Husain Saleh Mahmad Usman

Bhai Kara Vs

Union of India and Others

M.A. NO. 32 OF 2011

(ARISING OUT OF APPLICATION NO. 32 OF 2011)

JUDICIAL AND EXPERT MEMBERS: Justice A.S. Naidu and Dr. Vijai Sharma

Key words: Village Bhadreshwar, Taluk Mundra, District Kutch, coal based Thermal Power Plant, Forest Conservation act, Environmental Clearance

Application Dismissed

Date: 10th January, 2012

Orders of the Tribunal

The State Level Environment Impact Assessment Authority, Gujarat (SLEIAA) by order dated 11th June, 2010 granted environmental clearance (in short EC) for establishing 300 MW (2x150 MW) imported / Indian coal based Thermal Power Plant at Village Bhadreshwar, Taluk Mundra, District Kutch in favour of M/s OPG Power Gujarat Pvt. Ltd. (Respondent No. 3.)

The Applicant has filed an application alleging violation of certain conditions stipulated in the aforesaid EC, more particularly violation of the guidelines issued under the Forest (Conservation) Act, 1980.

Along with the application, the Applicant has also filed a petition under Section 19 (4) (i) of the NGT Act, 2010 inter alia praying to restrain Respondent No.3 from carrying out any construction in consonance with the EC granted in its favour, on the ground that, it would cause irreparable damage to ecology and environment.

According to Mr. Panjwani, Learned Sr. Advocate appearing on behalf of the Applicant, the land over which the project is proposed to be constructed involves both forest and non-forest lands, but the said aspect was not disclosed either in the Environment Impact Assessment (EIA) Report or in the EC letter, as it was intentionally suppressed by the Project Proponent (Respondent No. 3). Drawing the court's attention to para 4.4 of the guideline on Forest (Conservation) Act, 1980, Mr. Panjwani submitted that as and when a project involves use of forest as well as non-forest land, work should not be started on non-forest land till approval of the Central Government for release of forest land is granted. In the case in hand a prayer is made to issue an Interim Order / direction restraining Respondent No. 3 from making any construction over the non-forest land, till necessary permission is obtained from the Central government.

According to Mr. Ramchandran, Learned Advocate appearing for Respondent No. 3 the perusal of the records reveals that 3.68 ha of forest land out of 300 acres of forest lands, are involved in the aforesaid project. The forest land, it is submitted would be used only for laying pipelines without causing any damage to the existing forest. Mr. Krishnan Venugopal, Learned Sr. Counsel, advancing the cause of the Project Proponent submitted that Para 4.4 of the circular issued under the Forest (Conservation) Act, 1980

is only a guideline and it has neither any statutory force nor can it be said to be binding upon Respondent No.3. It is also submitted that alternative steps are being taken not to use the reserve forest land and instead use other land situated in the vicinity for laying down the pipe lines, and as such, if the construction work is stalled Respondent No.3 would suffer insurmountable hardship.

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

Considering the submissions made in Court, and the facts and circumstances, the Tribunal feels that the balance of convenience tilts in favour of Respondent No. 3. The learned judges are also satisfied that irreparable loss and prejudice would be caused if the said Respondent is restrained from raising any construction over the non-forest land at this stage.

Therefore, this miscellaneous application is disposed with a direction that if Respondent No. 3 carries any construction in connection with the Thermal Power Plant over non-forest land at Village Bhadreshwar, the same would be at the risk of said Respondent. It is also made clear that in future, Respondent No. 3 shall not claim any equity with regard to the constructions made.

Baijnath prajapati

Vs.

Ministry of Environment Forests

and others

NGT APPEAL NO. 18/2011

JUDICIAL AND EXPERT MEMBERS: Justice A.S. Naidu and Dr. Vijai Sharma

Key words: Environmental Clearence, Madhya Pradesh State Pollution Control Board, M/s MB Power (Madhya Pradesh) Ltd., The Chief Conservator of Forests, coal based thermal power plant, withdrawn

Application withdrawn by applicant Date:20th January,2012

Baijnath Prajapati, a resident of village Guwari, district Anuppur, Madhya Pradesh, while asserting that "he is involved in issues concerning the social development as well as the environment", has filed the present Appeal assailing the order dated 28th May, 2010, and the corrigendum dated 1st September 2010 and the office memorandum dated 23rd November, 2010, granting environmental clearance in favour of M/s Moser Baer Power and Infrastructure Ltd (Respondent No. 3) for a coal based thermal power plant. The environmental clearance was challenged on several grounds enumerated in the Memorandum of Appeal.

As the Appeal was barred by Limitation, by order dated 27th September, 2011 notices were issued to the Respondents.

