The Sarpanch Grampanchyat Trioda

Vs

Ministry of Environment & Forests

MA NO. 1 of 2011 IN APPEAL NO. 3 OF 2011

JUDICIAL AND EXPERT MEMBERS: Justice C.V. Ramulu and Dr. Devendra Kumar Agrawal

Key words: Maharashtra Pollution Control Board, State of Maharashtra, Sindhudurg, M/s Gogte Minerals, M/S infrastructure Logistics Private Limited, Tiroda Iron Ore Mine, Environmental Clearance, Public Hearing, Environmental Impact Assessment.

Application Dismissed

Date: 25th May, 2011

ORDER BY THE BENCH

This application is filed seeking stay of the order passed by the Ministry of Environment and Forest (Respondent No. 1) dated. 31/12/2008 (No.I-11015/1026/2007-IA.II(M) and also seeking stay of the mining operations conducted by the M/s Gogte Minerals (Respondent No. 5) and M/S infrastructure Logistics Private Limited (Respondent No. 6) for the project Tiroda Iron Ore Mine at village Trioda in Sawantwadi Taluka of Sindhudurg District of Maharashtra state.

In a Miscellaneous Application of this nature, the balance of convenience between the parties needs to be examined. In this case, admittedly the Ministry of Environment and Forest passed order granting Environmental Clearance on 31 December, 2008. Eleven months thereafter, an appeal was filed before the National Environment Appellate Authority (NEAA) which was rejected in limini as time barred. Aggrieved thereby, Writ Petition No. 7050 of 2010 was filed before Bombay High Court in month of August 2010. During the pendency of Writ Petition, no interim order was passed by the Bombay High Court. Writ Petition however, was finally disposed of on 1st February, 2011 allowing the Writ Petition and directing the National Green Tribunal to take up the appeal as if the appeal was filed in time and dispose it off on its merits.

At the outset, though the learned counsel appearing for the applicants/appellants strenuously contended that, there are serious lapses on the part of the authorities in conducting the public hearing and in conducting the proceedings in other than the Marathi language and the environmental aspects of Environmental Impact Assessment report contain certain factual errors and the Coastal Zone Regulations were not adhered to strictly. It is suffice to notice that there was slackness on the part of the applicants/appellants in approaching the National Environment Appellate Authority or even the High Court of Bombay thereafter. The mining operations had commenced and had been more than one and half year since the mining operations were going on.

After considering the learned counsel on either side, the learned judges were of the opinion that the applicants/appellants were not diligent in pursuing the matter and the balance of convenience is not in their favour. However, in a matter concerning environment, the appeal cannot be allowed to be pending

for long time and has to be disposed of as early as possible. The learned counsel for Respondent No. 5 has fairly given an undertaking before this Tribunal, to argue the matter on 4th July, 2011 at 2.15PM without fail and if any adjournment is sought on behalf of the Respondent No. 5, without any justification, this Tribunal may pass any order making interim arrangement as required in the circumstances.

"The Respondent Nos. 1 to 4 and 5 to 6 shall file their response by 20th June 2011 and shall serve the responses on the applicants/appellants. The Registry to issue notices returnable in 3 weeks and the Counsel for the applicants/appellants is also permitted to take out personal notices on the Respondent Nos. 1 to List the matter on 4th July, 2011 at 2.15 PM."

Deepak Kumar Rai

Vs

M/s Prabhu Nath Rai Eent Bhatta Udyog Ltd.

APPLICATION NO. 1 OF 2010

(ARISING OUT OF APPEAL NO. 12 OF 2008)

JUDICIAL AND EXPERT MEMBERS: Justice A.S. Naidu and Prof. Dr. G.K. Pandey

Key words: District Ghazipur, Uttar Pradesh, brick Kiln, Non Objection Certificate.

Application Dismissed

Date: 7th July 2011

ORDER BY THE BENCH

The petitioner is a resident of Village Asawar in the District of Gazipur of Uttar Pradesh.

The No Objection Certificate granted in favour of M/s Prabhu Nath Rai Eent Bhatta Udyog Ltd. (Respondent No. 1) to establish a brick Kiln, stood withdrawn by the National Environment Appellate Authority under Section 21 of the Air (Prevention and Control Board) Act 1981, by order dated 18th February, 2009. The grievance of the petitioner in this case is with regard to non implementation of the orders passed by National Environment Appellate Authority (NEAA). He has filed this petition praying as follows:

i. Summon and prosecute the Respondent No. 1 for willfully violating the other of this Hon'ble Authority dated 25th May, 2009.
ii. Pass any order, writ or direction which the Hon'ble Authority may deem fit and proper in the facts and circumstances of the case.

The Miscellaneous petition filed by the petitioner came up for hearing before the National Green Tribunal. The petitioner has appeared in person before this Tribunal. In course of hearing he has fairly admitted that in the meanwhile by judgment of 28th April, 2010 the Hon'ble High Court of Allahabad has allowed the writ petition and has set aside the orders passed by the NEAA. The petitioner, as has been stated earlier 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 has been set aside by the Hon'ble High Court of Allahabad in Civil *Misc. Writ Petition Order No. 27865 of 2010*, and does 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. Parties to bear their own cost."

Prafulla Samantra

Vs

Ministry of Environment Forests and Others

REVIEW APPLICATION NO. 3/2010

(ARISING OUT OF NEEA APPEAL No. 18 to 21/2009)

JUDICIAL AND EXPERT MEMBERS: Justice A.S. Naidu and Prof. Dr. G.K. Pandey

Key words: Ministry of Environment and Forest, Environment Clearance, Lanjigarh Bauxite mining, Forest Clearance

Application solved externally

Date: 28th July, 2011

The Environment Clearance accorded by Ministry of Environment and Forests vide its letter dated 28th April, 2009, to the Lanjigarh Bauxite mining project of M/S The Orissa Mining Corporation was assailed by Shri Prafulla Samantra and others in four separate appeals. The said Appeals were registered as Appeal Nos. 18, 19, 20 and 21 of 2009 before the erstwhile National Environment Appellate Authority (herein after referred as "The Authority" for the sake of brevity).

The proposal for grant of Stage II Forest Clearance for the aforesaid project was rejected by the Ministry of Environment and Forests, and consequently, the Environmental Clearance granted to the Project automatically became infructuous and inoperable and the Ministry has withdrawn the Environment Clearance dated 28th April, 2009, by their order dated 11th July, 2011. In view of the aforesaid order which is annexed as Annexure- 14 to the counter affidavit filed on behalf of the Ministry of Environment and Forests, nothing survives to be decided in the Review Application, more so because, the order of the Authority dated 15th September, 2009, which is sought to be reviewed in this Review Application has worked out in the mean while and no longer exists. The Review Application thus has become infructuous.

"After hearing learned counsels for the parties, perusing the Memorandum and after giving conscious thoughts we are satisfied that nothing remains to decide in this Review Application, as the order sought to be reviewed has worked out and no longer exists, accordingly the Review Petition is dismissed, but then, without costs."

