercive action would be taken against the unit.

The Appeal was disposed of with no costs.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?8022/Girdhars-

International-Private-Limited-Vs-Delhi-Pollution-Control-Committee-Department-of-Environment

Husain Saleh Mahmad Usman Bhai Kara v. Gujarat Environment Impact Assessment Authority & Ors.

APPLICATION NO. 102 OF 2012

CORAM: Justice A.S. Naidu and Dr. G.K. Pandey

Key words: Thermal Power Plant, Environmental Clearance, Condonation of delay

Application is allowed

Date: 26th September, 2012

Order dated 15th May, 2012 issued by the Gujarat State Environment Impact Assessment Authority (SEIAA) modifying/amending previous Environmental Clearance (EC) dated 11th June, 2010 granted to M/s. OPG Power Gujarat Limited for establishing 300 MW Thermal Power Plant at Bhadreshwar, Taluka Mundra, Dist. Bhuj Kutch, Gujarat and thereby allowing change of technology from water cooled to air cooled system was assailed in *Appeal No. 38/2012* on various grounds.

In the case in hand, the impugned order amending the EC was passed on 15th May, 2012. The Appeal assailing the said order was presented on 16th July, 2012, thus, the same was filed after laps of 30 days, but then within 90 days. Husain Saleh Mahmad Usman Bhai Kara (the Appellant/Applicant) being conscious of the said facts filed a petition for condonation of delay explaining the reasons which prevented him from filing the Appeal within 30 days.

The factual background reveals that number of cases were filed assailing the EC, Forest Clearance and CRZ Clearance granted to the Project Proponent with regard to the aforesaid project. Out of the said cases, some have been disposed of and others are still sub-judice. The present Appellant/Applicant was a party to most of the litigations.

Admittedly, the Appeal was not filed within 30 days of the impugned order, but then it has been filed within 90 days, thus, in consonance with the provisions of Section 16 of the National Green Tribunal Act, 2010 (NGT Act), this Tribunal, if it is satisfied that the

Appellant/Applicant was prevented by sufficient cause from filing the Appeal within 30 days can entertain the same.

For explaining the delay, the Appellant/Applicant has categorically averred that due to pendency of several litigations he was not sure as to whether the impugned order should be assailed by filing a separate appeal and he had to wait till the end of summer vacation to obtain legal advice as the counsel who was handling the matter was out of the city. The Appellant/Applicant has also clearly stated that the complexities involving in the case, particularly with regard to the scientific/technical aspects, vis-à-vis the technical change made by the amendment ofEnvironmental Clearanceand the affect thereof on the environment as well as ecology, is a matter which needed deliberation and re-examination with technical persons and villagers who are likely to be affected.

The history of the case and the submissions advanced *inter-se* by the parties, leads to a conclusion that in a case like the present one, where the environmental impact of the project on local population in terms of environmental implications, has to be assessed, the approach of this Tribunal, especially set up for the said purpose, should be literal and not “hyper-technical”.

The nature of the disputes, as would be evident, from the aims and objectives of the NGT Act, this Tribunal is expected to adjudicate upon, is not really a *lis* between the litigant parties and or adversary litigations. The jurisdiction of this Tribunal is necessarily a wider one whereby the impact of the decision granting EC vis-à-vis the effect thereof on the local community or environment in general and ecology in particular has to be considered. The Tribunal is expected to adopt a broad and liberal approach rather than narrow and cribbed one.

That apart, as stated earlier some litigations relating to clearances granted to the aforesaid project are still sub-judice before this Tribunal, thus, the Judges find no reason to prevent the appellant/applicant to put forth his grievance so as to facilitate affective and efficacious adjudication of the environmental problems for all times to come.

In view of the discussions made above, and on being satisfied that there was sufficient reasons for not approaching this Tribunal within 30 days and further as the delay being less than 90 days i.e. 31 days, after appreciating the pleadings and documents referred, the Tribunal held that deliberate laches cannot be attributed to the

appellant/applicant and that the reasons assigned are sufficient to condone the delay. This petition for condonation of delay is accordingly allowed.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?8023/Husain-Saleh-Mahmad-Usman-Bhai-Kara-Vs-Gujarat-SEIAA-and-Others

Real Gem Buildtech Pvt. Ltd. v. State of Maharashtra

APPEAL NO. 37 OF 2012

CORAM: Justice V. R. Kingaonkar and Dr. Devendra Kumar Agrawal
Key words: Environmental Clearance, Expert Appraisal Committee

Application dismissed due to deficiency

Date: 3rd October, 2012
The Tribunal disposed of the appeal finally in view of the fact that the question involved is rather short and could be addressed without any discussion of environmental issues.

Real Gem Buildtech Pvt. Ltd. (the Appellant) sought the Environmental Clearance (EC) for a Housing Project. The Environmental Appraisal Committee (EAC) considered the proposal on 26th May, 2010 for the first time. The Appellant had sought construction of 3,67,044 sq. m area including that of three basements. The Appellant was granted permission to construct 3 basements by the Competent Authority under DCR Rule 33(24). It appears that previously the State Authority declined to grant EC. The Appellant had therefore preferred an Appeal to this Tribunal. This Tribunal in that Appeal (Appeal No.1/2012) observed that the order of the State Authority was rendered beyond its jurisdiction. Yet the Appellant was granted liberty to make a representation for consideration of the request seeking the EC for the project. The appellant made a representation and sought the EC. The EC had been granted vide impugned order dated 24th February, 2012. The

Appellant is aggrieved only in respect of the part of the order whereby the request of grant of EC for three basements is rejected and the EC is granted only in respect of two basements as per the earlier Minutes of Meeting.

Upon hearing counsel for the parties, it is amply clear that the impugned order does not reflect as to whether rejection of the EC for three basements was done on ground of any adverse environmental impact. In fact, the Tribunal found that no environmental issue was involved in the matter. The material on record did not show that the third basement is likely to cause any serious impact on the environment. Thus, the impugned order suffers from deficiency because the relevant adverse impact on environment is not the reason for rejection of the request.

In view of the discussion made herein above, the Tribunal set aside the impugned part of the order and remanded the matter to the State Authority for reconsideration of the issue. The State Authority to decide the matter afresh, to the extent of EC for the third basement, within a period of two (02) months hereafter, as far as possible. The Appeal was accordingly disposed of.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?8080/Real-Gem-Buildtech-Pvt-Ltd-Vs-State-of-Maharastra

Kshitija Infrastructure Pvt. Ltd. & Anr. v. Union of India & Ors.

APPEAL NO. 16 OF 2012

CORAM: Justice V. R. Kingaonkar and Dr. Devendra Kumar Agrawal

Key words: Intervener, Environment clearance

Application disposed of with directions

Date: 3rd October, 2012

By consent of Counsel for the parties and also Shri Amit Maru (the intervener) who appeared in person, this appeal was finally disposed of in the following terms:-

(i) Since it appears that Rule 4(3-a) of the Environment (Protection) Rules, 1986 has not been followed in *stricto*

sensu , the Secretary, Environment Department of the State will restore the proceedings to the stage of issuance of the proposed direction as required under the Rule. The Authority shall issue a set of proposed directions to the appellant and shall give time of fifteen (15) days from the date of service of the Notice and thereafter to take final decision.

(ii) The intervener shall be permitted to file representation, in as much as the grievance of the intervener is that the buildings were already demolished by the appellants before the passing of even commencement certificate and that was in total disregard to directions of the Bombay High Court. The representation of the intervener may be considered while issuing the proposed directions and taking of the final decision by the State Authority.

(iii) The impugned order and communication dated 9th March, 2012 is set aside and the matter is remitted to the Competent Authority for afresh decision which shall be taken in due compliance of the relevant Rules.

(iv) The Tribunal made it clear that they did not touch the merits of the matter and have decided this appeal only on the ground that there appears non-compliance of the relevant Rule and on basis of consent given by the Counsels and the intervener.

(v) The Competent Authority to take a fresh decision within a period of four (04) months. The intervener shall file the representation within the period of one (01) month hereinafter before the Competent Authority. The Competent Authority shall be free to take final decision after including the directions of the Bombay High Court; the fact that the buildings were demolished even before obtaining of necessary Environmental Clearance and permission of the Competent Authority; and the relevant circumstances. The appellants may be allowed to adduce any fresh material, in support of their contentions regarding so called “bona fide intention” of the alleged commencement of the work at the construction site. The intervener also shall be permitted to adduce any material in order to demonstrate mala fide of the Appellants.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?8081/Kshitija-Infrastructure-Pvt-Ltd-and-Another-Vs-Union-of-India-and-Others

M/s Hindalco Industries Ltd. v. Union of India & Ors.

APPEAL NO. 21 OF 2012

CORAM: Justice V. R. Kingaonkar and Dr. Devendra Kumar Agrawal
Key words: Environment Impact Assessment

Application partly allowed

Date: 17th October, 2012
By consent of the counsel for the parties, the Tribunal partly allowed the appeal on following terms:

1. The impugned communication was set aside.
2. The competent authority shall restore the representation of the appellant and decide afresh the issues involved, in accordance with procedure as laid down in Rule 6 of the Forest (Conservation) Rules, 2003.
3. The appellant shall be allowed to make any additional representation, if so desired within a period of 30 days hereafter.
4. The Competent Authority is requested to form a committee comprising of two experts (one with wildlife and one with forestry background) and a retired Chief Conservator of Forest. The committee shall visit the project area and its surrounding and shall examine the Environment Impact Assessment (EIA) report *vis-à-vis* the forest and wildlife issues as highlighted by the Forest Department of the State Government and the submissions made by the Project Proponent apart from their own observations, suggesting additional mitigative measures needed, if any.
5. The Competent Authority shall give an opportunity of hearing to the agent/person nominated by Project Proponent and thereafter shall exercise discretionary power in accordance with law.

6. The appointment of committee shall be made within a period of four (4) weeks and thereafter the report of the committee shall be submitted to the Competent Authority within four (4) weeks. The Competent Authority shall thereafter decide the representation within further period of four (4) weeks.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?8082/Ms-Hindalco-Industries-Ltd-Vs-Union-of-India-and-Others

M/s Hubtown Limited & Anr. (Mount Mary) v. Ministry of Environment and Forests & Ors.

APPEALS NO. 13, 14, 19, AND 20 OF 2012

CORAM: Justice V. R. Kingaonkar and Dr. Devendra Kumar Agrawal

Key words: Slum dwellers, CRZ Notification, Condonation of delay

Two appeals partly allowed and two appeals dismissed

Date: 17th October, 2012

These four appeals were clubbed together for common hearing and decision in as much as they are interlinked.

M/s Hubtown Limited (Appellant No. 1) is developer and deals in construction activities. Appellant No. 1, admittedly, undertook construction of buildings for Maya Nagar Cooperative Housing Society Ltd. and Durgamata Cooperative Housing Society Ltd. There is no dispute about the fact that both the housing societies are formed by slum dwellers. The rehabilitation project of slum dwellers was to be implemented by the Housing Societies formed by the slum dwellers. One of such project is contemplated to be executed on a plot at Worli and another at Bandra. It appears that the plots in question were already occupied by the slum dwellers prior to 19th February, 1991.

On 19th February, 1991 a Notification was issued by the Ministry of Environment & Forests (MoEF). Under the said notification, classification was made in respect of Coastal Area for the purpose of Development Regulations. By the said classification, Category-II CRZ (III) was declared to consist of the area which had already been

developed up to limit of the shore land. The expression ”developed area” was purported to mean the area within the Municipal Limits or in other designated urban area which was already substantially build up and which had been provided with drainage and project roads and other infrastructural facilities, such as water supply and Sewerage. Category-III (CRZ-III) was declared to consist of the areas within the Municipal Limits or other designated area, which were not substantially build up, and had been neglected. The development or construction activities in such areas were regulated by virtue of the said notification. On 27th September, 1996 Coastal Zone Management Plan (CZMP) for the State of Maharashtra was approved by the MoEF as per the general conditions. In the order of approval, it has been mentioned that the Parks, Playgrounds, Regional Parks, General Green zones and other non- buildable areas, which are in the category “CRZ-II”, shall be treated as “CRZ-III.” Thus, by fiction the non- buildable areas as well as the parks ground general areas etc. were shifted from Category-II (CRZ-II) areas to category-III (CRZ-III) areas.

Slum Rehabilitation Authority (SRA) issued Letter Of Intent (LoI) to the appellants for grant of approval to the proposed redevelopment of the subject plots. The slum dwellers were permitted to be rehabilitated in the new buildings proposed to be constructed on the plots in question. On 4th January, 2002, Maharashtra Coastal Zone Management Authority (MCZMA) was requested to grant clearance for construction of the buildings over the subject plots for the rehabilitation of slum dwellers. The SRA issued amended LOI on 30th October, 2004. It appears that the appellants submitted an application to the Ministry of Environment and Forests (MoEF) for grant of clearance to their projects under the Environment Impact Assessment Notification. The appellant submitted proposals to MCZMA for no objection certificate.

The MoEF did not give approval to the proposals in view of the CRZ Notification of 1991, on the ground that these subject plots were reserved for garden and therefore reclassification of the plots from Category-II (CRZ-II) to Category CRZ –III could not be approved. The appellants preferred an appeal to National Coastal Zone Management Authority (NCZMA). The NCZMA eventually declined to accord permission for both the projects. The said orders of the NCZMA were the subject matter of challenge *in Appeal No. 13/2012 and Appeal No. 14/2012,* which were taken in its 23rd meeting of 4th January, 2012 on the above subject, which was Item No. 4 on agenda of the meeting of the NCZMA. The NCZMA held that

although the subject plots were being used by the slum dwellers even prior to 1976, due to reservation of the plots as per the development plan under CRZ Notification, 1991, because those plots were reserved for garden and therefore the request of the appellants for reclassification of CRZ areas from CRZ-III to CRZ-II cannot be considered Still, however, the NCZMA observed that since scheme is for slum improvement, the MCZMA to consider such issues in the CZMP to be prepared under CRZ Notification, 2011 to protect the 'socially important project'.