An application dated January 13th, 2012 was filed by the Appellant seeking withdrawal of the Appeal on the following ground:-"*That, the Appellant-Applicant begs this Hon'ble Tribunal for permission to withdraw this Appeal as the Appellant has come to the conclusion, after careful consideration, that this developmental project is required for development of the region and that he cannot oppose this project.*"

This Tribunal has to see that it does not engage in adjudication that is motivated by frivolous considerations or reasons not connected with environmental protection and conservation. It appears that the Appellant has dragged the project proponent, the Ministry of Environment and Forests and other State Government departments into litigation in a flippant manner amounting to abuse of the Tribunal process.

"*We cannot stop the Appellant from withdrawing the case filed by him. At the same time, it is mentionable that we are not conferred with suo moto powers to proceed with the case. Therefore, we allow the Appellant to withdraw this Appeal. But, to avoid such frivolous cases in future we intend to award some costs*."

In this regard, the learned judges enquired from the Appellant who was present in Court in presence of Mr. Aagney Sail, Learned Counsel. The Appellant agreed to pay Rs. 50,000/- towards cost.

Shri govind singh patangey
Vs.
Ministry of Forest and Environment and others

APPEAL NO. 2/2011(T)

NEAA APPEAL NO. 25/2009

JUDICIAL AND EXPERT MEMBERS: Justice A.S. Naidu and Dr. Vijai Sharma

Key words: National Thermal Power Corporation Ltd., Uttarakhand Environment Protection and Pollution Control Board, Pithoragarh District of Uttarakhand, Rupsiabagar Khasiabara, HEP Project 261 MW (3X87 MW), Forest Clearance, Environmental Clearance

Application withdrawn by applicant

Date: 20th January, 2012

Environmental Clearance was accorded by the Ministry of Environment and Forests (in short MoEF) to Rupsiabagar Khasiabara, HEP Project 261 MW (3X87 MW) situated at Pithoragarh District of Uttarakhand, in favour of M/s National Thermal Power Corporation Ltd. by order dated 26th March 2009. The Environmental Clearance was assailed before the then National Environment Appellate Authority (NEAA), and was registered as NEAA *Appeal no. 25/2009*. In conformity with the provisions of the National Green Tribunal Act, the said Appeal stood transferred to this Tribunal and was registered as NGT *Appeal No. 2/2011(T)*.

In the course of hearing, it was revealed that by order dated 19th July, 2010 the MoEF, exercising the power conferred upon it under Section 2 of the Forest Conservation Act 1980, has denied approval for diverting 217.522 ha of forest land for construction of the Hydro-electric Project in question. Consequently, the Environmental Clearance granted becomes infructuous and inoperable.

Being confronted with the said facts and changed circumstances, Learned Counsel for the Appellant submitted that the Appellants are no longer inclined to pursue the Appeal, as the impugned order has become nugatory. A prayer is made to withdraw the Appeal.

After hearing Learned Counsel for the parties the learned judges accept the prayer made and permit the Appellant to withdraw this Appeal. In future if any contingency arises thereby creating fresh cause of action it would be open to the parties to work out their remedies in accordance with law.

With the aforesaid observation, the Appeal is disposed of as withdrawn.

Satish Umesh Prabhu

Vs

M/s Matoshree Infrastructure Private Limited

M.A NO. 30/2011

ARISING OUT OF APPEAL No. 15/2011

JUDICIAL AND EXPERT MEMBERS: Justice A.S. Naidu and Dr. Vijai Sharma

Key words: Member Secretary State Level Environment Impact Assessment Authority, Member Secretary Maharashtra State Level Expert Appraisal Committee, Condonation of delay

Application Allowed

Date: 24th January, 2012

Environmental Clearance granted by the Maharashtra State Level Environment Impact Assessment Authority vide its letter dated 5th July, 2011, has been assailed in *Appeal No. 15/2011* on various grounds. The said Appeal being one under section 16 of the National Green Tribunal Act, 2010, the prescribed period of limitation is thirty days from the date of the order or communication thereof. Proviso to section 16 sub-section (j) stipulates that the Tribunal may, if it is satisfied that the Appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

In the case in hand, the Appeal was filed on 5th September, 2011, i.e., after a lapse of thirty days. The Appeal is thus barred by time. This Application is filed to condone the delay in filing the Appeal. It has been submitted that the Appellants were misguided by clause 11 of the order dated 5th July, 2011, granting Environmental Clearance.

It has been further submitted that the Appellants were expecting the National Green Tribunal to start functioning in Pune soon and that they were waiting to file the Appeal there. However, there was delay and the Appellants were constrained to come to Delhi and seek legal assistance. He was advised by Learned Counsel to present the Appeal in the Principal Bench at Delhi. Thereafter, the Appellants made arrangements and filed the Appeal on 5th September, 2011. According to the Appellants, they were pursuing their 'cause' diligently. The delay was caused due to reasons beyond their control and that it is a fit case in which the same should be condoned.