Gayatri Pragyna Mandal Beltrara

Vs

MoEF and Others

BEFORE THE NATIONAL GREEN TRIBUNAL, PRINCIPAL BENCH, NEW DELHI

APPEAL NO.11/2011(T)

JUDICIAL AND EXPERT MEMBERS: Justice L.S. Panta and Vijai Sharma

Appeal Dismissed as Withdrawn

Date: 17th August, 2011

Orders of the Tribunal

Mr. Ritwick Dutta, Advocate and Mr. Rahul Choudhary, Advocate both state at the Bar that they may be permitted to withdraw from the case. Mr. Jamuna Prasad (Appellant) who had signed their power of attorney in the capacity of President of Gayatri Pragya Mandal, Beltra, has filed an application stating therein that M/s Phil Mineral Beneficiation and Energy Ltd. (Respondent-3) company had been given proper Environment Clearance by the Ministry of Environment & Forests (Respondent-1). The Respondent Company has 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 also has been provided. Mr. Jamuna Prasad also submits that the present appeal is being withdrawn voluntarily without any pressure, coercion and undue influence from any other person interested in the case. Mr. Jamuna Prasad is present in person and has supported and corroborated his statement given in the application. In the aforesaid facts and circumstances of the case, the learned judges permit Mr. Ritwick Dutta, Adv. & Mr. Rahul Choudhary, Adv. to withdraw from the case. Appellant Gayatri Pragya Mandal, Beltra is also permitted to withdraw the appeal as prayed for by Mr. Jamuna Prasad, who has filed and signed the appeal on behalf of the Appellant. The appeal is dismissed as withdrawn, without expressing any opinion on the merits of the case.

Mahendra Pandey

Vs

State Environment Impact Assessment Authority and Others

BEFORE THE NATIONAL GREEN TRIBUNAL, PRINCIPAL BENCH, NEW DELHI

APPEAL NO. 1 AND 2 OF 2011

JUDICIAL AND EXPERT MEMBERS: Justice Shri C.V. Ramulu and Prof. Dr. Devendra Kumar Agrawal

Appeal Dismissed

Date: 18th August 2011

Orders of the Tribunal

This is appeal is filed by the party in person. Initially it came up for hearing on 7th July 2011. Mr. Mahendra Pandey (Appellant) argued the matter at length. However, he was not able to make out any prima facie case. He requested time for filing a better application. On that day, it was noted that if no further pleadings explaining the details are filed, the matter shall be closed at that stage itself and the matter was directed to be posted on 18th July, 2011. When the matter was called at 11 AM, none appeared for the appellant. The matter was then passed over to be taken up at 2 PM. Even at 2 PM when the matter was called, none appeared for the appellant. The matter was adjourned to provide one more opportunity to the appellant. Thus, when the matter was called none appeared nor was there any representation -the party was called three times by name. Therefore, the learned judges opined that the appellant is not interested to pursue the matter. Even, otherwise, on examination, there are no tenable grounds, much less substantial grounds for entertaining the appeal.

Therefore, the appeal stands dismissed.

The Sarpanch Grampanchayat and Others

Vs

Ministry of Environment Forests

APPEAL NO. 3 OF 2011

JUDICIAL AND EXPERT MEMBERS: Justice Shri C.V. Ramulu and Prof. Dr. Devendra Kumar Agrawal

Key words: Maharashtra State Pollution Control Board, State of Maharashtra, M/s Gogte Mineral, M/s Infrastructure Logistics Pvt. Ltd, Sawantwadi Taluk, Sindhudurg District, mining, Environment Impact Assessment, Expert Appraisal Committee, Environmental Clearance, Public Hearing

Application Disposed With Directions

Date: 12th September, 2011

This appeal is filed, under Section 18(1) read with section 16 of the National Green Tribunal Act 2010, being aggrieved by the grant of Environmental Clearance (for short EC) dated 31st December, 2008 by the Ministry of Environment & Forests (for short MoEF), Government of India (for short GoI), New Delhi, in favour of M/s Gogte Minerals (Respondent No. 5), for conducting mining operations, at Tiroda Iron Ore Mine (Mining Lease Area - 31.4812 ha with a production capacity of 0.40 MTPA) at Tiroda village, Sawantwadi Taluk, Sindhudurg District of Maharashtra State.

It appears that the M/s Gogte Minerals was granted EC, by the MoEF, through its order dated 31st December, 2008, for conducting mining operations at Tiroda Iron Ore at Tiroda Village, Maharashtra. Aggrieved by the same, the appellants herein, had filed appeal, before the then National Environment Appellate Authority (now stood abolished) 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 Hon'ble High Court, Bombay in Writ Petition No. 7050 of 2010, where the petition was allowed and the matter was remitted to the National Green Tribunal established under the National Green Tribunal Act 2010, for hearing the petitioners' appeal on merits, after treating the same filed within the period of limitation.

The first appellant is the Sarpanch of Gram Panchayat Tiroda village, whereas the appellants 2 and 3 are the villagers of Tiroda village, Swantwadi Taluk, Sindhudurg District of Maharashtra. It is their grievance that the EC was granted by the MoEF, GoI, for the project of mining at Tiroda Iron Mine, in an extent of 31.4812 ha, with a production capacity of 0.40 MTPA 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. The project is hazardous to human health and further it is polluting the river joining the sea. The existence of forest and a school located adjacent to the buffer zone of Mining Lease 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. The project was granted EC flouting all the norms of environmental law and the procedure thereof.

The following issues arose for consideration:

i) Whether the prior-EC process and Public Hearing conducted by the authorities were legal or not.

In view of the findings noticed above, the learned judges are 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) in the meeting held on 13 December, 2007. But, it cannot be said that the Public Hearing was vitiated or invalid as substantial compliance was made in this regards. However, the very purpose of the Public Hearing got defeated since the EIA report was defective.

ii) Whether the Expert Appraisal Committee (EAC) had conducted itself as per law and examined all the aspects of pollution while recommending grant of EC.

The learned judges are in full agreement with the submissions made by the learned counsel for the appellant that the EIA report which was prepared at the behest of project proponent, does not disclose proper and sufficient facts and information. For example, the entire baseline data pertains 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 cannot be said the EAC had conducted itself in the manner it requires in recommending the grant of EC to the project.

iii) Whether post EC measures such as precautionary principles suggested by the authorities were adhered to by the project proponent and non-compliance if any resulted in vitiating the EC granted.

The EC requires to be set aside. However, considering the fact that the Mining operation has substantially complied with the conditions attached to the EC, before commencing the mining operations and thereafter and it is now almost two years, therefore, the learned judges refrained from quashing the EC.

Thus, the Appeal is disposed of with the following directions keeping in view the balance to be maintained between the environment and development and the precautionary principle:

1) The EC dated 31st December, 2008 granted in favor 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 (Mining) to which Majumdar is not a party 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. However, the Tribunal makes it clear that the EAC is at liberty to reject or accept the proposal for recommending revival of EC in favor of the project proponent.
3) The EAC, however, 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.

4) The EAC also shall call for a fresh report as to existence of number of iron ore mines in Sawantwadi Taluk and their cumulative effect on the environment and ecology of the area particularly the Tiroda village.
5) This entire process shall be completed within a period of 6 months from the date of receipt of this judgment.

With the above directions, the Appeal stands disposed of.

M/s Nagarjuna Construction Company Ltd.

Vs

T. Mohan Rao S/o Late Seetharam

REVIEW PETITION NO. 2 OF 2010

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

JUDICIAL AND EXPERT MEMBERS: Justice A.S. Naidu and Prof. Dr. G. K. Pandey

Key words: Nagarjuna Construction Company Ltd, Forum for Sustainable Development, Paryavarana Parirakshana Sangham, Andhra Pradesh, Coal based Thermal Power Plant, Wetlands, Public Hearing, Environmental Clearance

Application Allowed

Date: 19th September, 2011

M/s Nagarjuna Construction Company limited has filed this review petition, inter-alia praying to review / recall the judgement dated 14th July, 2010 passed by the Member of the National Environment Appellate Authority (NEAA), New Delhi, in *Appeal No. 1 to 6 of 2010*.