The other two appeals (*Appeal No. 19/2012 and Appeal No. 20/2012*) are between the same parties and the issues involved are also the similar. In those two Appeals the Appellants have challenged letters dated 31st August, 2009 and dated 16th February, 2010 issued by the MoEF whereby the projects were not approved. The MoEF asked the NCZMA to refrain itself from making references of such cases which were not in accordance with CRZ Notification, 1991.

In all the four Appeals, the Appellants have filed delay condonation applications. The Judges propose to deal with the delay condonation applications in *Appeal No. 19/2012 and Appeal No. 20/2012* at the outset. Thereafter they propose to deal with the other two applications for delay condonation and on merits (*Appeal No. 13/2012 and Appeal No. 14/2012*).

It is pertinent to note that Section 16 of the National Green Tribunal Act prescribes limitation of 30 days for filing of an appeal. A further period of 60 days is available on the appellant's furnishing sufficient explanation for the delay. Thus a total of 90 days prescribed period of limitation is envisaged under Section 16 of the National Green Tribunal Act. It is explicit, therefore, that the appellants had approached wrong forum when they preferred appeals before the Chairman, NCZMA. Once it is found that by order dated 17th August, 2011, the High Court held that the appeals before the NCZMA were not maintainable, the appellants ought to have promptly preferred appeals under Section 16 of the National Green Tribunal Act. Perusal of Section 16 of the National Green Tribunal Act will make it clear that only the orders passed after 18th October, 2010 are susceptible to appeal. Needless to say, those orders dated 31st August, 2009 and 16th February, 2010 could not have been challenged by Appellants before the NGT. Consequently, both the *Appeal Nos. 19/2012 and 20/2012* are not maintainable at all. Nor the delay

caused in filing of those Appeals can be condoned. Hence both these Appeals are dismissed as not maintainable.

Coming to the delay condonation applications in other two Appeals (*Appeal No. 13/2012 and Appeal No. 14/2012*), it may be gathered that the impugned decision taken by the NCZMA in its 23rd meeting of 4th January, 2012 was not communicated to the Appellants. The version of the Appellants that they learnt about the impugned decisions, at belated stage is acceptable. The delay appears to be unintentional. The delay condonation applications in both the above Appeals were accordingly allowed.

A close scrutiny of the record showed that there was no existence of garden or park on the subject plots since much prior to 1991. It is an admitted fact that the area is covered by hutments. It is a fact that a large group of hutment dwellers falls under the census carried out by the Government agency in or about 1976. In other words, the subject plots were treated as gardens/parks only because of the Coastal Regulation Zone (CRZ) Notification, 1991.

The question that needs to be addressed is whether the plots already covered by the slums could be treated as reserved gardens/ parks. Such a reservation is assumed by giving “deeming effect” on account of issuance of the CRZ Notification, 1991. Needless to say, what did not exist, in reality, is assumed to be in existence by virtue of the CRZ Notification, 1991 with retrospective effect. The subsequent Notification dated 3rd June, 1992 issued by the Urban Development Department, State of Maharashtra, under Section 31(1) of the MRTP Act, recognised the fact that the slums were in existence in the areas which were not designated as residential areas. This subsequent notification of the Urban Development Department appears to have been ignored by the NCZMA.

Considering the legal, and factual position, the Judges are of the opinion that the NCZMA and MoEF ought to have properly exercised the discretion by harmonious interpretation of CRZ Notification, 1991 and subsequent Notification, 1992 as well as the purpose of classification under the CRZ Notification, 1991. In view of the discussion made above, they are of the opinion that the impugned decisions are required to be interfered with.

For the reasons discussed herein above, the Tribunal partly allowed both the appeals (*Appeal Nos. 13 and 14 of 2012*) and directed the MoEF to restore the earlier representation of the Appellants and to take a fresh decision in the light of observations made above. It is

made clear that they have not given any finding on merits of the matter and it will be within discretion of the competent authority to take any decision which will be backed by reasons. The other two appeals (*Appeal Nos. 19 and 20 of 2012*) are dismissed.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?8083/Ms-Hubtown-Limited-and-Another-Mount-Mary-Vs-Pr-Secy-Ministry-of-Environment-and-Forest-and-Others

M/s OPG Power Gujrat Private Ltd. & Ors. v. Husain Saleh Mahmad Usman Bhai Kara & Ors.

REVIEW APPLICATION NO. 4 OF 2012

CORAM: Justice A.S. Naidu and Dr. G.K. Pandey

Key words: Review, Coastal Regulation Zone, Environmental Clearance, Forest Clearance

Application modified

Date: 18th October, 2012

This Review Application was filed invoking the Tribunal's jurisdiction under Section 19 (4) (f) of the National Green Tribunal Act, 2010, inter-alia, praying to review/recall/modify/clarify the order dated 10th May, 2012 passed in *Application No.8/2012*, mainly on the ground that in paragraph 13 (*refer to the original judgment)* certain inadvertent mistakes apparent on the face of the record have occurred.

The facts stated in the Application are repudiated by the opposite parties mainly on the ground that the Review Application is not maintainable and as such it should be dismissed *in limine*.

It is well settled that a Review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reasons. The word "sufficient reason" is wide enough to include a misconception of fact or law by a Court or even an advocate. An application for review may be necessitated by way of

invoking the doctrine of "*Actus Curiae Neminem Gravabit*" which otherwise means that an Act of the Court shall prejudice no one.

Fact remains in paragraph 13 of the Tribunal's judgment dated 10th May, 2012, it is stated that the site inspection report observers certain facts but then, the Tribunal found that, in fact, the Committee which visited the site reflected the concerns of the local community and the contents of said paragraph were not observations/findings of the Committee. While deciding the case they had perused the entire report and on being satisfied that there are some allegations with regard to continuance of work in spite of dismissal of the judgment, and that some of Terms of the Reference embodied in the Environmental Clearance (EC) were flouted the Judges disposed of the case with certain directions. As a matter of fact, the Committee at page-3 of the report observed/held as follows: *"RCC Foundation works for Boilers and Turbines was in progress. The site condition revealed that the work was recently stopped*." Further under the heading "comments on the directions issued in the order of NGT" it is observed *"construction was started without obtaining the forest clearance. However, no works in the forest area was started."*

A cumulative reading of the entire report vis-à-vis the findings of the Committee as quoted above *prima-facie* revealed that there was allegation with regard to continuance of the work even before obtaining forest clearance and also after the disposal of the appeal. The observations made by the Judges in paragraphs 15 and 16 of the judgment, was on the basis of the conclusions/findings arrived at by the Committee which conducted the site inspection. Further, neither is there any error apparent on the conclusion arrived at nor there is any sufficient reason to review the previous judgment. However, the Tribunal directed that in paragraph 13 of the judgment after the word "*observed*" following sentence be added: *"the concerns of the local community, petitioners and complainants"*.

With the aforesaid modification/rectification, the review petition stood disposed of.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?8084/Ms-OPG-Power-Gujrat-Private-Ltd-and-Others-Vs-Husain-Saleh-Mahmad-Usman-Bhai-Kara-and-Others

Husain Saleh Mahmad Usman Bhai Kara v. Union of India & Ors.

REVIEW APPLICATION NO. 2 OF 2012

CORAM: Justice A.S. Naidu and Dr. G.K. Pandey
Key words: Review
Application dismissed

Date: 18th October, 2012
This Review Application was filed inter-alia, praying to review/recall/ modify the impugned order dated 8th February, 2012 passed in *Appeal No. 19/2011 (T), Appeal No. 37/2011 and Application No. 32/2011.*

After hearing both counsel, the Tribunal found that fresh litigations had crept up in the meanwhile. Even otherwise the order does not suffer from any error apparent on the face of the record nor were there sufficient reasons for admission.

The Review Application accordingly stood disposed of.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?8085/Husain-Saleh-Mahmad-Usman-Bhai-Kara-Vs-Union-of-India-and-Others

Vimal Bhai & Ors. v. Union of India & Ors.

APPEAL NO. 7 OF 2012

CORAM: Justice A.S. Naidu and Dr. G.K. Pandey
Key words: Forest land, Hydroelectric Project, Non-forest use

Application dismissed

Date: 7th November, 2012
Shri Vimal Bhai claiming to be a social activist, along with another, invoking jurisdiction under Section 16 (e) of the National Green Tribunal Act, 2010 (NGT Act), sought to assail the communication dated 8th November, 2011 issued by the Government of India,

Ministry of Environment and Forests (MoEF) according Stage-I approval under Section 2 of the Forest Conservation Act, 1980 (FCA) for diversion of 60.513 hac. of forest land in favour of GMR Energy Ltd. for construction of Alaknanda Badrinath Hydro-Electric Project in Chamoli District of Uttrakhand, subject to fulfilling of certain conditions of environmental safeguards. According to the Appellants, the Stage–I Forest Clearance granted by the MoEF is palpable, illegal and suffers from following infirmities:-

(i) The approval was granted without taking into consideration the recommendations of the Forest Advisory Committee (FAC). It is averred that the Forest Advisory Committee after considering all the facts and circumstances had came to the conclusion that prior approval under Section 2 of the FCA should not be accorded in favour of the project for use of forest lands for non-forest purpose.

(ii) Relying upon the report submitted by the Wildlife Institute of India (WII), it is averred that the diversion of forest land in the proposed site, would lead to severe fragmentation and degradation of the important wildlife habitats as well as habitats of RET species. The WII report it is stated reveals that the project in question is located in the buffer zone of the Nanda Devi Biosphere Reserve and the same will seriously hamper the movement of RET species like Snow Leopard and Brown Bear existing in the vicinity. The project shall also pose adverse effect on the ecology and bio-diversity and would cause irreparable and irreversible impact on the environment.

It is well settled law that while interpreting a statute effort should be made to give effect to each and every word used by the Legislature. It should be always presumed that the Legislature inserted every word in the Statute for a purpose and legislative intention is that every part of the statute should have a meaningful effect.

Section 2 of the FCA curtails the power of the State Government from leasing out or otherwise permitting use of forest land for non forest purpose, without obtaining prior permission of the Central Government.

The questions then arose as to whether the approval granted by the Central Government under Section 2 of the FCA granting in-principle sanction could be assailed by filing an Appeal, the said order not being the final allotment order. The language of the section

stipulates that before permitting user of forest land for non-forest purposes, the State Government has to obtained prior approval of the Central Government, thus there is no ambiguity that the State Government is the authority to grant permission for use of forest land for non-forest purpose, but then such permission can be granted only after the Central Government accords approval. Further a right to use the forest land for non-forest purpose accrues only after the State Government passes the order, and not from the date of granting Stage – I or Stage – II Clearance.

It was observed that an Appeal flows from a statute and if the statute does not provide an Appeal against a specific order, no Appeal can be entertained. Cumulative reading of Section 2 (A) of the FCA and 16(e) of the NGT Act, leads to an irresistible conclusion that under the said Sections an Appeal is provided for only against an order passed by the *State Government or other authorities*. In other words, the Legislature in its wisdom has kept the order of approval/clearance passed by the Central Government under FCA beyond the scope of Appeal.

However, a party cannot be remediless, a person who is aggrieved by the Approval/Clearance granted by the Central Government has to avail an opportunity to assail the same. In the aforesaid scenario it can safely be concluded that after receiving a Stage – I and/or Stage – II Clearance, thereby granting a consent to permit use of forest land for non-forest purposes, from the Central Government, it is incumbent upon the State Government to pass a reasoned order transferring and/or allowing the land in question for being used for non forest purpose. It is needless to say that bereft of such order no forest lands can be put to use for non-forest purpose. Further, all activities carried out without such orders would be *ab initio void*. An appeal can be filed against the said order of the State Government under Section 2 (A) of FCA and/or under Section 16 (e) of the NGT Act. In the event such an appeal is filed it would be open for the person aggrieved, to assail the order/Clearances granted by the Central Government under Section 2 of the Act which forms an integral part and sole basis of the order passed by the State Government.

Section 2 of the FCA, mandates that as and when the State Government decides to permit use of the Forest land for non forest purpose, it has to pass order to that effect. The said order with the conditions imposed by the Central Government according Stage–I and Stage–II Clearance is mandatorily required to be displayed on

the website. A copy of the order should also be sent to the MoEF forthwith. After receiving the copy of the order MoEF is also required to upload the same in its website so as to make the entire transactions transparent and bring it to public domain or Government portal and to enable any person aggrieved by the order passed under the provision of Section 2 of the FCA, to approach this Tribunal in consonance with Section 2 (A) for FCA or Section 16 (e) of the NGT Act. Apart from the said action the State Government should also insist that the Project Proponent should publish the entire forest clearances granted in verbatim along with the conditions and safe-guards imposed by the Central Government in Stage–I Forest Clearance in two widely circulated daily newspapers one in vernacular language and the other in English language so as to make people aware of the permission granted to the Project Proponent for use of forest land for non-forest purposes. The cause of action for filing an appeal would commence only from the date when such publication is made in the newspapers, as well as from the date when the forest clearance and permission to use the Forest land for non-forest purpose is displayed in the website of the concerned State Government or the MoEF, as the case may be. The copies of the Forest Clearance should also be submitted by the project proponents to the Heads of local bodies, Panchayats and Municipal Bodies in addition to the relevant offices of the Government who in turn has to display the same for 30 days from the date of receipt.