Member Secretary, State Level Environment Impact Assessment Authority (Respondent No. 2) has no jurisdiction or authority to enhance the period of limitation prescribed under the Statute. In view of the said clear position the learned judges are satisfied that Respondent No. 2 acted in excess of jurisdiction conferred upon him in incorporating clause 11 to the impugned order and thereby granting six months time to file the Appeal.

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

After considering all the facts and circumstances, the Tribunal is satisfied that there are sufficient reasons for not filing the Appeal on time. Consequently, the learned judges condone the delay. The Miscellaneous Application is accordingly allowed.

Suresh Banjan
Vs
State of Maharashtra and Others

APPEAL NO. 35 OF 2011
JUDICIAL AND EXPERT MEMBERS: Justice A.S. Naidu and Dr. G.K. Pandey

Key words: State of Maharashtra & Ors., Jai Shanker Yagnik Marg F/N ward, Mumbai, slum rehabilitation of Indira Nagar Hutment Dwellers, Environmental Clearance

Application Consents of parties Date: 31st January, 2012

The Order dated 14th October, 2011, passed by State Environmental Impact Assessment Authority (Respondent No. 2) granting Environmental clearance, to the project of slum rehabilitation of Indira Nagar Hutment Dwellers CHS Ltd. at C.S.No. 11(pt) of Sion Koliwada Division , Jai Shanker Yagnik Marg, F/N ward, Mumbai, in favour of M/s. Harekrishna Builders (Respondent No. 4) is assailed in this Appeal mainly on the following grounds:

That the State Environmental Impact Assessment Authority (in short SEIAA) granted the Environmental clearance (in short EC) on the basis of faulty, forged and incorrect representation of facts, without conducting any enquiry.

M/s Harekrishna Builder (Respondent No. 4) had time and again altered the number of stories in the proposed structure, thus there is variation in approved plan.

The Builder had misrepresented and misled, regarding the status of the construction.

No prior information was intimated to members of the Society about the change in plan.

That no Public Hearing was conducted before granting EC.

The Builder, violated the terms of reference enshrined in Environmental clearance (EC), and the EC had been granted without verification.

The plea of Respondent No. 4 that no environmental clearance would be necessary for the project, as the same is covered under Environmental Impact Assessment (for short EIA) Notification, 1994 having not been accepted by Maharashtra Pollution Control Board, Respondent No. 4 applied for Environmental clearance in prescribed form. In the application it was clearly mentioned that the project had commenced its work since 1996 and 3 buildings out of 6 have already been completed, and that the work in other buildings was in full swing.

We are conscious that Under Article 21 of the Constitution, a Person is entitled to live with dignity and comfort. In "Universal Declaration of Human Rights, 1948", housing has been specifically recognized as one of the rights relating to living. In the case in hand, the slum dwellers have been evicted from the Slum's which they were occupying since long. They were allotted transit accommodations where sanitary facilities and other amenities, to meet day-to-day existence, were lacking. That apart, continuance of a Housing project for more than 7 years, affects the environment. The pollution level in the locality, both air and water would be in deplorable state. Due to the construction work, noise and dust emanating in the area would pose a threat to health, apart from causing annoyance and inconvenience.

Considering all the aspects, the learned judges suggested the Parties to put forward a workable solution to end the litigation. After elaborate submissions and counter submissions, the parties agreed to dispose of the case with following directions:-

M/s Harekrishna Builders (Respondent No. 4) shall adhere to, the sanctioned plan and shall not deviate.

Respondent No. 4 shall take immediate steps to complete the entire construction, as per the plan and Environmental Clearance within a period of three and half years from today.

The project being a time bound one, any delay caused should be seriously viewed and the authorities, like Maharashtra Pollution Control Board and Town Planning Authorities to initiate appropriate action in accordance with law, if the project is not completed within three and a half years from today as undertaken by Respondent No. 4.

Respondent No. 4 shall provide all amenities as per the approved plan and agreement entered inter se between the Society and the Builder.

Respondent No. 4 shall further ensure that till all the members who have been found eligible for allotment of flats and staying in transit accommodations are provided with flats, it shall not sell any flat to outsiders.

To facilitate expeditious completion of the work, Shri Suresh Banjan, the appellant shall vacate the slum which he is occupying within a period of one month, failing which necessary steps shall be taken to demolish the same.

Learned Counsel for Respondent No. 4 and also the said Respondent who is present in the Court, in person fairly agreed to adhere to the time schedule and also gave consent to comply with the terms and conditions embodied in the preceding Paragraphs, and complete the project within three and a half years.