It was contended by the appellants (Respondents 1 to 7 in the present case) before the NEAA that the Minutes of public hearing was suppressed and that the "Beela Swamp" of Somepta where the project was proposed to be established, being very important from Environmental angle, the authorities acted illegally and with material irregularity granting Environment Clearance. Further the authorities also did not keep in mind that the said "Beela Swamp" being an internationally recognized Wet Land, 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 learned judges, the power of review should be sparingly exercised that too only on very exceptional circumstances. The first and foremost requirement to exercise the power of review is to be satisfied 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 has not only utilized his personal knowledge, but also did not follow the fundamental principles of Natural Justice. He has also 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. The learned judges are satisfied that the impugned order suffers from the vice of errors apparent on the face of record and that permitting the order to stand would lead to failure of justice. Accordingly they have no

hesitation to recall the order dated 14th July, 2010 passed by the Member, NEAA in *Appeal No. 1 to 6 of 2010*.

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

After considering the submissions made on merits of the case for the reasons stated in the proceeding paragraphs, the learned judges were satisfied that the order passed by the NEAA, suffers from errors apparent on the face of the record and permitting the said errors to stand will lead to failure of justice and would also create a dent in the mode of judicial adjudication. Therefore de hors of the technicalities the bench takes a liberal view and disposed of this Review Petition on merits.

The Review petition is accordingly allowed. Parties are directed to bear their own costs.

Krishi Vigyan Arogya Sanstha

Vs

The Ministry of Environment and Forests

APPEAL NO. 7 OF 2011 (T)

JUDICIAL AND EXPERT MEMBERS: Shri C.V. Ramulu and Dr. Devendra Kumar Agrawal

Key words: The Maharashtra State Pollution Control Board, the Maharashtra State Power Generation Co. Ltd, Koradi Thermal Power Project in Nagpur district, coal based thermal power unit, Environmental Clearance, Public Hearing

Application Disposed with Directions

Date: 20th September, 2011

This appeal is filed being aggrieved by the Environment Clearance granted, by the Ministry of Environment and Forest (the MoEF) dated 4th January, 2010 in favour of the The Maharashtra State Power Generation Co. Ltd. (Respondent No. 3), for the proposed 3X660 MW expansion of coal based thermal power unit at Koradi Thermal Power Project in Nagpur district of Maharashtra.

Appellants 1 to 3 are social and environmental groups working for the welfare of the local communities and creating awareness on social and environmental issues and the Appellants 4 to 7 are 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 to protect the environment and ecology in the area. It is their case that Environmental Impact Assessment report failed to take into account the cumulative impact of various existing and proposed power plants within the area. The Environmental Impact Assessment report submitted by the project proponent has misrepresented the facts as to the distance of the thermal power plant project from Nagpur city as 11 kms which is not correct. The distance was calculated from Koradi village and not from the project site. This has been deliberately done to reduce the impact of the project on human habitation. The existing power plant itself emits pollution beyond permissible limits and no efforts were made to control it. Now the proposed unit is far bigger one that means the plant will continue to pollute the environment. Kolar River is just within one km from the project site and if the expansion is allowed, the river would get polluted totally. Though the project proponent claimed to have planted 4.60 lakh trees since 1985, so many trees are not in existence. The Environmental Impact Assessment report has failed to provide the details of alternative sites. The present site is neither technically nor did commercially feasible, since coal has to be transported from about 1000 kms (from Orissa) and power generated has to be transmit more than 1000 kms. The impact of nuclear radiation due to thermal power plant was neither studied nor mentioned in the Environmental Impact Assessment report. Further, the project will adversely affect the ground water level. The proponent got the Environmental Clearance published in the newspapers with a delay of more than two weeks, thus prevented the public from acting upon. Apart from the above, the Public Hearing was not conducted as required under the Law.

The Tribunal is of the considered opinion that the following points arise for consideration in this appeal:

a) *Whether the Environment Impact Assessment report prepared for the project was proper and adequate and sufficient information was furnished-*

It cannot be said, the Environmental Impact Assessment report suffered from significant deficiencies or lack of information which resulted in recommendation of the grant of Environment Clearance by the Expert Appraisal Committee. However, it is expected that Expert Appraisal Committee/Ministry of Environment and Forests should always take a note of even small deficiencies in the Environmental Impact Assessment 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 Environmental Impact Assessment report is 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.

b) *Whether the Public Hearing conducted for the purpose of inviting objections and suggestions, if any, was in accordance with the Environmental Impact Assessment Notification 2006-*

Understanding the fact that there are habitations within 4.3 kms radius of the project site, the Public Hearing could have been conducted in a nearby place to the proposed project site. But Nagpur, being a metropolitan city, the distance cannot be taken seriously particularly when there was full participation of the public representatives and others. All these, cannot be said to be a substantial procedural lapse in the Public Hearing, calling for its invalidation. But, it is always desirable to conduct the Public Hearing within the close proximity of the project site, say within 1km radius. However, the learned judges notice here that the Notification dated 21st February, 2009 inviting people to participate in the Public Hearing was not happily worded. The language used is not clear as alleged by the appellant. The authorities could have taken care to avoid any ambiguous or inappropriate wordings. A plane reading of the Notification, gives a restrictive meaning as alleged by the appellant. But, there was no bar for participation of the people in the Public Hearing.

c) *Whether Expert Appraisal Committee 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-*

May be that the Nagpur city sewage water is proposed to be utilized, but it is common knowledge that the hot water let out from the boiler, if they are allowed to enter the land, it would not only contaminate the land but also would make the entire land around invalid for agriculture or otherwise. There are 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. Also, a large number of thermal power projects are existing and/or are proposed in and around the project area and thus are likely to have cumulative impacts especially in terms of nuclear radiation. It is given to understand, no national prescribed standards are available with regard to nuclear radiation for various types of eco-system.

This appeal requires to be disposed of with the following directions keeping in view the principles of sustainable development and precautionary principle:

a. The MOEF is directed to look into the matter as to long term impacts caused by nuclear radiation from the thermal power projects, by instituting a scientific long term study involving Bhabha Atomic

Research Agency or any such other recognized scientific institution dealing with nuclear radiation with reference to the coal ash generated by thermal power project (Respondent No. 3) particularly the cumulative effect of a number of thermal power project located in the area on human habitation and environment and ecology. The study shall also take into consideration the health profile of the residents within the area in which the pollutants are expected to spread from the thermal power project.

b. The MOEF shall direct the proponent to synchronize the commissioning of the project with that of the Sewage Wastewater 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 shall 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 shall 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.
e. If any of these directions are not carried out, the appellant is at liberty to take appropriate steps as required under the law.

With the above directions, the Appeal stands disposed of.

Kamlesh Singh s/o Shri Brijendra Singh

Vs

Regional Officer, Pollution Control Board Regional Office, District Raibareli (U.P.).

APPEAL NO. 6 OF 2011

JUDICIAL AND EXPERT MEMBERS: Shri C.V. Ramulu and Dr. Devendra Kumar Agrawal

Key words: Regional Officer-Pollution Control Board, brick kiln, mango trees

Application Disposed with Directions

Date: 29th September, 2011

Since, in both Appeal No. 6 and Appeal No. 7 of 2011, common questions of law and fact arise for consideration, they are being disposed of by this common order. These two appeals are directed against the orders passed by the Appellate Authority, Uttar Pradesh Pollution Control Board (Respondent No. 1).