In view of the discussions made above and reasons assigned the Tribunal came to the conclusion that the order dated 8th November, 2011, according Stage–I Forest Clearance cannot be assailed by filing an Appeal at this stage and as such the present Appeal is premature and has to be dismissed. Liberty is however granted to the Appellants to prefer an Appeal as and when the State Government passes the final order, if they feel aggrieved, permitting the Project Proponent to use the Forest land for non-forest purpose.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?8200/Vimal-Bhai-and-Others-Vs-Union-of-India-and-Others-Appeal-No-72012

Shri S. K. Naik v. Jain Steel and Power Ltd. & Ors.

Appeal No. 1 OF 2011

CORAM: Justice A.S. Naidu and Dr. G.K. Pandey

Key words: Environment Clearance, Sponge Iron Plant, Air pollution

Application disposed with directions

Date: 22nd November, 2012

Shri S.K. Naik (former Secretary, Government of India, Ministry of Health and Family Welfare, New Delhi) filed this appeal under Section 11(1) of National Environment Appellate Authority (NEAA) Act, 1997 assailing the Environment Clearance (EC) dated 29th December, 2008 accorded to M/s Jain Steel and Power Ltd. (JSPL), Village Durlaga, Distt, Jharsuguda, Odisha (Respondent No. 1) by the Ministry of Environment and Forests (MoEF) (Respondent No. 2).

The project in question comprises of an Integrated Steel Plant, DRI (1,10,000 TPA), Steel Melting Shop (50,000 TPA) with Induction Furnace, Ladle Refining Furnace and Continuous Caster Route and Captive Power Plant (8 MW). It is alleged by the Appellant that despite representations made by the Appellant and other residents of the locality the project has been accorded EC on the basis of extraneous considerations, without following the mandatory requirements of law. To substantiate the allegations made, it is specifically pleaded that the location of the plant, is in proximity to human settlements, residential areas, water bodies and Schools in "Durlaga Village" in Jharsuguda District, causes a threat to environment and ecology.

It appears the Project site is located in close proximity to the Airport and is coming on the way of approach funnel zone of the aircrafts. The Airport Authority of India (AAI) however had granted NOC on 9th May, 2005 to the project subject to certain conditions. One of the conditions imposed was with regard to use of oil fired or electric fired furnace which was obligatory within 8 km of the Aerodrome, and the said technique was required to be adopted.

Perusal of the records reveal that on 3rd November, 2008 the Collector, Jharsuguda wrote to the AAI, calling upon them for conducting correct assessment about the performance of different conditions imposed in the NOC more specifically with regard to the use of oil fired or electric furnace. The records reveal that the JSPL

had informed the AAI that it would not use coal as a fuel but use the same as a reducing agent for iron ore. Basing upon such undertaking NOC was issued. But then it appears that to raise the temperature in the rotary kiln, the required heat has to be produced by burning of coal inside the kiln and as such, the undertaking given by the Project Proponent to the effect that coal would not be used as fuel does not appear to be the correct position.

According to the affidavit filed, it appears that the AAI had issued the NOC on the undertaking given by JSPL that they will not use coal as a fuel and the period of the NOC was only for four years. That apart pollution related issues arising out of use of coal being essential ingredients in feed stock in the furnace the same have been left to the State Pollution Control Board (SPCB), Odisha for deciding and monitoring its impact on the ambient environment.

From the documents produced it appears that the Sponge Iron Plant in question is having rotary kiln process and would utilize 1,32,000 coal tonnes per annum (TPA) which is a significant quantity of coal consumption in this plant. In addition, 1,76,000 TPA of Iron Ore and 3300 TPA of Dolomite will be used in the rotary kiln as raw material. Under this scenario of coal consumption, it becomes difficult to accept that the Project Proponent will be able to comply with the stipulations made under condition No. 6 (*refer to original judgment*) *subject* to which the NOC was accorded. In fact, whether usage of coal will be violating the condition imposed by the AAI and whether it would lead to significant air pollution in the vicinity needs to be critically examined by regulatory body.

It has been submitted that the Project is now closed from 17th February, 2012 due to non-supply of iron ore and other raw materials. The Judges direct that the project should not be allowed to be reopened till the relevant issues pertaining to the likely emissions of smoke and particulates and its impact on air pollution adjoining to the Airport are critically evaluated.

From the project file submitted by MoEF, it is seen that a letter was addressed to JSPL by MoEF on 1st August, 2011 seeking clarification on the acquisition of excess land and whether there is any change in project profile. From the correspondence which took place between MoEF and JSPL, it is not clear, as to what further action has been taken by MoEF in this regard, the Tribunal, therefore, directed the MoEF to take necessary action in this regard and direct to utilise the excess land for the purpose of afforestation. It also directed the

Competent Authority, that is, CPCB to examine whether the JSPL have provided necessary facilities and measures to comply with the Consent Conditions stipulated by SPCB, Odisha and conditions imposed by AAI (specially Condition No.6 of NOC in view of use of coal). SPCB, Odisha will provide necessary assistance to CPCB to investigate the matter. It appears the "Jharsuguda" air strip has acquired importance by efflux of time. For safety of the air traffic, the Judges also direct AAI to re-examine the Chimney height in view of more advance technology now being available including retrofitting measures to have smokeless stack, if the same is causing obstruction in the operation of the Airport. Till the report of CPCB and fresh clearance from AAI are available and submitted to MoEF for review, the plant will not be allowed to operate. CPCB and AAI should submit their reports to MoEF within a period of 2 months hence and MoEF will take a final decision within one month thereafter regarding re-commissioning of the said plant.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?8220/Shri-S-K-Naik-Vs-Jain-Steel-and-Power-Ltd-and-Others

M/s Kuber Roller Flour Mills v. Rohit Chaudhary & Ors

REVIEW APPLICATION NO. 11 OF 2012

CORAM: Justice A.S. Naidu and Dr. G.K. Pandey

Key words: Review, Kaziranga National Park, No Development Zone, Mining

Application dismissed

Date: 23rd November, 2012

M/s Kuber Roller Flour Mills represented through its proprietor approached this Tribunal under Section 19 of the National Green Tribunal Act, 2010 *inter-alia* praying to review/modify a portion of the judgment dated 7th September, 2012 delivered in *Application No. 38 of 2011 (Rohit Chaudhary Vs. Union of India & Others).*

Mr. Rohit Choudhary, the Applicant of the original application is a resident of village Bokakhat and being concerned about the ecology of the area and future of Indian rhinoceros, elephants and species of

flora and fauna available in Kaziranga National Park, approached this Tribunal in *Application No. 30 of 2011* praying for issuance of directions to the Authorities to regulate quarrying and mining activities which were illegally existing in and around Kaziranga National Park. After going through the report and hearing counsel for the parties, relying upon the ratio decided by number of decisions of the Supreme Court the original application was disposed of directing the Authorities to take positive steps to ensure that no polluting industry should be permitted to operate within the No Development Zone (NDZ). The Judges further directed the Ministry of Environment and Forest (MoEF) and the State Government to prepare a comprehensive action plan and mandatory mechanism for implementation of the conditions stipulated in the 1996 Notification specifying the NDZ and for inspection, verification and monitoring of the prohibition imposed as well as the provisions of Rule 5 of the Environment (Protection) Act, 1986 (*Para 34 of the judgment*).

Being aggrieved by a portion of the said direction the Applicant has filed this review application, mainly on the ground that the Flour Mill of the Applicant having been established way back in the year 1989 to 1990, that is, much prior to the issuance of the Notification dated 5th July, 1996 declaring NDZ, in consonance with the decision of the Assam Government, may not be disturbed and the direction issued not to permit operation of the Flour Mill in *para 33 (d) of the judgment* be suitably modified. Even otherwise it is submitted that the 1996 Notification has no retrospective application and should not be made applicable to the industrial units, like that of the Applicant, which are in existence prior to the issuance of the Notification.

Notices were issued to the contesting Respondents and opportunity was granted to file replies if any. Unfortunately no reply was filed on behalf of the MoEF or any of the contesting Respondents, though, time was granted more than once.

There is no dispute that by Notification dated 5th July, 1996, the Ministry of Environment and Forest created an NDZ around Kaziranga National Park.

To determine which of the industries were causing pollution to the environment, this Tribunal directed the Central Pollution Control Board (CPCB) to conduct a survey and submit a detailed report. In *para 3.1.5 of the report* existence of the Flour Mill has been taken

into consideration. Perusal of the entire report gives an impression that the Applicant's unit cannot be given the nomenclature of a non-polluting industry. That apart, perusal of 1996 notification clearly reveals that the Central Government has specifically directed that on and from the date of publication of the Notification, the expansion of the industrial area township infrastructure facilities and other activities which could lead to pollution and congestion shall not be allowed within the NDZ. The Tribunal was not ready to hold that only because a polluting unit was established prior to the notification; it should be permitted to continue with the activities thereby spreading pollution even after the prohibition orders were issued.

In the case in hand it appears that the Assam Pollution Control Board had granted consent to operate to the Applicant's unit till 1999-2000. The said order, which is filed as an annexure, further reveals that the consent was subject to the provisions of clauses of the consent order.

In view of the discussions made above, the Tribunal was not inclined to review its judgment or directions issued at the instance of the Applicant. The Applicant cannot be permitted to function within the NDZ of Kaziranga National Park in the absence of consent. Liberty is however granted to the Applicant to approach the concerned Authorities for granting consent/permission. If such an attempt is made it should be open to the Authorities to consider the Application strictly in consonance with the Rules. On verification if the Authorities are satisfied that the Applicant's unit is a non-polluting one they may consider and pass necessary orders stipulating such conditions as would be deemed just and proper, subject to the conditions imposed in the NDZ Notification.

With the aforesaid observations the Review Application is disposed of.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?8240/Ms-Kuber-Roller-Flour-Mills-Vs-Rohit-Chaudhary-and-Others

M/s Pradip Industries v. Rohit Chaudhary & Ors.

REVIEW APPLICATION NO. 10 OF 2012

CORAM: Justice A.S. Naidu and Dr. G.K. Pandey

Key words: Review, Kaziranga National Park, No Development Zone, Mining

Application dismissed

Date: 23rd November 2012

M/s Pradip Industries (Saw Mill) represented through its proprietor has approached this Tribunal under Section 19 of the National Green Tribunal Act, 2010 *inter-alia* praying to review/modify a portion of the judgment dated 07th September, 2012 delivered in *Application No. 38 of 2011 (Rohit Chaudhary Vs. Union of India and Others)*.

Mr. Rohit Choudhary, the Applicant of the original application is a resident of village Bokakhat and being concerned about the ecology of the area and future of Indian rhinoceros, elephants and species of flora and fauna available in Kaziranga National Park, approached this Tribunal in *Application No. 30 of 2011* praying for issuance of directions to the Authorities to regulate quarrying and mining activities which were illegally existing in and around Kaziranga National Park. After going through the report and hearing counsel for the parties, relying upon the ratio decided by number of decisions of the Supreme Court the original application was disposed of directing the Authorities to take positive steps to ensure that no polluting industry should be permitted to operate within the No Development Zone (NDZ). The Judges further directed the Ministry of Environment and Forests (MoEF) and the State Government to prepare a comprehensive action plan and mandatory mechanism for implementation of the conditions stipulated in the 1996 Notification specifying the NDZ and for inspection, verification and monitoring of the prohibition imposed as well as the provisions of Rule 5 of the Environment (Protection) Act, 1986 (*Para 34 of the judgment*).

Being aggrieved by a portion of the said direction the Applicant has filed this review application, mainly on the ground that the Saw Mill of the Applicant having been established way back in the year 1982 to 1983, that is, much prior to the issuance of the Notification dated 5th July, 1996 declaring NDZ. Further it is submitted that the State Government of Assam after obtaining due permission from the MoEF has setup a “Minor Industrial Estate” (MIE) to regulate installation of Industrial Units. The said Notification specifically stipulates that the Industrial Estate may accommodate all wood based units including

"Saw Mills" which do not use timber brought in from outside the State of Assam as raw material. Relying upon the said Notification, it is submitted that the Saw Mill having been installed in consonance with the decision of the Assam Government, that too much prior to the issuance of Notification declaring NDZ, may not be disturbed and the direction issued not to permit operation of the Saw Mill in para 33 (d) of the judgment be suitably modified. Even otherwise it is submitted that the 1996 Notification has no retrospective application and should not be made applicable to the industrial units, like that of the Applicant, which are in existence prior to the issuance of the Notification.

Notices were issued to the contesting Respondents and opportunity was granted to file replies if any. Unfortunately no reply was filed on behalf of the MoEF or any of the contesting Respondents, though, time was granted more than once.

There is no dispute that the license of the Applicant's unit i.e. M/s Pradip Industries (Saw Mill) was suspended in consonance with the directions issued by the Supreme Court (*supra)*. A perusal of the documents produced by the Applicant further reveals that the license to operate the saw mill, as mandatorily required under the Assam Wood Based Industry (Establishment and Regulations) Rules, 2000, has not been granted till date though registration and license under the Factories Act, 1948 was renewed from time to time. In the absence of the renewal of license in consonance with the aforesaid Rules more particularly Rule 4, of Assam Wood Based Industry (Establishment and Regulations) Rules, 2000, the Applicant's unit cannot be permitted to operate, more so in the NDZ. In view of the discussions made above, the Judges are not inclined to review the judgment at the instance of the Applicant whose license has not been renewed under the statutory Rules. The Applicant cannot be permitted to function within the NDZ of Kaziranga National Park being bereft of the License. Liberty is however granted to the Applicant to approach the concerned Authorities for granting permission. If such an attempt is made it should be open to the Authorities to consider the Application strictly in compliance with the Rules. On verification if the Authorities are satisfied that the Applicant's unit is a non-polluting one they may consider and pass necessary orders stipulating such conditions as would be deemed just and proper but in no case any expansion be permitted.

With the aforesaid observations the Review Application was disposed of.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?8300/Ms-Pradip-Industries-Vs-Rohit-Chaudhary-and-Others

Save Mon Region Federation & Anr. v. Union of India & Ors.

APPEAL NO. 36 OF 2012

CORUM: Justice A.S. Naidu and Dr. G.K. Pandey
Key words: Forest Clearance, Forest land, Hydroelectric project, Stage I clearance

Application disposed off as premature

Date: 23rd November 2012
The order dated 9th April, 2012, passed by Ministry of Environment and Forest granting Stage – I Clearance under the Forest (Conservation) Act, 1980 for diversion of forest land in favour of Nyamjang Chhu Hydroelectric project, Tawang District of Arunachal Pradesh for construction of 780 MW Nyamjang Chuu Hydroelectric project was assailed in this Appeal.

This Tribunal in *Vimal Bhai & Ors.* v. *UoI & Ors.* in *Appeal no. 7/2012* had held that the order granting Stage–I forest clearance by the MoEF could not be appealed before this Tribunal. The present case was squarely covered by the ratio of the aforesaid decision. Accordingly, it was disposed of as premature by granting liberty to the Appellants to pursue their remedies at appropriate stage.

Uttam Bhisso Shetgaonkar v. Goa Coastal Zone Management Authority

APPEAL NO. 41 OF 2012

CORAM: Justice V. R. Kingaonkar and Dr. Devendra Kumar Agrawal
Key words: Stay order
Application disposed on terms

Date: 27th November 2012
By consent of Counsel for the parties, under instructions of the concerned parties, the appeal is being disposed of on following terms.

i) The respondent will issue a fresh notice addressed to the appellant, which will be sent to the appellant as well as his advocate as per the address given by advocate Mr. Yashraj Singh Deora in the appeal memo, by sending the same under registered post (AD) as well as by e-mail. The fresh notice will be issued in the second week of December.

ii) The appellant will be personally heard on the date shown in the notice and no adjournment will be sought by the appellant for the purpose of hearing.

iii) The respondent will decide the issue of encroachment alleged, before second week of January, 2013.

iv) The parties have consented to the above arrangement only in view of compliance required to be made to meet the principles of natural justice. No opinion about the merits of the matter is expressed and it will be decided independently by the respondent.

v) The interim relief is continued subject to condition that the appellant will abide himself to scheduled time for hearing of the matter before the respondent, else the stay will be deemed as vacated, by end of the second week of January 2013.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?8302/Uttam-Bhisso-Shetgaonkar-Vs-Goa-Coastal-Zone-Management-Authority

Shailesh Narvekar & Ors. v. Ministry of Environment and Forest & Ors.

APPEAL NO. 23 OF 2011

CORAM: Justice V. R. Kingaonkar and Dr. Devendra Kumar Agrawal

Key words: Environment Clearance, Slum Rehabilitation Authority, Redevelopment, Public Hearing

Application dismissed

Date: 5th December 2012
The Environment Clearance (EC) dated 23rd March, 2009, granted by the State of Maharashtra, through Secretary- Environment Department (Respondent No. 1) was challenged in this appeal.

The Appellants were Slum Dwellers of Nehru Nagar locality, situated on Dr. Annnie Besant Road, Mumbai. They claim to be stake holders in development of the plots of land bearing FP no. 1076 and 1078 of TPS- IV of Mahim Division and CS 286 (Pt), and village Lower Parel Division, Worli.

Briefly stated, case of the appellants is that the M/s Skylark Builders (Respondent No.3) had applied for grant of sanction to Slum Rehabilitation Authority, (SRA) for permission to execute Slum Redevelopment Project on above mentioned plots. The Slum Rehabilitation Authority (Respondent No. 2) accorded the sanction. A Letter of Intent (LOI) was issued to Respondent No. 3 and Intimation of Approval (IOA) was also issued without obtaining EC from the Ministry of Environment and Forests (MoEF) which was necessary under the prevailing Environment Impact Assessment (EIA) Notification. Thus, without compliance of the statutory and mandatory provisions of the Law and guidelines under the MoEF Notification dated 27th January, 1994 that was applicable for the SRD project. Even so, the Respondent No. 3 i.e. Developers commenced demolition of the slums and subsequently started construction of buildings at the site. The appellants have come out with a case that the grant of EC to the three amalgamated projects started by the Respondent No. 3 (project proponent) is illegal and liable to be quashed.

The Appellants seek declaration that the rehabilitation project is governed by EIA Notification dated 27th January, 1994, and as such required procedure of Public Hearing (PH) as well as proper assessment of Environmental Impact was essential pre-condition before approval of the project. They allege that the Respondent No. 3 suppressed materials facts and obtained the EC dated 23rd March, 2009, by misrepresentation, claiming it to be covered under EIA Notification dated 14th September, 2006.

The Delhi High Court held that the appellants have *locus standi* to challenge the EC. The main issue, therefore, is about applicability of the Notification pertaining to requirement of the PH.

Though the work of construction was started by the Respondent No. 3 in respect of the first SRD project yet there was no EC obtained for such work. The second Notification of 2004, will cover any new construction project which had been undertaken without EC.

What was apparent from the record was that the Respondent No. 3 amalgamated all the three projects in order to overcome the technical difficulty of the necessary compliance required to be made as per the Notification dated 7th July, 2004. The Respondent No. 3 submitted afresh project for grant of the EC after the 3rd Notification dated 14th September, 2006. The Notification dated 14th September, 2006, of course, required grant of EC to any construction project of 20000 sq. meters area as shown in interim No. 8(a) of Schedule-I appended thereto. The amalgamated project was therefore required to be cleared by the MoEF being in the Category A. It appears that subsequently the MoEF circular dated 13th October, 2007 was issued. Thereafter, new guidelines were issued for EIA Appraisal.

On careful consideration of the documents on the record, it is explicit that the MoEF returned the proposal to the State Environmental Impact Assessment Authority (SEIAA) after constitution of the latter authority as per the Notification. The fall out of such subsequent development was that the SEIAA was required to assess the EIA and take independent decision. In other words, the requirement of PH could be done away with by the SEIAA. The SEIAA called upon the Respondent No. 3 to furnish certain documents and information. The Respondent No. 3 complied with such direction. The three amalgamated projects were approved by the SDA. The SEIAA considered the amalgamated project in its 7th meeting held on 18th March, 2009. The SEIAA thereafter granted the EC dated 23rd March, 2009. It appears that the minutes of the said meeting were drawn on the same day i.e. 18th March, 2009. It further appears that Shri Sanjay Khandare, the then Member Secretary of the MPCB was present in that meeting as an invitee. Not only that, but previously the project was considered in meeting dated 23rd November, 2008. It was decided in the meeting dated 23rd November, 2008, by the SEIAA that the three amalgamated projects could by treated in Category B-2 and the project proponent was requested to give additional information as shown against item

at Serial No. 12 of the Minutes. The Respondent No. 3 gave needed information to the SEIAA.

In the opinion of the Tribunal, when the work of assessment of the SRD project was transferred to the SEIAA and the same was evaluated as Category B-2 project, there was no necessity to conduct PH. That apart, the appellants have not demonstrated through the appeal memo as to what kind of objections could have been raised by them in such process of PH. Unless it is shown that they have been seriously prejudiced and there legal right is adversely affected, mere technical ground of the absence of PH will be of no much avail to them. In the Tribunal's opinion, there was no legal impediment when the EC was granted to the Respondent No. 3 without conducting the PH as on 18th March, 2009. The impugned EC could not be, therefore, quashed and set aside due to absence of PH. In their opinion, the Notification dated 14th September, 2006, and circular dated 23rd October, 2007 issued by the MoEF would be applicable to the amalgamated project. It cannot be said that the Respondent No. 3 committed any illegality by joining the three projects.The appeal was therefore found by the Tribunal to be of merits.

It further opined that when the MPCB decided to take action against the Respondent No. 3 for alleged violation of conditions in accordance that the EIA Notification dated 27th January, 1994; the said action should not have been aborted only because subsequently the EC was granted by the SEIAA. It appears that the MPCB issued show cause notice dated 11th February, 2009 to the Respondent No. 3. The Respondent No.3 admitted in clear terms that the construction was started without the grant of EC.

The Maharashtra State Pollution Control Board (MPCB) issued the stop work order dated 30th March, 2009. The stop work order bears signature of Shri Sanjay Khandare, then Member Secretary of MPCB. It is an admitted fact that Shri Sanjay Khandare attended the meeting of the SEIAA for grant of EC. It was his duty to point out the fact that show cause notices had been issued on 11th February, 2009, and dated 29th January, 2009. Shri Sanjay Khandare did not raise any issue in discussion/deliberations of the committee of the SEIAA. In fact, it was necessary to take suitable action again the Respondent No. 3 for the construction work which, admittedly, was done without grant of the EC by the Competent Authority. It is difficult to appreciate his silence in the meeting dated 18th March, 2009 held by the SEIAA. He may be the special invitee but there was

no legal embargo on him to keep silence. He failed in his duty to point out that show cause notices were already issued by his office to the Respondent No. 3 and that the lapses were admitted by the Respondent No. 3.

The Judges deem it proper, therefore, to request the Chief Secretary, Maharashtra State Government, to take suitable action against Shri Sanjay Khandare for such kind of conduct and intentional suppression of the material facts. They also deem it proper to direct the MPCB and SEIAA to take proper penal action against the Respondent No. 3 for commencement of the construction work without obtaining the prior EC.

In result, the appeal is dismissed with no order as to costs. SEIAA and MPCB shall take suitable penal action against the Respondent No. 3 for the lapses, including the commencement of the work without the EC and prior consent of the MPCB, within period of four months after receipt of the copy of the judgment.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/?8320/Narvekar-and-Others-Vs-Ministry-of-Environment-and-Forest-and-Others

Vinod R. Patel v. Gujarat State Level Impact Assessment Authority & Ors.

APPEAL NO. 25 OF 2012

CORAM: Justice V. R. Kingaonkar and Dr. Devendra Kumar Agrawal
Key words: Limitation, Condonation of delay
Appeal Allowed

Date: 9th August, 2012
ORDER
This was an application for condonation of delay. The delay was said to be 48 days. According to the Appellants, the delay was caused in filing of the appeal due to the fact that initially the establishment of National Green Tribunal was not within their knowledge, they were required to organize a meeting and after due consultation of villagers, a common decision was arrived at, to file the appeal. They alleged that the process of taking common decision is a contributory cause for the delay. The application was strongly opposed on behalf of the project proponent. The response of the project proponent i.e., Respondent No. 3 was filed by way of counter. It was the contention

of the Respondent No. 3 that the delay was not properly explained. It is alleged further that the Appellants were well aware of the prescribed period of limitation and yet did not approach the National Green Tribunal within a reasonable time. It is contended that the delay of 58 days is actually caused from date of the order impugned in the Appeal. It is categorically denied that time was consumed in calling a meeting and reaching a common decision. According to the Respondent No. 3, the appellants are exporting agricultural produce to foreign countries and were having means to approach the National Green Tribunal within the prescribed limitation and yet failed to do so.

In the opinion of the Tribunal, this was not a case where based upon ignorance of law, the delay was sought to be condoned. In fact, the main ground of the Appellants was that they were required to organize a meeting of villagers, thereafter a common decision was taken and the process for filling of the appeal was undertaken. In its opinion, one could not overlook the fact that establishment of new Tribunal like NGT could not be immediately noticed by a common man. Secondly, the fact that the Appellants were required to assemble together for taking appropriate action was found to be a satisfactory reason to explain the delay. Section 16 of the NGT Act, 2010 provide that delay up to 60 days beyond the prescribed limitation period may be condoned on satisfaction of the Tribunal that the Appellant has been prevented from filling of the Appeal within a prescribed period.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?8360/Vinod-R-Patel-Vs-Gujarat-State-Level-Impact-Assessment-Authority-and-Others

Sajal Kumar & Anr. v. Union of India & Ors.

APPLICATION NO. 131 OF 2012

CORAM: Justice A.S. Naidu and Dr. G.K. Pandey

Key words: Environmental Clearance, Mining, Limitation, Condonation of delay

Application allowed

Date: 18th December 2012
The order dated 24th May, 2012, passed by Ministry of Environment and Forests (MoEF) granting Environment Clearance (EC) in favour of M/s Bharat Aluminium Company Ltd. for setting up of Durgapur-II Taraimar Opencast (3 MTPA) - cum- Underground (1 MTPA) Coalmine project having combined capacity 4 MTPA with Captive Washery (4 MTPA) in a Mine Lease (ML) area of 1070 hac in villages Taraimar, Bayasi Basti, Bayasi Colony, Dharma Colony, and Rupunga, Tehsil Dharamjaigarh, District Raigarh Chhattisgarh. The said Appeal is filed invoking the jurisdiction of this Tribunal under Section 16(h) read with Section 14(1) and Section 18(1) of the National Green Tribunal Act, 2012 (NGT Act).

In the case in hand the impugned order granting EC was passed by MoEF on 24th May, 2012. In consonance with Section 16 of the NGT Act, 2010 the Appeal should have been filed within 30 days that is on or before 13th July, 2012. Admittedly this Appeal had been filed on 30th August, 2012 thus the same was beyond the time prescribed under the Act.