It is the case of the appellants that they are the owners of certain extents of land wherein mango trees are planted (existing) and their mango trees are being affected by the brick kiln erected by M/s Pankaj Brick Field, Village Kalupur (Respondent No. 2). Due to their close proximity, the heat generated and ash emanated from them spoils the flowering and fruiting of mango crop. Apart from this, the brick kiln is also located very close to the human habitation which results in health hazard. The authorities have not measured the distance between the mango orchards and the brick kiln. The distance between the brick kiln and the human habitation and mango orchards is against the prescribed distance under the governmental orders issued from time to time. The direction of the wind was not properly taken into consideration looking into the location of the orchard and human habitation. It is also argued that the sum total area of various owners of mango orchards within the prescribed limits from the brick kiln is also more than the prescribed limit of area under orchards. All the reports of inspection are manipulated and the authorities have blindly accepted the same.

Whereas, it is the case of the respondents that the brick kiln is located beyond the distance prescribed by the governmental orders, from the mango orchards as well as human inhabitation in both the cases.

The following points arise for consideration:

i. Whether the brick kiln established by the respondents is causing any pollution and resulting in the damage of flowering and fruiting of the mango trees of the appellants; and
ii. Whether the appellate authority has committed any error calling for this Tribunal's interference.

The learned judges are of the considered opinion that the appellants have not made any case to demonstrate that the brick kiln established by the respondents is causing any 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 learned Counsel for the appellant stated that there is environmental threat for the mango trees of other landlords. Therefore, the matter has to be examined in details by calling for a fresh report from the authorities concerned.

Under these circumstances, the appeal is 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 Respondent brick kiln owners:

a. Before renewing the consent to operate in favor of the respondent brick kiln owners, the District Environmental Engineer concerned shall 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 shall 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 favor of the respondents.

The appeal stands disposed of subject to above directions.

Ram Nath s/o Late Shri Ram Pal

Vs

Regional Officer, Pollution Control Board Regional Office, District Raibareli (U.P.).

APPEAL NO. 7 OF 2011

JUDICIAL AND EXPERT MEMBERS: Shri C.V. Ramulu and Dr. Devendra Kumar Agrawal

Key words: Regional Officer, Pollution Control Board, brick kiln, mango trees

Application Disposed with Directions

Date: 29th September, 2011

Since, in both Appeal No. 6 and Appeal No. 7 of 2011, common questions of law and fact arise for consideration, they are being disposed of by this common order. These two appeals are directed against the orders passed by the Appellate Authority, Uttar Pradesh Pollution Control Board (Respondent No. 1).

It is the case of the appellants that they are the owners of certain extents of land wherein mango trees are planted (existing) and their mango trees are being affected by the brick kiln erected by M/s Pankaj Brick Field, Village Kalupur (Respondent No. 2). Due to their close proximity, the heat generated and ash emanated from them spoils the flowering and fruiting of mango crop. Apart from this, the brick kiln is also located very close to the human habitation which results in health hazard. The authorities have not measured the distance between the mango orchards and the brick kiln. The distance between the brick kiln and the human habitation and mango orchards is against the prescribed distance under the governmental orders issued from time to time. The direction of the wind was not properly taken into consideration looking into the location of the orchard and human habitation. It is also argued that the sum total area of various owners of mango orchards within the prescribed limits from the brick kiln is also more than the prescribed limit of area under orchards. All the reports of inspection are manipulated and the authorities have blindly accepted the same.

Whereas, it is the case of the respondents that the brick kiln is located beyond the distance prescribed by the governmental orders, from the mango orchards as well as human inhabitation in both the cases.

The following points arise for consideration:

iii. Whether the brick kiln established by the respondents is causing any pollution and resulting in the damage of flowering and fruiting of the mango trees of the appellants; and
iv. Whether the appellate authority has committed any error calling for the National Green Tribunal's interference.

The learned judges are of the considered opinion that the appellants have not made any case to demonstrate that the brick kiln established by the respondents is causing any 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 learned Counsel for the appellant stated that there is environmental threat for the mango trees of other landlords. Therefore, the matter has to be examined in details by calling for a fresh report from the authorities concerned.

Under these circumstances, the appeal is 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 Respondent brick kiln owners:

d. Before renewing the consent to operate in favor of the respondent brick kiln owners, the District Environmental Engineer concerned shall 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.
e. For this purpose the District Environmental Engineer shall 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).
f. 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 favor of the respondents.

The appeal stands disposed of subject to above directions.

Gram Panchayat Totu (Majthai)

Vs

State of Himachal Pradesh

ORIGINAL APPLICATION NO. 2 OF 2011

JUDICIAL AND EXPERT MEMBERS: Justice A.S. Naidu and Prof. Dr. G.K. Pandey

Key words: The Municipal Corporation, Shimla, Himachal Pradesh State Pollution Control Board, Central Pollution Control Board (CPCB), "Solid Bio-Waste Management Plant"

Application Dismissed

Date: 11th October, 2011

Gram Panchayat Totu through Shri Uttam Singh Kashyap and two other villagers of the said Village, situated in District Shimla of Himachal Pradesh, have 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 BYE PASS about 9 kms away from Shimla Town and for other consequential reliefs.

In 1999, a Solid Bio-Waste Management Plant (hereinafter called as MSW, Plant) was installed by Shimla Municipality (hereinafter called M.C. Shimla) at a place commonly known as DARNI-KA-BAGICHA, Lalpass, and Shimla. By afflux of time, the Township of Shimla grew all around the place consequently the MSW Plant became virtually situated in the middle of the town. The plant, unfortunately did not work satisfactorily, as a result of which, stench and foul smell emanated from the site and polluted the surroundings, consequently the residents of the area were affected adversely due to the foul smell. The Municipality, it appears had entrusted the management of the plant to a private company which did not possess the necessary technical know how to run the plant, consequently the entire area was polluted and it caused nuisance to general public at large.

In 2003, two sites suitable for locating the MSW plant were selected in order to shift the location. First, the site near village BHARYAL situated at TARADEVI - TOTU BYE PASS for the said purpose, and a proceeding was drawn up on 2nd September, 2003. In consonance 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, 2003. The MoEF, by letter dated 25th February, 2005, conveyed approval for diversion of 2.45 ha of forest land for non forestry purpose. In the year 2009 unfortunately the MSW Plant which was situated at DARNI-KA-BAGICHA caught fire and the M.C. Shimla could not control it. The obnoxious smell and smoke emanating from the dump site engulfed not only the surrounding areas but also the entire town, posing immense health risks, like respiratory ailments amongst the residents of the locality. It appears that the fumes and smoke arising from the fire threatened the residential houses situated in the surrounding areas and entered into the High Court premises, thereby causing disruptions in the day to day work.

The learned judges are not inclined to interfere with the decision to install the MSW Plant and Land Fill site by M.C. Shimla at village BHRYAL on TARA DEVI-TOTU BYE-PASS. However, they direct the Project proponent i.e. M.C. Shimla 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. M.C. Shimla is also directed to ensure that necessary preventive and control measures are adopted / implemented to avoid any adverse impact on the environment especially on the ground water and surface water bodies.

The project in hand is in a "Fait Accompli" situation as the construction work has already started as per the direction of the Hon'ble High Court. But then, as stated earlier the High Court has not directed the Project Proponent i.e. M.C. Shimla not to comply with the required statutory Provisions, on the other hand the Hon' High Court has clearly directed M.C. Shimla to follow the provisions of MSW Rules, 2000.