In the Application filed for condonation of delay, the Applicant took the stand that he received no intimation with regard to the aforesaid order from any quarter. Section 16 of the NGT Act, 2010, as stated earlier clearly stipulates that an Appeal assailing the order granting Environmental Clearance (EC) has to be filed within 30 days from the date on which the order or the decision or direction or determination is communicated. In the instant case, averments made in the memorandum of appeal, as well as the Application for condonation of delay, set out the reasons why the appeal could not be filed by the Appellants within time. In the view of the Judges, these were sufficient reasons for condoning the delay in filing the appeal, and no deliberate laches could be attributed to the Applicants.

The history of the case and the submissions advanced by the parties, led to the conclusion that in a case like the present one, where the environmental impact of the project on local population in terms of environmental implications, has to be assessed, the approach of this Tribunal, especially set up for the said purpose, should be literal and not “hyper-technical”.

It transpired that the website of the MoEF uploads the orders granting environmental clearance long after they have been passed and invariably after the expiry period to 30 days which is the limitation for filing appeals. As a result, the persons who desire to

file an appeal, and who are located outside Delhi, are unable to file them within time. If a strict construction has to be placed on the proviso to Section 16 of the NGT Act, 2010, then it would be mandatory for MoEF to disclose on its website not only the information about the order granting environmental clearance in each case, but the entire order as well, not later than five days after the date of the order granting such clearance. This is because an aggrieved person, not being privy to the order granting environmental clearance, is unlikely to learn of the order within a reasonable time thereafter, except by looking for it on the website of the MoEF.

On the basis of discussions made above and on being satisfied that Appellants were prevented from filing the Appeal due to sufficient reasons, the Tribunal allowed the application and condoned the delay.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?8361/Sajal-Kumar-and-Another-Vs-Union-of-India-and-Others

Ankur v. Maharashtra State Environment Impact Assessment Authority

APPLICATION NO. 30 OF 2012

CORAM: Justice V. R. Kingaonkar and Dr. Devendra Kumar Agrawal

Key words: Environmental Clearance, Mining, Public Trust, Locus standi, Dumping

Application dismissed at admission stage

Date: 18th December 2012

This was an Application filed under Sections 14 and 15 of the National Green Tribunal Act, 2010 (NGT Act). The Applicant claimed to be a Public Trust. The Application was filed through its founder member. The applicant sought revocation of the Environmental Clearance (EC) dated 27th February, 2009, granted to M/s Minerals & Metals (Respondent No. 3) for its iron ore open mine situated at Village Kalane, Taluka Dodamarg (District Sindhudurg) and for

restoration of the environment of the area by removal of mining waste dumped at adjoining agricultural lands of the villagers.

Briefly stated, case of the applicant is that the Respondent No. 3 has violated conditions of the EC dated 27th February 2009. The mining area of 32.25 hectares is permitted for conducting the mining activity by the Respondent No. 3. The Respondent No. 3, however, encroached on the adjoining agricultural land as well as common land of the villagers. The Respondent No. 3 also has dumped the mining waste on adjoining land bearing Survey No. 60. With the result, about 10-12 acres of that land has been buried under the mining waste.

The Applicant further alleges that though several complaints were made by the villagers to various authorities yet the Respondent No. 3 i.e. project proponent continued to commit breach of the conditions of the EC. The site inspection carried out by Deputy Director, Directorate of Geology and Mining revealed that the mining activity was being carried out beyond the leased area. Respondent No. 3, due to dumping of the solid waste, has overburdened the adjoining agricultural lands. The mining activity was being carried out without complying with the conditions of the EC. The air and noise pollution caused by the mining activity was hazardous to health of the villagers. The Respondent No. 3 had allegedly destroyed the agricultural land of the farmers and also caused damage to the ecology and environment of the area. The Applicant further stated that by applying precautionary principle the harm caused to the environment is required to be prevented by revocation of the EC dated 27th January, 2009 and also by restoration of the environment.

First, regarding whether the Applicant has *locus standi* to file the Application, being an aggrieved person within the meaning of Section 18, it was at the outset observed that a person entitled to file application under Section 18, besides any aggrieved person as shown under Section 16 of the National Green Tribunal Act (NGT Act), should fall within categories mentioned in Section 18 Sub clause (2). It is pertinent to note that Section 16 of the NGT Act deals with jurisdiction of the Tribunal to deal with appeals. The present application is filed under Section 14 and 15 of the NGT Act. Therefore, the applicant must show that he is the fit person to submit such an application.

According to the Applicant, the Application could be filed by the Applicant Trust which represented the affected agriculturists. It was submitted by the Counsel that the Applicant is a duly registered Trust and therefore entitled to file such application because the mining activity of Respondent No. 3 was detrimental to the interest

of the adjoining land holders in particular and the villagers in general. The Applicant placed on record copy of the resolution which authorizes Vaishali Partil to take necessary steps in order to protect" Constitutional Rights of the farmers". The documents submitted showed that objects of the said Trust and Ankur Trust were different. That trust was not formed with an object to help the agriculturists. What appeared from the record is that "Ankur" is the trust registered as per registration E-1809 (Pune). There was also no material to show that said Trust (Ankur) was formed with an object to protect constitutional rights of the farmers. It held, therefore, that the Applicant had no *locus standi* to file the instant Application.

Apropos whether Respondent No. 3 has expanded its mining activity by dumping the mining waste on adjacent land and therefore has caused loss to 10-12 acres area of agricultural lands, it appeared that Respondent No. 3 had obtained a part of Survey No. 60 on basis of a private agreement. It further appeared that a part of Survey No. 60 was being used by the project proponent as per consent letter given by the owner. The Applicant on the other hand, failed to prove that Respondent No. 3 dumped the mining waste on the land of any other farmer. Nor there is any site inspection plan placed on record. On the other hand, the project proponent placed on record documents which showed that he converted the agricultural lands for non- agricultural use prior to the alleged dumping of the mining waste on the part of Survey No. 60. It was also shown that the Indian Bureau of Mines (IBM) approved this modified plan.

It was apparent from the record that Respondent No. 3 carried out certain excessive mining activity by way of extraction of the ore beyond the permissible limits. It was seen that the District Collector had taken necessary action for recovery of the penalty and price of the ore illegally extracted from the mine in question. The issue was *sub judice* in the proceedings initiated by the District Collector under the Maharashtra Land Revenue Code 1966, and under Section 21 of the MMRD Act, 1957.

The Tribunal felt that the Application had been filed without any scientific data or report of an expert. It failed to prove the allegation in the context of over dumping or loss to the agricultural produce or the trees. The map prepared on basis of Google map or the information by way of affidavits of interested persons could not be treated as reliable and acceptable data.

The Tribunal, however, did not think it necessary to impose costs on the Applicant because there was in fact extraction of more than permitted quantity of the ore from the leased mine. It was, in its opinion, proper to direct the parties to bear their own costs.

In view of the foregoing discussion, the Tribunal was of the opinion that the Application was without merits. It was left to the Competent Authority to take proper action against the Respondent No. 3 for recovery of the value of the ore extracted from the mine, beyond the permissible limits.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?8362/Ankur-Vs-Maharashtra-State-Environment-Impact-Assessment-Authority

Rudresh Naik v. State of Goa & Anr.

APPLICATION NO. 172 OF 2012

CORAM: Justice A.S. Naidu and Dr. G.K. Pandey

Key words: Non-compliance of judgment, Goa Coastal Zone Management Authority

Application disposed with directions

Date: 18th December 2012

This miscellaneous application was filed *inter-alia* praying to initiate proceedings under Section 26 read with Section 28 of the National Green Tribunal Act, 2010 (NGT Act) and direct appropriate action against the Respondents for non-compliance of the judgment passed by this Tribunal in Appeal No. 23 of 2012.

The order dated 11th April, 2012 passed by Goa Coastal Zone Management Authority (GCZMA) was assailed by the Appellant in Appeal No. 23 of 2012. By the said order GCZMA had directed the Appellant to make good the geological and ecological loss caused at the site, by back filling the cut portion and the cavity formed and to restore the area to its original status and carry out plantation in the area, within thirty days from the date of the receipt of the order. The major issue before this Tribunal was that the order was passed without giving an opportunity of hearing and suffered from the vice of non-consideration of vital materials. Owing to the continuous

absence of the Respondents, this Tribunal had no other way out but to dispose of the case in their absence, directing the petitioner to deposit a sum of rupees one lakh. On depositing the said amount, Respondent authorities were directed to afford an opportunity of hearing to the Appellant and decide the matter once again in accordance with law on its own merits.

This Tribunal took a serious view with regard to the fact that in spite of the above directions, the authorities failed to comply with the operative portion of the order i.e. to grant an opportunity of hearing within the time fixed.

On the basis of the agreement arrived at between the parties, the Tribunal directed that the Appellant was to deposit a further sum of Rs. 50,000 with the authorities within a period of three weeks. The authorities were to close all the proceedings which have been initiated against the Applicant in respect of the disputed lands pending as on date. The directions issued by the Member Secretary in his order dated 11th April, 2012 would be deemed to have been fully complied with. The authorities were directed to utilize the aforesaid sum of Rs. 50,000 to be deposited and Rs. 1 lakh (which had already been deposited by the Applicant) towards restoring the geological and ecological loss caused to the area and also for afforestation in the affected area.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?8363/Rudresh-Naik-Vs-State-of-Goa-and-Another

Supreme Court Group Housing Society & Anr. v. All India Panchayat Parishad & Ors.

APPLICATION NO. 34 OF 2011

CORAM: Justice A.S. Naidu and Dr. G.K. Pandey

Key words: Public Interest Litigation, Noise Pollution

Application disposed of with observations

Date: 18th December 2012

The main issue raised in this petition pertained to the noise pollution caused due to use of loud speakers, DJ systems, Music Systems, public address system etc. during weddings, receptions, parties and other functions arranged in the premises of “All India Panchayat Parishad” situated in a strategic point of the Housing Societies thereby violating the terms of allotment of the said premises. It was averred that All India Panchayat Parishad had let out the adjacent land for marriages, parties etc., which were held almost every day until past midnight.

Noise pollution not only causes annoyance, but also leads to significant adverse health impacts like rise of blood pressure, hearing impairment, neurological disorders etc. Children are most susceptible to noise pollution which may slow down the process of development of their mental capacity. As noise has been regarded as a pollutant, the Ministry of Environment and Forests had issued the Noise Pollution (Regulations and Control) Rules, 2000 under the provision of the Environment (Protection) Act, 1986. These Rules provide for ambient quality standards in respect of noise for different areas / zones as specified in the schedule.

As per the laid down procedure, any person who requires using a loud speaker or public address system is required to take prior permission from the concerned authority (Police), and the use should be prohibited between 10.00 pm to 6.00 am. In spite of the existing provisions and the procedures laid down, it was alleged that the All India Panchayat Parishad had been letting out its premises for the above-mentioned purposes. Besides loud-speakers and music systems, a heavy duty electricity generator was also installed which caused both noise and air pollution. It was further alleged in the petition, that in spite of repeated complaints to the police, no action had been taken to stop the noise pollution emanating from the use of loudspeakers, music systems and other sources.

Pollution is essentially wrongful contamination of the environment which causes material injury to rights of an individual, and noise can well be regarded as a pollutant because it contaminates environment, with high decibel noise intensity, causing nuisance and adversely affecting the health of a person and would therefore offend Article 21 of the Constitution if it exceeds a reasonable limit.

This Tribunal, noting the continual breach of the Rules, had directed the Divisional Commissioner (East Delhi) to coordinate and convene a meeting of all the concerned officers.

In compliance with the directions of the Tribunal, a detailed Action Plan had been prepared at the meeting. This Action Plan should by and large be able to reduce/mitigate noise pollution. The Tribunal suggested a few modifications to this, and disposed of the matter.

Link for the original judgment:

http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/case_summaries/?8364/Supreme-Court-Group-Housing-Society-and-Another-Vs-All-India-Panchayat-Parishad-and-Others

Annexure I

The National Green Tribunal Act, 2010

Act title: NO. 19 OF 2010

An Act to provide for the establishment of a National Green Tribunal for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto.AND WHEREAS India is a party to the decisions taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972, in which India participated, calling upon the States to take appropriate steps for the protection and improvement of the human environment;AND WHEREAS decisions were taken at the United Nations Conference on Environment and Development held at Rio de Janeiro in June, 1992, in which India participated, calling upon the States to provide effective access to judicial and administrative proceedings, including redress and remedy and to develop national laws regarding liability and compensation for the victims of pollution and other environmental damage;AND WHEREAS in the judicial pronouncement in India, the right to healthy environment has been construed as a part of the right to life under article 21 of the Constitution;AND WHEREAS it is considered expedient to implement the decisions taken at the aforesaid conferences and to have a National Green Tribunal in view of the involvement of multi-disciplinary issues relating to the environment.BE it enacted by Parliament in the Sixty-first Year of the Republic of India as follows:

Section 1. Short title and commencement. - (1) This Act may be called the National Green Tribunal Act, 2010.(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Section 2. Definitions. - (1) In this Act, unless the context otherwise requires,-

(a) "accident" means an accident involving a fortuitous or sudden or unintended occurrence while handling any hazardous substance or

equipment, or plant, or vehicle resulting in continuous or intermittent or repeated exposure to death, of, or, injury to, any person or damage to any property or environment but does not include an accident by reason only of war or civil disturbance;

(b) "Chairperson" means the Chairperson of the National Green Tribunal;

(c) "environment" includes water, air and land and the inter-relationship, which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property;

(d) "Expert Member" means a member of the Tribunal who, is appointed as such, and holds qualifications specified in sub-section (2) of section 5, and, is not a Judicial Member;

(e) "handling", in relation to any hazardous substance, means the manufacture, processing, treatment, package, storage, transportation, use, collection, destruction, conversion, offering for sale, transfer or the like of such hazardous substance;

(f) "hazardous substance" means any substance or preparation which is defined as hazardous substance in the Environment (Protection) Act, 1986, and exceeding such quantity as specified or may be specified by the Central Government under the Public Liability Insurance Act, 1991;

(g) "injury" includes permanent, partial or total disablement or sickness resulting out of an accident;

(h) "Judicial Member" means a member of the Tribunal who is qualified to be appointed as such under sub-section (1) of section 5 and includes the Chairperson;

(i) "notification" means a notification published in the Official Gazette;

(j) "person" includes-(i) an individual,(ii) a Hindu undivided family, (iii) a company,(iv) a firm,(v) an association of persons or a body of individuals, whether incorporated or not, (vi) trustee of a trust,(vii) a local authority, and(viii) every artificial juridical person, not falling within any of the preceding sub-clauses;

(k) "prescribed" means prescribed by rules made under this Act;

(l) "Schedule" means Schedules I, II and III appended to this Act;

(m) "substantial question relating to environment" shall include an instance where,-(i) there is a direct violation of a specific statutory environmental obligation by a person by which,- (A) the community at large other than an individual or group of individuals is affected or likely to be affected by the environmental consequences; or(B)

the gravity of damage to the environment or property is substantial; or(C) the damage to public health is broadly measurable;(ii) the environmental consequences relate to a specific activity or a point source of pollution;

(n) "Tribunal" means the National Green Tribunal established under section 3;

(o) "workman" has the meaning assigned to it in the Workmen's Compensation Act, 1923.

(2) The words and expressions used in this Act but not defined herein and defined in the Water (Prevention and Control of Pollution) Act, 1974, the Water (Prevention and Control of Pollution) Cess Act, 1977, the Forest (Conservation) Act, 1980, the Air (Prevention and Control of Pollution) Act, 1981, the Environment (Protection) Act, 1986, the Public Liability Insurance Act, 1991 and the Biological Diversity Act, 2002 and other Acts relating to environment shall have the meaning, respectively, assigned to them in those Acts.

(CHAPTER II) ESTABLISHMENT OF THE TRIBUNAL

Section 3. Establishment of Tribunal. - The Central Government shall, by notification, establish, with effect from such date as may be specified therein, a Tribunal to be known as the National Green Tribunal to exercise the jurisdiction, powers and authority conferred on such Tribunal by or under this Act.

Section 4. Composition of Tribunal. - (1) The Tribunal shall consist of- (a) a full time Chairperson;(b) not less than ten but subject to maximum of twenty full time Judicial Members as the Central Government may, from time to time, notify;(c) not less than ten but subject to maximum of twenty full time Expert Members, as the Central Government may, from time to time, notify.

(2) The Chairperson of the Tribunal may, if considered necessary, invite any one or more person having specialised knowledge and experience in a particular case before the Tribunal to assist the Tribunal in that case.

(3) The Central Government may, by notification, specify the ordinary place or places of sitting of the Tribunal, and the territorial jurisdiction falling under each such place of sitting.

(4) The Central Government may, in consultation with the Chairperson of the Tribunal, make rules regulating generally the practices and procedure of the Tribunal including-(a) the rules as to the persons who shall be entitled to appear before the Tribunal;(b)

the rules as to the procedure for hearing applications and appeals and other matters [including the circuit procedure for hearing at a place other than the ordinary place of its sitting falling within the jurisdiction referred to in sub-section (3)], pertaining to the applications and appeals;(c) the minimum number of Members who shall hear the applications and appeals in respect of any class or classes of applications and appeals:

Provided that the number of Expert Members shall, in hearing an application or appeal, be equal to the number of Judicial Members hearing such application or appeal;(d) rules relating to transfer of cases by the Chairperson from one place of sitting (including the ordinary place of sitting) to other place of sitting.

Section 5. Qualifications for appointment of Chairperson, Judicial Member and Expert Member. - (1) A person shall not be qualified for appointment as the Chairperson or Judicial Member of the Tribunal unless he is, or has been, a Judge of the Supreme Court of India or Chief Justice of a High Court:Provided that a person who is or has been a Judge of the High Court shall also be qualified to be appointed as a Judicial Member.

(2) A person shall not be qualified for appointment as an Expert Member, unless he,-(a) has a degree in Master of Science (in physical sciences or life sciences) with a Doctorate degree or Master of Engineering or Master of Technology and has an experience of fifteen years in the relevant field including five years practical experience in the field of environment and forests (including pollution control, hazardous substance management, environment impact assessment, climate change management, biological diversity management and forest conservation) in a reputed National level institution; or(b) has administrative experience of fifteen years including experience of five years in dealing with environmental matters in the Central or a State Government or in a reputed National or State level institution.

(3) The Chairperson, Judicial Member and Expert Member of the Tribunal shall not hold any other office during their tenure as such.

(4) The Chairperson and other Judicial and Expert Members shall not, for a period of two years from the date on which they cease to hold office, accept any employment in, or connected with the management or administration of, any person who has been a party to a proceeding before the Tribunal under this Act:Provided that nothing contained in this section shall apply to any employment under the Central Government or a State Government or local authority or in any statutory authority or any corporation established by or under any Central, State or Provincial Act or a

Government company as defined in section 617 of the Companies Act, 1956.

Section 6. Appointment of Chairperson, Judicial Member and Expert Member. - (1) Subject to the provisions of section 5, the Chairperson, Judicial Members and Expert Members of the Tribunal shall be appointed by the Central Government.

(2) The Chairperson shall be appointed by the Central Government in consultation with the Chief Justice of India.

(3) The Judicial Members and Expert Members of the Tribunal shall be appointed on the recommendations of such Selection Committee and in such manner as may be prescribed.

Section 7. Term of office and other conditions of service of Chairperson, Judicial Member and Expert Member. - The Chairperson, Judicial Member and Expert Member of the Tribunal shall hold office as such for a term of five years from the date on which they enter upon their office, but shall not be eligible for re-appointment:Provided that in case a person, who is or has been a Judge of the Supreme Court, has been appointed as Chairperson or Judicial Member of the Tribunal, he shall not hold office after he has attained the age of seventy years:Provided further that in case a person, who is or has been the Chief Justice of a High Court, has been appointed as Chairperson or Judicial Member of the Tribunal, he shall not hold office after he has attained the age of sixty-seven years:Provided also that in case a person, who is or has been a Judge of a High Court, has been appointed as Judicial Member of the Tribunal, he shall not hold office after he has attained the age of sixty-seven years:Provided also that no Expert Member shall hold office after he has attained the age of sixty-five years.

Section 8. Resignation. - The Chairperson, Judicial Member and Expert Member of the Tribunal may, by notice in writing under their hand addressed to the Central Government, resign their office.

Section 9. Salaries, allowances and other terms and conditions of service. - The salaries and allowances payable to, and the other terms and conditions of service (including pension, gratuity and other retirement benefits) of, the Chairperson, Judicial Member and Expert Member of the Tribunal shall be such as may be prescribed:Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson, Judicial

Member and Expert Member shall be varied to their disadvantage after their appointment.

Section 10. Removal and suspension of Chairperson, Judicial Member and Expert Member. - (1) The Central Government may, in consultation with the Chief Justice of India, remove from office of the Chairperson or Judicial Member of the Tribunal, who,-(a) has been adjudged an insolvent; or(b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or(c) has become physically or mentally incapable; or(d) has acquired such financial or other interest as is likely to affect prejudicially his functions; or(e) has so abused his position as to render his continuance in office prejudicial to the public interest.

(2) The Chairperson or Judicial Member shall not be removed from his office except by an order made by the Central Government after an inquiry made by a Judge of the Supreme Court in which such Chairperson or Judicial Member has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(3) The Central Government may suspend from office the Chairperson or Judicial Member in respect of whom a reference of conducting an inquiry has been made to the Judge of the Supreme Court under sub-section (2), until the Central Government passes an order on receipt of the report of inquiry made by the Judge of the Supreme Court on such reference.

(4) The Central Government may, by rules, regulate the procedure for inquiry referred to in sub-section (2).

(5) The Expert Member may be removed from his office by an order of the Central Government on the grounds specified in sub-section (1) and in accordance with the procedure as may be notified by the Central Government:Provided that the Expert Member shall not be removed unless he has been given an opportunity of being heard in the matter.

Section 11. To act as Chairperson of Tribunal or to discharge his functions in certain circumstances. - In the event of the occurrence of any vacancy in the office of the Chairperson of the Tribunal, by reason of his death, resignation or otherwise, such Judicial Member of the Tribunal as the Central Government may, by notification, authorise in this behalf, shall act as the Chairperson until the date on which a new Chairperson is appointed in accordance with the provisions of this Act.

Section 12.Staff of Tribunal. - (1) The Central Government shall determine the nature and categories of the officers and other employees required to assist the Tribunal in the discharge of its functions.

(2) The recruitment of the officers and other employees of the Tribunal shall be made by the Chairperson in such manner as may be prescribed.

(3) The officers and other employees of the Tribunal shall discharge their functions under the general superintendence of the Chairperson.

(4) The salaries and allowances and conditions of service of the officers and other employees of the Tribunal shall be such as may be prescribed.

13. Financial and administrative powers of Chairperson. - The Chairperson of the Tribunal shall exercise such financial and administrative powers as may be vested in him under the rules made by the Central Government:Provided that the Chairperson may delegate such of his financial and administrative powers, as he may think fit, to any Judicial Member or Expert Member or officer of the Tribunal subject to the condition that the Member or such officer, while exercising such delegated power, continues to act under the direction, control and supervision of the Chairperson.

(CHAPTER III) JURISDICTION, POWERS AND PROCEEDINGS OF THE TRIBUNAL

Section 14. Tribunal to settle disputes. - (1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.

(2) The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) and settle such disputes and pass order thereon.

(3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose:Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.

Section 15. Relief, compensation and restitution. - (1) The Tribunal may, by an order, provide,-(a) relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule I (including accident occurring while handling any hazardous substance); (b) for restitution of property damaged; (c) for restitution of the environment for such area or areas, as the Tribunal may think fit.

(2) The relief and compensation and restitution of property and environment referred to in clauses (a), (b) and (c) of sub-section (1) shall be in addition to the relief paid or payable under the Public Liability Insurance Act, 1991.

(3) No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose:Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.

(4) The Tribunal may, having regard to the damage to public health, property and environment, divide the compensation or relief payable under separate heads specified in Schedule II so as to provide compensation or relief to the claimants and for restitution of the damaged property or environment, as it may think fit.

(5) Every claimant of the compensation or relief under this Act shall intimate to the Tribunal about the application filed to, or, as the case may be, compensation or relief received from, any other court or authority.

Section 16. Tribunal to have appellate jurisdiction. - Any person aggrieved by,-(a) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under section 28 of the Water (Prevention and Control of Pollution) Act, 1974;(b) an order passed, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government under section 29 of the Water (Prevention and Control of Pollution) Act, 1974;(c) directions issued, on or after the commencement of the National Green Tribunal Act, 2010, by a Board, under section 33A of the Water (Prevention and Control of Pollution) Act, 1974;(d) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under section 13 of the Water (Prevention and Control of Pollution) Cess Act, 1977;(e) an order or decision made,

on or after the commencement of the National Green Tribunal Act, 2010, by the State Government or other authority under section 2 of the Forest (Conservation) Act, 1980;(f) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the Appellate Authority under section 31 of the Air (Prevention and Control of Pollution) Act, 1981;(g) any direction issued, on or after the commencement of the National Green Tribunal Act, 2010, under section 5 of the Environment (Protection) Act, 1986;(h) an order made, on or after the commencement of the National Green Tribunal Act, 2010, granting environmental clearance in the area in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986;(i) an order made, on or after the commencement of the National Green Tribunal Act, 2010, refusing to grant environmental clearance for carrying out any activity or operation or process under the Environment (Protection) Act, 1986;(j) any determination of benefit sharing or order made, on or after the commencement of the National Green Tribunal Act, 2010, by the National Biodiversity Authority or a State Biodiversity Board under the provisions of the Biological Diversity Act, 2002, may, within a period of thirty days from the date on which the order or decision or direction or determination is communicated to him, prefer an appeal to the Tribunal:Provided that the Tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed under this section within a further period not exceeding sixty days.

Section 17. Liability to pay relief or compensation in certain cases. - (1) Where death of, or injury to, any person (other than a workman) or damage to any property or environment has resulted from an accident or the adverse impact of an activity or operation or process, under any enactment specified in Schedule I, the person responsible shall be liable to pay such relief or compensation for such death, injury or damage, under all or any of the heads specified in Schedule II, as may be determined by the Tribunal.

(2) If the death, injury or damage caused by an accident or the adverse impact of an activity or operation or process under any enactment specified in Schedule I cannot beattributed to any single activity or operation or process but is the combined or resultant effect of several such activities, operations and processes, the Tribunal may, apportion the liability for relief or compensation amongst those responsible for such activities, operations and processes on an equitable basis.

(3) The Tribunal shall, in case of an accident, apply the principle of no fault.

Section 18. Application or appeal to Tribunal. - (1) Each application under sections 14 and 15 or an appeal under section 16 shall, be made to the Tribunal in such form, contain such particulars, and, be accompanied by such documents and such fees as may be prescribed.