It is evident that the Hon'ble 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 are stopped from agitating the questions which could have been raised before the Hon'ble High Court but was not raised.

For the reasons stated in the preceding paragraph the learned judges feel that the MoEF should review the MSW Rules, 2000, and make it 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 visa vise those areas. Prescribing minimum distance criteria of ecologically sensitive areas and human habitation etc. from the proposed site will go a long way towards preventive measures to avoid environmental ramification, including the problem of obnoxious / foul smell / odour associated with such other hazards. The precautionary principle as enunciated under Section-20 of the NGT Act vis-à-vis the authoritative pronouncement of the Hon'ble Supreme Court, requires and mandates that the MoEF should prescribe criteria which are workable, unambiguous and not vague. This Tribunal therefore, calls upon the MoEF to critically review the MSW Rules, 2000 and make it more pragmatic, and workable. The said exercise may be completed within a period of six months.

Therefore, this Original Application is disposed, upholding the decision to set up the MSW Plant and Landfill site at Village BHARYAL in TARA-DEVI TOTU BYE PASS and direct the Project Proponent, Municipal Corporation 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 directs the M.C. Shimla to plant at least two times of the trees i.e. 219 x 2 and double the saplings i.e. 1055 x 2 of the same species which have been felled by the project proponent to maintain ecological balance.

Raagam Exports

Vs

Tamil Nadu Pollution Control Board & Another

NATIONAL GREEN TRIBUNAL, NEW DELHI

JUDICIAL AND EXPERT MEMBERS: Justice A.S. Naidu and Prof. Dr. G.K. Pandey

Key words: Dyeing and Bleach works, Tirupur, industrial effluents, River Noyyal, Public Interest Litigation, Tamil Nadu Pollution Control Board, Competent Authority

Application Disposed with permission to approach the Competent Authority

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

All the aforesaid (13) thirteen applications involve same facts and point of law. The respondents in each of the case are also one and the same and as such by consent of Learned Counsel appearing for the parties all the cases were heard together and are disposed of by this common judgment.

All these Original Applications have been filed by different fabric bleaching and dyeing units situated at TIRUPUR in the State of Tamil Nadu and are hosiery exports.

Alleging that the units engaged in Dyeing and Bleaching works at TIRUPUR area are discharging the industrial effluents into river NOYYAL thereby creating water pollution to the extent that the water of the river has become neither fit for irrigation nor potable, and that the pollution has adversely affected the tanks and channels situated nearby the river, a Public Interest Litigation was filed before the Hon'ble High Court of Madras and was registered as Writ Petition *No. 29791 of 2003*. In the said writ application directions were sought for to the extent that the dyeing units would clean the river water stored at Orathapalyan Dam within a stipulated time with its own expenses and as an interim measure shall not discharge their industrial effluents into the river NOYYAL.

A prayer is made before this Tribunal, to direct the Tamil Nadu Pollution Control Board (respondents) to permit the different 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 Hon'ble Supreme Court (in the case- *Tirupur Dyeing Factory Owners Association vs. Noyyal River Ayacutdars Protection Association, AIR 2010 Supreme Court 3645*) and the Madras High Court in their order dated 4th January, 2011.

Fact remains there are about 754 dyeing and bleaching industries situated in and around TIRUPUR Town. The trade effluent discharged by different units was admittedly treated through its conventional treatment system but the said system does not satisfy the total dissolve 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 Town TIRUPUR started deteriorating the environment in as much as the trade effluent either treated or partially treated and sometimes untreated find its course into NOYYAL River either directly or indirectly. Polluting the water of the river, ground water and the land lying in the vicinity, led to filing of Public Interest Litigation seeking directions for prevention of pollution of NAYYAL River.

In course of hearing, however, it is found that the applicants have only approached the District Environment Engineer, Tamil Nadu Pollution Control Board and requested the said Authority to inspect their unit and permit the applicant to resume operation. It is well settled that the District Environment Engineer is not the Competent Authority to grant any permit to recommence operation of any unit. For the said purpose the Applicant's have to approach the Competent Authority individually under the Water (Prevention Control & Pollution) Act, 1974 and other Acts which are applicable to the subject matter. The Applicant's having not approached the Competent Authority till today, it is not possible for this Tribunal to issue any direction to Tamil Nadu Pollution Control Board (Respondent No.1).

In view of the discussions made above, the learned judges dispose of all the above applications with an observation that if the Applicant's file suitable applications, individually seeking permission to commence their units, before the Competent Authorities, under the provisions of appropriate Law in vogue, the said Authority shall consider the said applications separately conduct such inspections as deemed just proper and necessary and if satisfied that the Applicant's or any of them have complied with

the directions issued by the Hon'ble Supreme Court as well as Hon'ble 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 the counter/affidavit filed before this Tribunal. It is needless to say that the units are lying closed for quite some time and for the sake of ends of justice and equity, warrants that the Competent Authority shall take the decision on the applications to be filed by the Applicants, individually as expeditiously as possible.

With the aforesaid observations/directions all the original applications are disposed off.

Bhawani Shankar Thapliyal

Vs

Union of India

BEFORE THE NATIONAL GREEN TRIBUNAL, PRINCIPAL BENCH, NEW DELHI

APPEAL NO. 9/2011

JUDICIAL AND EXPERT MEMBERS: Shri C.V. Ramulu and Dr. Devendra Kumar Agrawal

Key words: Ministry of Environment and Forest, M/s Alaknanda Hydro Power Company Ltd., Srinagar Hydroelectric Power Project, River Alaknanda

Appeal Dismissed

Date: 13th October, 2011

Orders of the Tribunal

Originally this appeal is filed being aggrieved by the direction issued by the Ministry of Environment and Forest (in short, MoEF) under section 5 of the Environment Protection Act, 1986 dated 30th June, 2011 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 and 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.

In so far as, relief B, D & E are concerned, they have been withdrawn by the appellant themselves, by filing an application and they have already been stood deleted. The Hon'ble Supreme Court dismissed SLP No. 15423/2011 filed seeking these three prayers i.e., B, D & E by an order dated 10th October, 2011. In so far as, prayer A & C are concerned, the Appellant No. 2 has filed a detailed representation on 5th October, 2011 to the MoEF.

The MoEF is directed to consider and dispose of the representation purported to have been filed by Appellant No. 2 on 5th October, 2011 along with the applications/compliance/objection of Respondent No. 3 within a period of 8 weeks from the date of receipt of the order, after hearing all the parties.

The learned judges made it clear that the Appellant and the Respondents may work out their remedies on reconsideration by the MoEF, if any necessary.

The appeal stands disposed of accordingly.

Balachandra Bhikaji Nalwade

Vs

Ministry of Environment & Forests

APPEAL NO. 21 OF 2011

JUDICIAL AND EXPERT MEMBERS: Justice Shri C.V. Ramulu and Prof. R. Nagendran

Key words: Maharashtra Pollution Control Board, M/s JSW Energy (Ratnagiri) Limited, Jaigad, Ratnagiri District, Coal based Thermal Power Plant, Expert Appraisal Committee, Environmental Clearance

Application Dismissed

Date: 29th November, 2011

This appeal is filed being aggrieved by the grant of Environmental Clearance (for short EC) for the 1200 mw (4x300 mw) coal based Thermal Power Plant (for short TPP) in favour of M/s JWS Energy Limited (Respondent No. 3) at Jaigad, Ratnagiri District, Maharashtra State, by the Ministry of Environment & Forests (for short MoEF), Government of India dated 28 June, 2010.