(2) Without prejudice to the provisions contained in section 16, an application for grant of relief or compensation or settlement of dispute may be made to the Tribunal by-(a) the person, who has sustained the injury; or(b) the owner of the property to which the damage has been caused; or(c) where death has resulted from the environmental damage, by all or any of the legal representatives of the deceased; or(d) any agent duly authorised by such person or owner of such property or all or any of the legal representatives of the deceased, as the case may be; or(e) any person aggrieved, including any representative body or organisation; or(f) the Central Government or a State Government or a Union territory Administration or the Central Pollution Control Board or a State Pollution Control Board or a Pollution Control Committee or a local authority, or any environmental authority constituted or established under the Environment (Protection) Act, 1986 or any other law for the time being in force:Provided that where all the legal representatives of the deceased have not joined in any such application for compensation or relief or settlement of dispute, the application shall be made on behalf of, or, for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined shall be impleaded as respondents to the application:Provided further that the person, the owner, the legal representative, agent, representative body or organisation shall not be entitled to make an application for grant of relief or compensation or settlement of dispute if such person, the owner, the legal representative, agent, representative body or organisation have preferred an appeal under section 16.

(3) The application, or as the case may be, the appeal filed before the Tribunal under this Act shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the application, or, as the case may be, the appeal, finally within six months from the date of filing of the application, or as the case may be, the appeal, after providing the parties concerned an opportunity to be heard.

Section 19. Procedure and powers of Tribunal. - (1) The Tribunal shall not be bound by the procedure laid down by the Code of Civil

Procedure, 1908 but shall be guided by the principles of natural justice.

(2) Subject to the provisions of this Act, the Tribunal shall have power to regulate its own procedure.

(3) The Tribunal shall also not be bound by the rules of evidence contained in the Indian Evidence Act, 1872.

(4) The Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:- (a) summoning and enforcing the attendance of any person and examining him on oath; (b) requiring the discovery and production of documents;(c) receiving evidence on affidavits;(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;(e) issuing commissions for the examination of witnesses or documents;(f) reviewing its decision;(g) dismissing an application for default or deciding it ex parte;(h) setting aside any order of dismissal of any application for default or any order passed by it ex parte; (i) pass an interim order (including granting an injunction or stay) after providing the parties concerned an opportunity to be heard, on any application made or appeal filed under this Act;(j) pass an order requiring any person to cease and desist from committing or causing any violation of any enactment specified in Schedule I;(k) any other matter which may be prescribed.

(5) All proceedings before the Tribunal shall be deemed to be the judicial proceedings within the meaning of sections 193, 219 and 228 for the purposes of section 196 of the Indian Penal Code and the Tribunal shall be deemed to be a civil court for the purposes ofsection 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

Section 20. Tribunal to apply certain principles. - The Tribunal shall, while passing any order or decision or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle.

Section 21. Decision to be taken by majority. - The decision of the Tribunal by majority of Members shall be binding:Provided that if there is a difference of opinion among the Members hearing an application or appeal, and the opinion is equally divided, the Chairperson shall hear (if he has not heard earlier such application or appeal) such application or appeal and decide:Provided further

that where the Chairperson himself has heard such application or appeal alongwith other Members of the Tribunal, and if there is a difference of opinion among the Members in such cases and the opinion is equally divided, he shall refer the matter to other Members of the Tribunal who shall hear such application or appeal and decide.

Section 22. Appeal to Supreme Court. - Any person aggrieved by any award, decision or order of the Tribunal, may, file an appeal to the Supreme Court, within ninety days from the date of communication of the award, decision or order of the Tribunal, to him, on any one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908:Provided that the Supreme Court may entertain any appeal after the expiry of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal.

Section 23. Cost. - (1) While disposing of an application or an appeal under this Act, the Tribunal shall have power to make such order as to costs, as it may consider necessary.

(2) Where the Tribunal holds that a claim is not maintainable, or is false or vexatious, and such claim is disallowed, in whole or in part, the Tribunal may, if it so thinks fit, after recording its reasons for holding such claim to be false or vexatious, make an order to award costs, including lost benefits due to any interim injunction.

Section 24. Deposit of amount payable for damage to environment. - (1) Where any amount by way of compensation or relief is ordered to be paid under any award or order made by the Tribunal on the ground of any damage to environment, that amount shall be remitted to the authority specified under sub-section (3) of section 7A of the Public Liability Insurance Act, 1991 for being credited to the Environmental Relief Fund established under that section.

(2) The amount of compensation or relief credited to the Environmental Relief Fund under sub-section (1), may, notwithstanding anything contained in the Public Liability Insurance Act, 1991, be utilised by such persons or authority, in such manner and for such purposes relating to environment, as may be prescribed.

Section 25. Execution of award or order or decision of Tribunal. - 1) An award or order or decision of the Tribunal under this Act shall be executable by the Tribunal as a decree of a civil court, and for this purpose, the Tribunal shall have all the powers of a civil court.

(2) Notwithstanding anything contained in sub-section (1), the Tribunal may transmit any order or award made by it to a civil court having local jurisdiction and such civil court shall execute the order or award as if it were a decree made by that court.

(3) Where the person responsible, for death of, or injury to any person or damage to any property and environment, against whom the award or order is made by the Tribunal, fails to make the payment or deposit the amount as directed by the Tribunal within the period so specified in the award or order, such amount, without prejudice to the filing of complaint for prosecution for an offence under this Act or any other law for the time being in force, shall be recoverable from the aforesaid person as arrears of land revenue or of public demand.

(CHAPTER IV) PENALTY

Section 26. Penalty for failure to comply with orders of Tribunal. - (1) Whoever, fails to comply with any order or award or decision of the Tribunal under this Act, he shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to ten crore rupees, or with both and in case the failure or contravention continues, with additional fine which may extend to twenty-five thousand rupees for every day during which such failure or contravention continues after conviction for the first such failure or contravention:Provided that in case a company fails to comply with any order or award or a decision of the Tribunal under this Act, such company shall be punishable with fine which may extend to twenty-five crore rupees, and in case the failure or contravention continues, with additional fine which may extend to one lakh rupees for every day during which such failure or contravention continues after conviction for the first such failure or contravention.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence under this Act shall be deemed to be non-cognizable within the meaning of the said Code.

CHAPTER V Miscellaneous

Section 29. Bar of jurisdiction. - (1) With effect from the date of establishment of the Tribunal under this Act, no civil court shall have jurisdiction to entertain any appeal in respect of any matter, which the Tribunal is empowered to determine under its appellate jurisdiction.

(2) No civil court shall have jurisdiction to settle dispute or entertain any question relating to any claim for granting any relief or compensation or restitution of property damaged or environment damaged which may be adjudicated upon by the Tribunal, and no injunction in respect of any action taken or to be taken by or before the Tribunal in respect of the settlement of such dispute or any such claim for granting any relief or compensation or restitution of property damaged or environment damaged shall be granted by the civil court.

Section 30.Cognizance of offences. - (1) No court shall take cognizance of any offence under this Act except on a complaint made by-(a) the Central Government or any authority or officer authorised in this behalf by that Government; or(b) any person who has given notice of not less than sixty days in such manner as may be prescribed, of the alleged offence and of his intention to make a complaint, to the Central Government or the authority or officer authorised as aforesaid.

(2) No court inferior to that of a Metropolitan Magistrate or, a Judicial Magistrate of the first class shall try any offence punishable under this Act.

Section 31. Members and staff of Tribunal to be public servants. - The Chairperson, the Judicial and Expert Members, officers and other employees of the Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Section 32. Protection of action taken in good faith. - (1) No suit or other legal proceeding shall lie against the employees of the Central Government or a State Government or any statutory authority, for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

(2) No suit, prosecution or other legal proceeding shall lie against the Chairperson or, Judicial Member or Expert Member of the Tribunal or any other person authorised by the Chairperson or Judicial Member or the Expert Member for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

Section 33. Act to have overriding effect. - The provisions of this Act, shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

Section 34. Power to amend Schedule I. - (1) The Central Government may, by notification, amend the Schedule I by including therein any other Act, enacted by Parliament having regard to the objective of environmental protection and conservation of natural resources, or omitting therefrom any Act already specified therein and on the date of publication of such notification, such Act shall be deemed to be included in or, as the case may be, omitted from the Schedule I.

(2) A copy of every notification proposed to be issued under sub-section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

Section 35. Power to make rules. - (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-(a) rules as to the persons who shall be entitled to appear before the Tribunal under clause (a) of sub-section (4) of section 4;(b) the procedure for hearing applications and appeals and other matters pertaining to the applications and appeals under clause (b) of sub-section (4) of section 4;(c) the minimum number of members who shall hear the applications and appeals in respect of any class or classes of applications and appeals under clause (c) of sub-section (4) of section 4;(d) the transfer of cases by the Chairperson from one place of sitting (including the ordinary place of sitting) to other place of sitting;(e) the selection committee and the manner of appointment of the Judicial Member and Expert Member of the Tribunal under sub-section (3) of section 6;(f) the salaries and allowances payable to, and other terms and conditions of service (including pension,

gratuity and other retirement benefits) of, the Chairperson, Judicial Member and Expert Member of the Tribunal under section 9;(g) the procedure for inquiry of the charges against the Chairperson or Judicial Member of the Tribunal under sub-section (4) of section 10; (h) the recruitment of officers and other employees of the Tribunal under sub-section (2) of section 12; and the salaries and allowances and other conditions of service of the officers and other employees of the Tribunal under sub-section (4) of that section;(i) the financial and administrative powers to be exercised by the Chairperson of the Tribunal under section 13;(j) the form of application or appeal, the particulars which it shall contain and the documents to be accompanied by and the fees payable under sub-section (1) of section 18;(k) any such matter in respect of which the Tribunal shall have powers of a civil court under clause (k) of sub-section (4) of section 19;(l) the manner and the purposes for which the amount of compensation or relief credited to the Environment Relief Fund shall be utilised under sub-section (2) of section 24; (m) the manner of giving notice to make a complaint under clause (b) of sub-section (1) of section 30; (n) any other matter which is required to be, or may be, specified by rules or in respect of which provision is to be made by rules.

(3) Every rule made under this Act by the Central Government shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or thesuccessive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Section 36. Amendment of certain enactments. - The enactments specified in the Schedule III to this Act shall be amended in the manner specified therein and such amendments shall take effect on the date of establishment of the Tribunal.

Section 37. Power to remove difficulties. - (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government, may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as may appear to it to be necessary for removing the difficulty:Provided that no such order shall be made after the expiry of a period of two years from the commencement of this Act.(2)

Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Section 38. Repeal and savings. - (1) The National Environment Tribunal Act, 1995 and the National Environment Appellate Authority Act, 1997 are hereby repealed (hereinafter referred to as the repealed Act).

(2) Notwithstanding such repeal, anything done or any action taken under the said Acts shall be deemed to have been done or taken under the corresponding provisions of this Act.

(3) The National Environment Appellate Authority established under sub-section (1) of section 3 of the National Environment Appellate Authority Act, 1997, shall, on the establishment of the National Green Tribunal under the National Green Tribunal Act, 2010, stand dissolved.

(4) On the dissolution of the National Environment Appellate Authority established under sub-section (1) of section 3 of the National Environment Appellate Authority Act, 1997, the persons appointed as the Chairperson, Vice-chairperson and every other person appointed as Member of the said National Environment Appellate Authority and holding office as such immediately before the establishment of the National Green Tribunal under the National Green Tribunal Act, 2010, shall vacate their respective offices and no such Chairperson, Vice-chairperson and every other person appointed as Member shall be entitled to claim any compensation for the premature termination of the term of his office or of any contract of service.

(5) All cases pending before the National Environment Appellate Authority established under sub-section (1) of section 3 of the National Environment Appellate Authority Act, 1997 on or before the establishment of the National Green Tribunal under the National Green Tribunal Act, 2010, shall, on such establishment, stand transferred to the said National Green Tribunal and the National Green Tribunal shall dispose of such cases as if they were cases filed under that Act.

(6) The officers or other employees who have been, immediately before the dissolution of the National Environment Appellate Authority appointed on deputation basis to the National Environment Appellate Authority, shall, on such dissolution, stand reverted to their parent cadre, Ministry or Department, as the case may be.

(7) On the dissolution of the National Environment Appellate Authority, the officers and other employees appointed on contract basis under the National Environment Appellate Authority and

holding office as such immediately before such dissolution, shall vacate their respective offices and such officers and other employees shall be entitled to claim compensation for three months' pay and allowances or pay and allowances for theremaining period of service, whichever is less, for the premature termination of term of their office under their contract of service.

(8) The mention of the particular matters referred to in sub-sections (2) to (7) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal. SCHEDULE I[See sections 14(1), 15(1), 17(1)(a), 17(2), 19(4) (j) and 34(1)] 1. The Water (Prevention and Control of Pollution) Act, 1974; 2.The Water (Prevention and Control of Pollution) Cess Act, 1977; 3.The Forest (Conservation) Act, 1980; 4.The Air (Prevention and Control of Pollution) Act, 1981; 5.The Environment (Protection) Act, 1986; 6.The Public Liability Insurance Act, 1991; 7.The Biological Diversity Act, 2002.