It appears the MoEF granted EC in favour of Respondent No. 3 for the establishment of a coal based thermal power plant (1200 mw) at Ganpatipule Taluka and District Ratnagiri, Maharashtra State.

The following points arise for consideration in this appeal:

i) Whether the Dr. Bala Saheb Sawant Konkan Krishi Vidyapeeth Daboli (for short KKVD) report was not properly considered by the Expert Assessment Committee (for short EAC) while recommending for the grant of EC and whether it is contrary to the directions of the Hon'ble High Court of Delhi;
ii) Whether the likely impact due to Thermal Power Plant on the Ecosystem was not yet studied and the same amounts to violation of Precautionary Principle;
iii) Whether the EAC was prejudiced and influenced by earlier clearance granted to the project and further failed to keep in mind the Principle of Sustainable development while recommending for grant of EC.

It is the case of the appellant that he is a resident of Ganpatipule Taluka, Ratnagiri District in Maharashtra and earns his livelihood mainly from mango business and owns mango orchards in the project affected area. Ratnagiri district produces Alphonso mangoes and the EC granted by the MoEF as upheld by National Environment Appellate Authority (for shot NEAA) is arbitrary and illegal. There is violation of Environment Impact Assessment Notification 1994 as amended in 2002. Whereas, it is the case of Respondent No. 1 that subsequent to the order of the Hon'ble High Court of Delhi dated 18th September, 2009, the MoEF placed the matter before the Expert Appraisal Committee (Thermal Power) in its 58th, 60th and 62nd meetings held during November 10-11, 2009, December 11-12, 2009 and January 11-12, 2010, respectively. The Expert Appraisal Committee (Thermal Power) have scientifically viewed the likely impact on Alphonso mangoes before recommending grant of EC for 4x300mw coal based TPP.

No doubt, the KKVD Report was not ready since the data are to be gathered over a period of four years as per the work plan provided in the study proposal on "Effect of Pollution from the Proposed Thermal Power Plant (1200 MW) on growth, Yield and Quality of Alphonso Mango in Jaigad Area" submitted by the KKVD to the JSW Energy (Ratnagiri) Limited. In view of the above, as directed by the EAC, the Sub-group consisting of Shri T.K. Dhar, Prof. R.V. Ram Rao, Dr. S.K. Paliwal and Prof. C.R. Babu conducted a study and reported that there is no threat to Alphonso mango trees because of the TPP.

The KKVD's first annual report has been furnished in April 2009 which was to be followed by subsequent reports over a period of three years. The first report of KKVD was placed before the EAC /MoEF in the meeting held on October 2009. The available report of KKVD on the basis of data collected thus far and analysed was considered by the sub-group. Thus, it cannot be said that the KKVD report was not taken into consideration while recommending for grant of EC by the EAC. The sub-group of EAC, specifically the Science & Technology Park (STP), Pune had compiled the information on impact of coal based power plants, particularly mango and aquatic ecology based on the published research and development papers. This was specifically evaluated and considered by the EAC. 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. 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.

It appears there are no Alphonso mango orchards elsewhere nearer to Thermal Power Project where studies could be conducted and analysed. This is a peculiar situation and in the light of that the KKVD was directed to conduct two phase study i.e. one year pre-commissioning stage and three years' post commissioning stage. No doubt, apart from this, some other study was also conducted which may not have much relevance for the purpose of this case. Therefore, it cannot be said that the KKVD report was not taken into consideration and therefore, the directions of the Hon'ble High Court of Delhi in the Writ Petition *No. 388 of 2009* disposed off on 18th September, 2009, were not adhered to and as such the EC requires to be interfered.

In so far as the question as to whether the EAC did not consider the precautionary principle as alleged by the appellant, that apart from the above findings, the learned judges found that the EAC as well as the MoEF have taken all the precautionary measures in the conditions attached to the EC in respect of the effect of TPP on the mango plantations and other significant environmental issues.

After noticing the above, it cannot be said that the official respondents have not taken the precautionary principles into consideration in the process of granting of EC and relied upon a report which suffers from serious deficiencies and short comings being based on wrong assumptions and the sensitivity of mango to sulphur dioxide has not been considered. Further, it also cannot be said, that the EAC and MoEF are prejudiced by the earlier grant of EC while reconsidering the EC. All other allegations made by the appellant have no bearing on the issues in question; therefore, they need not be delved further.

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."

The appeal is accordingly dismissed. No order as to costs.

Adivasi Majdoor Kisan Ekta Sangthan and Anr.

Vs

Ministry of Environment and Forests

M.A. NO. 36 OF 2011

(ARISING OUT OF APPEAL NO. 3 OF 2011)

JUDICIAL AND EXPERT MEMBERS: 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

Orders of the Tribunal

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 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.

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 2 Member joins. The said application having been rejected by NEAA, M/s. Jindal Steel Power Ltd. approached the High Court of Chhattisgarh in *WP(C) No.2412 of 2010*. The Hon'ble High Court by order dated 20th July, 2010 admitted the Writ Application stayed further proceedings of the appeal pending before the NEAA. After constitution of the NGT, *Appeal No. 26* of 2009 stood transferred from NEAA to this Tribunal and was registered as *Appeal No. 3 of 2011(T)*. The present Miscellaneous Application is filed by M/s Jindal Steel Power Ltd., with a prayer to continue the Interim order dated 20th July, 2010 and allow Ms Jindal Steel Power Ltd., to carry on acquisition activities for acquiring land by way of acquisition or negotiation and also to do activities in favour of the environment like plantation of trees etc., till the disposal of the appeal.

Mr. Krishnan Venugopal, Learned Senior Advocate, submitted that no prejudice whatsoever would be caused to any of the parties if Respondent No.3 is permitted to acquire land by negotiation. However, Mr. Ritwick Dutta, Learned Counsel for Appellant however, resisted the submissions made by Mr. Venugopal and submitted that as the appellants have a prima facie case, the Tribunal should not grant any interim order.

"After considering all the pros and cons and submissions made, we feel that no prejudice would be caused to the appellants if Respondent No. 3 is permitted to acquire / purchase private lands by negotiations from the land owners at his own risk."

Accordingly, liberty was granted to Respondent No.3 to acquire / purchase lands from private persons at its own risk. Such activities, however, do not confer any equity on the said Respondent. It may also carry on plantation and other environment friendly activities but then shall not make any construction or development or extract coal without obtaining prior permission of this Tribunal.

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

Bhagat Singh Kinnar

Vs

Ministry of Environment and Forest and Others

M.A. NO. 6 OF 2011

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

JUDICIAL AND EXPERT MEMBERS: Justice A.S. Naidu and Dr. G.K. Pandey

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

Application Partly Allowed

Date: 1st December, 2011

Orders of the Tribunal

The order passed by the Ministry of Environment and Forest (in short 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, of 2977 before the National Environment Appellant Authority (NEAA) and the same was registered as *Appeal No. 16 of 2010*. After the formation of National Green Tribunal under the National Green Tribunal Act, 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.

It is averred that the appellant is an illiterate person and hails from a remote tribal district of Himachal Pradesh. It is further, stated that village Rarang where Shri Negi resides is situated more than 50 kms away from the Headquarters and is near to the Indo Tibetan border. It is further averred that after consultation with some of the advocates, and on being told that all the averments have not been made, the appellant as per the instructions of his advocates seeks to amend 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 is trying to assail the forest clearance granted on 14thJune, 2011.

After going through the pleadings and the proposed amendment, the learned judges state that the amendments sought for are 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 is 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 effectual adjudication. The same does not change the nature and character of the case pleaded, nor take away any admissions made. However, the appellant cannot be permitted to introduce a prayer which has become

time barred by way of amendment. For the reasons stated above, the petition is allowed for amendment in part.

"The Appellant is permitted to incorporate the averments made in other paragraphs i.e. except the facts stated in paragraph-Z and sub-para A of BB of the amendment petition and file a consolidated Memorandum of Appeal for convenience, after serving copies thereof on all the Respondents or their Counsel, the respondents are granted time to file further reply if they so desire."

The application is accordingly disposed of.

Devi Gyan Negi

Vs

Ministry of Environment and Forest and Others

M.A. NO. 7 OF 2011

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

JUDICIAL AND EXPERT MEMBERS: Justice A.S. Naidu and Dr. G.K. Pandey

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

Application Partly Allowed

Date: 1st December, 2011

Orders of the Tribunal

An order dated 16th April, 2010 passed by Government of India, Ministry of Environment and Forests (in short 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) and the same was registered as *Appeal No. 16 of 2010*. After the formation of National Green Tribunal under the National Green Tribunal Act, 2010, the said appeal stood transferred to this Tribunal and has been registered as *Appeal No. 15 of 2011(T)*.

It is averred that Shri Devi Gyan Negi, the appellant is an illiterate person and hails from a remote tribal district of Himachal Pradesh. The village Lippa where Shri Negi resides is situated more than 50 kms away from the Headquarters and is near to the Indo Tibetan border. Further according to the appellant, suitable legal assistance is not available either in the village or in its vicinity and due to paucity of funds, it is not possible for him to come to Delhi often and seek legal assistance. The appellant on coming to know about the impugned order and on being told that the limitation for preferring an appeal before the NEAA would expire soon rushed to Delhi and filed the appeal to save the limitations.

It is further, averred that after consultation with some of the advocates, and on being told that all the averments have not been made, the appellant as per the instructions of his advocates sought to amend the Memorandum of Appeal. Mr. Naresh Kumar Sharma, Learned 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 was not the subject matter of the earlier appeal.

According to the learned judges, as would be 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 allow the same. The amendment sought, should be necessary for the purpose of determining the real question in controversy between the parties and for effectual 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 learned judges state that the amendments sought for are 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 is 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 effectual adjudication. The same does not change the nature and character of the case pleaded, nor take away any admissions made. However, the appellant cannot be permitted to introduce a prayer which has become time barred by way of amendment.

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

Vimal Bhai

Vs

Ministry of Environment and Forests

APPEAL NO. 5 OF 2011

JUDICIAL AND EXPERT MEMBERS: Justice Shri C.V. Ramulu and Dr. Devendra Kumar Agrawal

Key words: Tehri Hydro Development Corporation, Helong in Chamoli District of Uttarakhand State, dam, river Alakhnanda, Forest Clearance, Cumulative Impact Assessment

Application Disposed with directions

Date: 14th December, 2011

This appeal is filed being aggrieved by the grant of Forest Clearance (for short FC) accorded by the First respondent through its Order No. 8-65/2009 – FC dated 3rd of June 2011 under which deforestation of 80.507 hectares of government forest land diverted for construction of 65m high diversion dam across river Alakhnanda near village Helong in Chamoli District of Uttarakhand State for the purpose of generating hydroelectricity power.

The Environmental Clearance (for short EC) was already granted as early as 22nd August 2007 by the Ministry of Environment and Forest (for short MoEF). It has been more than three years, and the EC has not been challenged so it is valid. Thus, the only challenge made is for the grant of FC and not EC.

Appellant No. 1 is a Gandhian Social Activist working for the Environment Protection and Peoples' right over the natural resources in middle Himalaya area since 1988. Appellant No. 2 is an economist and a former Professor of Indian Institute of Management, Bangalore and lives on the bank of the river Alaknanda. Appellant No. 3 is a Social Activist and elected as Van Sarpanch of Village Naurakh. All of them are affected by the FC of the Vishnugad-Pipalkoti hydro power project in which construction of a 65m high diversion dam across river Alaknanda at Helong Village, Chamoli district of Uttarakhand State is proposed.

The total land requirement of the project is about 120 hectares. Out of which, about 40ha is agriculture land and about 80 hectares is government forest land. The grant of FC in the present case was substantially based on the study made by Indian Institute of Technology, Roorkee (for short IITR) and Wildlife Institute of India, Dehradun (for short 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. Thus, the recommendation of the Forest Advisory Committee (for short FAC) was based on non-existent study and as such is arbitrary and whimsical. The Respondents No. 1 to 3 have filed their detailed relies. According to them, all the allegations made and the grounds raised in the appeal are all baseless and liable to be rejected.

The following questions arise for considerations in this appeal-

a) Whether the appellants can be called as aggrieved and /or injured "person(s)" as defined under the National Green Tribunal (for short NGT) Act and the appeal is maintainable by them:

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 indicate "person" who can maintain an application/appeal under the NGT Act. But, it is the argument of the learned 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 (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 are interested persons in the environment and ecology of the area, though they are not directly affected/ injured at this point of time. But, they can be definitely called aggrieved persons since they apprehend some danger, if the project is 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 to EC. The FC alone is under challenge in this Appeal. Therefore, the submission made by learned counsel for the appellant that all the issues that arise from the EC can also be raised in this appeal cannot be countenanced and accepted. But an exception can 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 precautionary measures:

The appellants have raised grounds pertaining to 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. Whereas the respondents have filed detailed replies countering the allegations and relied 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 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, it is argued that the MoEF has stipulated at Para (xi) of the FC that minimum environmental flow as recommended in IITR study report shall be released whereas, the environmental flow determined by IITR is erroneous owing to limited data, non-use of Building Block Method and mechanical application of other methodologies as examined by Mr. Himanshu Thakkar and Parineeta Dandekar of South Asian Networks on Dams, Rivers and People. In this context, a study of International Water Management Institute (for short IWMI) has been quoted that gives environmental flow recommendations for the Ganges basin. The learned judges are 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 the Respondent No. 1. "

The appeal stands 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.

Jaya Prakash Dabral

Vs

Union of India, Through the Secretary Ministry of Environment & Forests

APPLICATION NO. 12 OF 2011

JUDICIAL AND EXPERT MEMBERS: Justice Shri C.V. Ramulu and Dr. Devendra Kumar Agrawal

Key words: State of Uttarakhand, Lanco Hydro Energy (P) Ltd., L&T Uttaranchal Hydro Power Pvt. Ltd., river Alaknanda, Hydroelectric projects, dam

Application Allowed

Date: 14th December, 2011

This application is filed under Section 14 (1) of the National Green Tribunal Act 2010 (for short 'NGT Act') by the parties in person. It is 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. There is an urgent need to raise the negative impact of the tunnel based hydro power projects. If the construction of the dam is allowed, it may cause irreparable and irreversible loss to the environment.