SCHEDULE II[See sections 15(4) and 17(1)]HEADS UNDER WHICH COMPENSATION OR RELIEF FOR DAMAGE MAY BE CLAIMED (a) Death; (b) Permanent, temporary, total or partial disability or other injury or sickness; (c) Loss of wages due to total or partial disability or permanent or temporary disability; (d) Medical expenses incurred for treatment of injuries or sickness; (e) Damages to private property; (f) Expenses incurred by the Government or any local authority in providing relief, aid and rehabilitation to the affected persons; (g) Expenses incurred by the Government for any administrative or legal action or to cope with any harm or damage, including compensation for environmental degradation and restoration of the quality of environment; (h) Loss to the Government or local authority arising out of, or connected with, the activity causing any damage; (i) Claims on account of any harm, damage or destruction to the fauna including milch and draught animals and aquatic fauna; (j) Claims on account of any harm, damage or destruction to flora including aquatic flora, crops, vegetables, trees and orchards; (k) Claims including cost of restoration on account of any harm or damage to environment including pollution of soil, air, water, land and eco-systems; (l) Loss and destruction of any property other than private property; (m) Loss of business or employment or both; (n) Any other claim arising out of, or connected with, any activity of handling of hazardous substance.

Annexure 2

Thematic index of NGT cases 2011 – 2012

I. Environmental Clearance (EC)

S. No.	Case Name	Date	Pg. No.
1.	Prafula Samantra v. Ministry of Environment and Forests & Ors.	28-07-2011	15
2.	The Sarpanch, Gram Panchayat, Tiroda & Ors. v. Ministry of Environment and Forests	09-12-2011	18
3.	Nagarjuna Construction Company v. Mohana & Ors. (*Sompeta Case)*	19-09-2011	21
4.	Krishi Vigyan Arogya Sanstha & Ors. v. Ministry of Environment and Forests & Ors.	20-09-2011	26
5.	Balachandra Bhikaji Nalwade v. Ministry of Environment and Forests & Ors.	29-11-2011	41
6.	Bhagat Singh Kinner v. Ministry of Environment and Forests & Ors.	12-03-2011	46
7.	Devi Gyan Negi v. Ministry of Environment and Forests & Ors.	03-12-2011	47
8.	Jaya Prakash Dabral v. Union of India	14-12-2011	53
9.	Hussain Saleh Mahmad Usman Bhai Kara v. Union of India & Ors.	01-10-2012	80
10.	Baijnath Prajapati v. Ministry of Environment and Forests & Ors.	20-01-2012	82
11.	Shri Govind Singh Pangtey v. Ministry of Environment and Forests & Ors.	20-01-2012	83
12.	Suresh Banjan v. State of Maharashtra & Ors.	31-01-2012	86
13.	Hussain Saleh Mahmad Usman Bhai Kara v.	09-02-	96

	Gujarat State Level Environment Impact Assessment Authority & Ors.	2012	
14.	Bhikhalal Nathubhai Nagdan Ahir & Ors. v. Ministry of Environment and Forests & Ors.	09-02-2012	96
15.	Jan Chetna & Ors. v. Ministry of Environment and Forests & Ors.	09-02-2012	99
16.	V. Srinivasan v. Tamil Nadu State Level Environment Impact Assessment Authority & Ors.	24-02-2012	106
17.	Mahameghaban Aira Kharabela Sawin v. Ministry of Environment and Forests & Ors.	28-02-2012	115
18.	Utkal Bikas Yuva Parishad v. Union of India (Ministry of Environment and Forests & Ors.)	28-02-2012	116
19.	Shiva Cement Ltd. v. Union of India & Ors.	01-03-2012	117
20.	Real Gem Buildteach v. State of Maharashtra	15-03-2012	121
21.	Mr. A.S. Mani v. State Environment Impact Assessment Authority, Tamil Nadu & Ors.	27-03-2012	130
22.	Janajagrithi Samiti v. Union of India & Ors.	27-03-2012	132
23.	Praffula Samantra v. Union of India & Ors. (POSCO case)	30-03-2012	136
24.	Mayur Karsanbhai Parmar& Anr. v. Union of India & Ors.	20-04-2012	143
25.	Mayur Karsanbhai Parmar& Another v. Union of India & Ors.	20-04-2012	146
26.	Adivasi Majdoor Kisan Ekta Sangathan & Anr. v. Ministry of Environment and Forests &Ors.	20-04-2012	149
28.	Thervoy Gramam Munnetranalasangam v. Union of India & Ors.	26-04-2012	152

29.	Consumer Federation v. Union of India & Ors.	30-04-2012	155
30.	Nirma Ltd. v. Ministry of Environment and Forests & Ors.	01-05-2012	157
31.	T. Mohana Rao & Ors. v. Ministry of Environment and Forests & Ors. *(Sompeta case)*	23-05-2012	162
32.	T. Murugandam & Ors. v. Ministry of Environment and Forests & Ors.	23-05-2012	166
33.	Janahit Seva Samiti, Madban & Anr. v. Union of India & Ors.	24-05-2012	171
34.	Ossie Fernandes & Ors. v. Ministry of Environment and Forests & Ors.	30-05-2012	174
35.	Ossies Fernadas v. Ministry of Environment and Forests & Ors.	30-05-2012	177
36.	Ramesh Agrawal v. Member Secretary, State Level Environment Impact Assessment Authority & Ors.	31-05-2012	178
37.	Antar Singh Patel v. Union of India & Ors.	09-08-2012	189
38.	IL & FS Tamil Nadu Power Company Ltd. v. Ministry of Environment and Forests & Ors.	09-08-2012	192
39.	Rana Sen Gupta v. Union of India & Ors.	24-08-2012	193
40.	M/s Diana Infrastructure Ltd. v. State Level Environment Impact Assessment Authority (SEIAA), Maharashtra and Anr.	29-08-2012	198
41.	Real Gem Buildtech Pvt. Ltd. v. State of Maharashtra	03-10-2012	220
42.	Vimal Bhai and Ors. v. Union of India and Ors.	07-11-2012	231

43.	Shri S. K. Naik v. Jain Steel and Power Ltd. and Ors.	22-11-2012	234
44.	Shailesh Narvekar and Ors. v. Ministry of Environment and Forests & Ors.	05-12-2012	249
45.	Vinod R. Patel v. Gujarat State Level Impact Assessment Authority and Ors.	18-12-2012	252
46.	Sajal Kumar and Another v. Union of India & Ors.	18-12-2012	254
47.	Ankur v. Maharashtra State Environment Impact Assessment Authority	18-12-2012	256

II. Air Pollution

S. No.	Case Name	Date	Pg. No.
1.	Deepak Kumar Rai v. Government of Uttar Pradesh & Ors.	07-07-2011	16
2.	Kamlesh Singh v. Regional Officer & Ors.	29-09-2011	29
3.	M/s P. Manokaran Power Loom & Ors. v. Tamil Nadu Pollution Control Board	15-02-2012	103

III. Miscellaneous

S. No.	Case Name	Date	Pg. No.
1.	Adivasi Majdoor Kisan Ekta Sangathan and Anr. v. Ministry of Environment and Forests & Ors.	11-03-2011	44
2.	Gayatri Pragyna Mandal Beltrara v. Ministry of Environment and Forests & Ors.	17-08-2011	19
3.	Mahendra Pandey v. State Environment Impact	18-08-	20

	Assessment Authority & Ors.	2011	
4.	Bhawani Shankar Thapliyal v. Union of India	13-10-2011	39
5.	M/s. Athiappa Chemicals v. Puducherry Pollution Control Committee & Ors.	14-12-2011	55
6.	M/s Baba Bricks Field v. Uttar Pradesh Pollution Control Board & Ors.	02-02-2012	88
7.	Sri Lakshmi Minerals v. Tamil Nadu Pollution Control Board & Ors.	08-02-2012	90
8.	M/s Amman Plastics v. Tamil Nadu Pollution Control Board	28-02-2012	114
9.	M/s Maharaja Minerals v. Tamil Nadu Pollution Control Board & Ors.	28-02-2012	112
10.	M/s Balaji Minerals v. Tamil Nadu Pollution Control Board & Ors.	28-02-2012	111
11.	Hindustan Coca-Cola Beverages Pvt. Ltd. v. Member Secretary, West Bengal Pollution Control Board and Ors.	19-03-2012	122
12.	Madheshwaran G. v. M/s Chemplast Sanmar Pvt. Ltd.	30-05-2012	173
13.	Verinder Singh v. Land Acquisition Collector-Cum- DRO, Haryana	13-07-2012	181
14.	Swami Gyan Swarup Sanand & Ors. v. Union of India & Ors.	17-07-2012	183
15.	Jesurethinam & Ors. v. The Ministry of Environment and Forests & Ors.	30-08-2012	199
16.	Intech Pharma Pvt. Ltd. v. Goa Pollution Control Board	04-09-2012	200
17.	M/s Siddhartha Enterprises v. The State of NCT and Ors. (Appeal No. 32/2012)	04-09-2012	202
18.	Mr. Joseph Coutinho v. Goa State Pollution	06-09-	207

S. No.	Case Name	Date	Pg. No.
	Control Board	2012	
19.	Rohit Choudhary v. Union of India & Ors.	07-09-2012	210
20.	Union of India v. Goa Foundation & Ors.	20-09-2012	215
21.	Girdhars International Private Limited v. Delhi Pollution Control Committee Department of Environment	20-09-2012	216
22.	Kshitija Infrastructure Pvt. Ltd. & Anr. v. Union of India & Ors.	03-10-2012	221
23.	M/s. OPG Power Gujarat Pvt. Ltd. and Ors. v. Husain Saleh Mahmad Usman Bhai Kara & Ors.	18-10-2012	228
24.	Husain Saleh Mahmad Usman Bhai Kara v. Union of India & Ors.	18-10-2012	230

IV. Solid Waste Management/Land Pollution

S. No.	Case Name	Date	Pg. No.
1.	Gram Panchayat, Totu (Majthai) & Ors. v. State of Himachal Pradesh & Ors.	11-10-2011	34
2.	K. G. Mathew v. State of Kerala and Ors.	26-03-2012	128

V. Water Pollution

S. No.	Case Name	Date	Pg. No.
1.	Raagam Exports v. Tamil Nadu Pollution Control Board and Another	11-10-2011	36
2.	Blooming Colours v. Tamil Nadu Pollution	15-12-	57

	Control Board & Ors.	2011	
3.	Nanthivaram Radha Nagar Residential Welfare Association v. Tamil Nadu Pollution Control Board & Ors.	24-02-2012	108
4.	I.P. Bhaskar & Ors. v. The District Collector Kancheepuram District & Ors.	24-02-2012	110

VI. Forest Clearance

S. No.	Case Name	Date	Pg. No.
1.	Vimal Bhai and Ors. v. Ministry of Environment and Forest	14-12-2011	49
2.	VimalBhai and Ors. v. Ministry of Environment and Forest	08-02-2012	92
3.	JanajagrithiSamithiv. Union of India and Ors.	07-03-2012	119
4.	M/s KIOCL Limited v. Union of India and Ors.	23-03-2012	127
5.	Husain SalehMahmadUsmanBhai Kara v. M/s OPG Power Private Limited (Application No. 8/2012)	10-05-2012	160
6.	Save Mon Region Federation and Another v. Union of India and Ors.	23-11-2012	241

VII. Limitation

S. No.	Case Name	Date	Pg. No.
1.	ParyavaranSanrakshanSangarshSamiti, Lippa v. Union of India and Ors.	15-12-2011	58

2.	Sh. SatishUmeshPrabhu and Ors. v. M/s Matoshree Infrastructure Private Limited and Ors.	24-01-2012	84
3.	Jeet Singh Kanwar and Another v. Ministry of Environment and Forest and Ors.	22-03-2012	126
4.	Dyaneshwar Vishnu Shedge v. Union of India and Ors.	24-05-2012	170
5.	Vinod R. Patel v. Gujarat State Level Impact Assessment Authority and Ors.	09-08-2012	185
6.	K. Karthi v. Tamil Nadu Pollution Control Board and Ors.	28-08-2012	196
7.	DileepNamdeoDherange and Ors. v. Ministry of Environment and Forest and Ors.	05-09-2012	205
8.	Golden Seam Textiles Pvt. Ltd. v. Karnataka Pollution Control Board	18-09-2012	214
9.	Husain SalehMahmadUsmanBhai Kara v. Gujarat SEIAA and Ors.	26-09-2012	218
10.	M/s Hubtown Limited and Another (Mount Mary) v. Pr. Secy., Ministry of Environment and Forest and Ors.	17-10-2012	224

VIII. Illegal Construction

S. No.	Case Name	Date	Pg. No.
1.	Suresh Banjan v. State of Maharashtra and Ors.	27-03-2012	134

IX. Noise Pollution

S. No.	Case Name	Date	Pg. No.
1.	N. Chellamuthu v. The District Collector & Ors.	24-02-2012	104
2.	M/s Om Sakthi Engineering Works v. Tamil Nadu Pollution Control Board and Ors.	10-04-2012	141
3.	Supreme Court Group Housing Society and Another v. All India PanchayatParishad and Ors.	18-12-2012	262

X. Illegal Mining

S. No.	Case Name	Date	Pg. No.
1.	M/s Hindalco Industries Ltd. v. Union of India and Ors. (Appeal No. 21/2012)	17-10-2012	223
2.	M/s Kuber Roller Flour Mills v. Rohit Chaudhary and Ors.	23-11-2012	237
3.	M/s Pradip Industries v. Rohit Chaudhary and Ors.	23-11-2012	239

XI. Coastal Regulation Zone (CRZ)

S. No.	Case Name	Date	Pg. No.
1.	Ramana Industries v. Tamil Nadu Pollution Control Board	29-03-2012	135
2.	Uttam Bhisso Shetgaonkar v. Goa Coastal Zone Management Authority	27-11-2012	248
3.	Rudresh Naik v. State of Goa and Another	18-12-2012	260