According to the applicants, Mandakini River is an important tributary of river Alaknanda which eventually forms River Ganga after merging with River Bhagirathi in Devprayag. Six Hydroelectric projects have been planned in river Mandakini. Four of them are in the planning stage while in two i.e. Singoli-Bhatwari and Phata-Byung construction has started. What is alarming today is that in the entire length of 50 km from the first dam to the last dam, the river will be channeled through tunnels. This will have grave 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. The Sinogli-Bhatwari project is being constructed by L&T Uttaranchal Hydro Power Limited and in Phata-Byung the project is being constructed by Lanco Hydro Energy Private Limited. The first applicant is the President of Himalayan Chipko Foundation (Registered Society) an NGO working on several environmental issues relating to the Himalayas. The Second applicant Dr. Bharat Jhunjhunwala is a former-professor of IIM-Bangalore and an expert on dam economics, a noted columnist and resides in Lakshmoli Village of Tehri, Garhwal on the banks of river Alaknanda.

It is the contention of all the respondents that the very application under Section 14 (1) of the NGT Act is not maintainable. The applicants can never be called either person/(s) aggrieved or person/(s) injured for the purpose of maintaining this application. According to the applicants, they are 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 is the case of the respondents that a *Writ Petition No. 38 of 2011* has been filed and pending before the Hon'ble High Court of Uttarakhand. The subject matter of the present application and the subject matter of the Writ Petition before the Hon'ble High Court of Uttarakhand under Article 226 of the Constitution of India are substantially one and the same. Once the matter is under consideration with the Constitutional Court, this Tribunal may not venture to decide the matter unless and until the High Court of Uttarakhand decides the matter one way or the other.

The only point that falls for consideration is:

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

The learned judges took note of the judgment delivered by them on 14th day of December 2011 in *Vimal Bhai Vs Ministry of Environment and Forest (Appeal No. 5 of 2011)* on the similar lines. The applicants are "persons aggrieved", in a matter of this nature. Therefore, the applicants are entitled to maintain an application of this nature.

The applicants are directed to re-submit the application in its proper form as required under the rules duly serving papers in advance on the respondents.

"The parties shall intimate the Registry of this Tribunal as and when the writ petition before the Hon'ble High Court of Uttarakhand is disposed of or withdrawn as the case may be. Post the matter after intimation is received from the parties."

M/s Athiappa Chemicals (P) Ltd.

Vs

Puducherry Pollution Control Committee Government of Pondicherry

APPLICATION NO. 30 OF 2011

JUDICIAL AND EXPERT MEMBERS: Justice Shri C.V. Ramulu and Dr. Devendra Kumar Agrawal

Key words: Central Pollution Control Board, Government of Pondicherry Department of Science, Technology and Environment, Puducherry, M/s Athiappa Chemicals (P) Ltd., Appellate Authority

Application Dismissed

Date: 14th December, 2011

This is an application filed under Section 14 of the National Green Tribunal Act 2010 challenging the Order dated 16th November, 2011 issued by the Puducherry Pollution Control Committee, Pondicherry under Section 31-A of the Air (Prevention and Control of Pollution) Act, 1981 directing the Applicant to stop all the manufacturing activities until the three directions mentioned therein are complied with.

It was submitted that this Tribunal has 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. The Appellate Authority sits periodically once in a month or once in two months, therefore, the appeal under Section 31 of the Air Act is 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.

The National Green Tribunal is a statutory Tribunal and it cannot examine the virus 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, the learned judges cannot 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 cannot assume jurisdiction under Section 14 of the NGT Act. Thus, entertaining an application of this nature amounts to allowing the Applicant to jump the statutory appeal which is not permissible under the law. Unless, all the forum available under the Act are exhausted by the Applicant including the appeal under Section 31 of Air Act, it cannot approach this Tribunal directly, whatever may be the merits and the questions of Law raised and arise for consideration. This Tribunal being statutory in its nature cannot entertain the Applicant of this nature much less any substantial question of law has arisen under Section 14 of the NGT Act for consideration. Therefore, the considered opinion of the learned judges is that the Application is not maintainable and being devoid of merits and is liable to be dismissed.

Accordingly, the Application stands dismissed at admission stage itself.

M/s. Blooming Colours

Vs

Tamil Nadu Pollution Control Board

APPLICATION NO. 33 OF 2011

JUDICIAL AND EXPERT MEMBERS: Justice A.S. Naidu and Dr. G.K. Pandey

Key words: Tamil Nadu Pollution Control Board, Competent Authority

Application Dismissed

Date: 15th December, 2011

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

Therefore, without issuing notice to the Respondents, the learned judges dispose of this Application with an observation that if the Applicant files suitable application, seeking permission to commence its unit, before the Competent Authorities, under the provisions of appropriate Law in vogue, the said Authority shall 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 Hon'ble Supreme Court as well as Hon'ble 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 is 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 is disposed of at the admission stage, liberty is granted to any of the opposite parties to move this Tribunal by filing appropriate Application, if any feel aggrieved, by this order.

The Application is accordingly disposed of.

Paryavana Sanrakshan Sangarsh Samiti Lippa

Vs

Union of India and Ors.

M.A. No. 23 OF 2011

(ARISING OUT OF APPEAL NO. 17 OF 2011)

JUDICIAL AND EXPERT MEMBERS: Justice A.S. Naidu and Dr. G.K. Pandey

Key words: Integrated Kashang stage II and III Hydroelectric Project, Condonation of delay, forest diversion

Application Allowed

Date: 15th December, 2011

Orders of the Tribunal

The Appellant seeks to assail the order dated 14th June, 2011 issued by Ministry of Environment and Forests (Respondent No. 1), granting final approval for diversion of 17.6857 ha of forest land in favour of M/s. Himachal Pradesh Power Corporation Ltd., (HPPCL) for construction of 130 MW Integrated Kashang stage II and III Hydroelectric Project in this appeal, filed under Section 18 (1) read with Section 14, 15 & 16 of the National Green Tribunal Act, 2010 (hereinafter referred to as NGT Act).

The appellant presented the Memorandum of Appeal in the office of NGT on 12th December, 2011. The same was registered as *Appeal No.17 of 2011*, subject to objection on limitation and notices were issued.

After receiving notice, Respondents No. 2 and 3 entered appearance through Mr. Naresh Kumar Sharma. Ms. Neelam Rathore appeared on behalf of Respondent No.1, Union of India. In course of hearing on the question of limitation, Mr. Ritwick Dutta, appearing on behalf of the appellants, prayed to allow him to file a detailed petition for condonation of delay. The said prayer having been allowed an application for condonation of delay was filed on 12th October, 2011 and was registered as *M.A. No. 23 of 2011*. A reply to the said application was filed by Respondent No.3. On behalf of Respondent No.1, however, no objection was filed.

Mr. Sharma, Learned Counsel for Respondents No. 3 and 4 contended that admittedly the Appeal was not filed within the prescribed period i.e. 30 (thirty) days, thus it was barred by time. The Memorandum of Appeal in this case was also not accompanied with a petition for condonation of delay, thus the belated application filed for condonation should not be accepted and the Appeal should be dismissed, on the ground of limitation.

It is true that, Section 16 of the Act requires that the period of limitation should 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 8 of Appeal. In the

learned judges' view, the reasons assigned are sufficient and the delay caused has been properly explained.

The submission of Mr. Sharma that the President of the Appellant Samiti was present in the Ministry when the order was passed, is not very much material, as no document is produced before the Tribunal to reveal that the copy of the impugned order was served upon him, nor there is any material to reveal on what context he went to the Ministry of Environment and Forest. In the considered view of this Tribunal, the aforesaid mentioned 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. As a matter of fact, the appeal has been filed on the 90th day and under the proviso of Section 16 of the NGT Act, this Tribunal has the authority and jurisdiction to condone the delay.

"The application is accordingly allowed, the delay is condoned, with no order of cost.

List the appeal for hearing on merits."