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

APPEAL NO. 29/2011

JUDICIAL AND EXPERT MEMBERS: Justice A.S. Naidu and Vijai Sharma

Key words: Regional Officer UP Pollution Control Board, Village Lakhaiya Pargana Charda, Tehsil Nanpara, District Bahraich, Uttar Pradesh, Brick Kiln, NOC, withdrawn

Application withdrawn by applicant

Date: 2nd February, 2012

This Appeal is filed assailing the legality of the order dated 12th September, 2011, passed by Special Secretary, Environment Department, UP Government, in exercise of the powers conferred upon him under Section 31 of the Air (Prevention and Control of Pollution) Act, 1981. With a view to avoid unnecessary detail, the short facts leading to the present Appeal are as follows:

(i) The Appellant is the owner of a piece of land, Gata No. 870, situated at Village Lakhaiya Pargana Charda, Tehsil Nanpara, District Bahraich, and Uttar Pradesh.

(ii) The Appellant intended to establish a Brick Kiln over the said land and filed an Application before the competent authority for granting license / no objection certificate, under the Air (Prevention and Control of Pollution) Act, 1981. The authorities after due process granted no objection certificate on 1st October, 2009 for establishment of Brick Kiln.

(iii) After obtaining the no objection certificate (NOC), the Appellant, it is averred, took steps for setting up the Brick Kiln. Thereafter, it is alleged, some frivolous allegations were made by the adversaries and rivals of the Appellant before the Authorities. After receiving the complaint, the Sub-Divisional Magistrate, Nanpara, by order dated 10th October, 2009, called upon the Appellant to show cause and produce the relevant documents relating to the establishment of the Brick Kiln. The said direction was duly complied with by the Appellant, within the time prescribed.

(iv) That the Sub-Divisional Magistrate conducted a field enquiry, recorded the statements of the complainant and other villagers and being satisfied submitted a report in favour of the Appellant, to the District Magistrate. Thereafter, the Appellant established his Kiln and obtained registration certificate.

(v) While the matter stood thus, it is alleged, he received the order dated 21st October, 2009 from the Regional Officer of Uttar Pradesh Pollution Control Board (in short U.P. PCB), Faizabad, revoking the no objection certificate granted to the Appellant. The Appellant being aggrieved assailed the said order before the High Court of Allahabad in *Writ Petition No. 11816/2009*. The said writ petition was disposed of granting liberty to the petitioner to move for an application against the impugned order before the appropriate authority. In consonance with the direction, the Appellant, it is submitted, filed an application before U.P. Pollution Control Board on 23rd December, 2009. After receipt of the application from the Appellant, it appears, the Regional Officer, U.P. PCB, conducted the site inspection, which revealed that the Brick Kiln in question was installed at a place other than the place

for which no objection was granted. It also did not satisfy the guidelines set forth by the District Board. That apart, the Brick Kiln was set-up at a distance of 80 meters from Abadi lands with thick population. After considering the facts and circumstances, by a well discussed order dated 19th January, 2010, the U.P. PCB rejected the petition filed by the Appellant and confirmed the order cancelling the no objection certificate.

(vi) The Appellant once again approached the Hon'ble High Court challenging the order passed by the Board but the Hon'ble High Court of Allahabad dismissed the application, permitting the Appellant to prefer an Appeal in accordance with law. Thereafter, the Appellant filed an appeal under Section 31(2) of the Air Act, 1981, which was registered as *AIR Appeal No. 2/2010*. The Appellate Authorities, as would be evident from the judgment, dated 12th September, 2011 (Annexure A-1), discussed the facts and circumstances, and came to the conclusion that the findings arrived at by the Board do not suffer from any infirmity and dismissed the Appeal.

In view of the submissions made by Mr. Javed Ahmad, Learned Counsel appearing for the Appellant, that he does not want to press this Appeal and wants to withdraw the same, the learned judges find no reason to go into the merits of the case. Accordingly, the Appellant is permitted to withdraw the Appeal, but then the Tribunal grants liberty to the Appellant to file a fresh application before the competent authority in respect of the lands that satisfy the sitting criteria for a Brick Kiln. If such an application is filed enclosing all relevant documents, the competent Authority shall do well to conduct a site inspection, complete the formalities and dispose of the said application strictly in accordance with law. The said exercise should be completed as expeditiously as possible. This Appeal is accordingly disposed of as withdrawn.

Sri Lakshmi Minerals

Vs

TAMIL NADU POLLUTION CONTROL BOARD

APPLICATION NO. 5/2012

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

Key words: Tamil Nadu Pollution Control Board, District Environmental Engineer Tamil Nadu Pollution Control Board, The Tamil Nadu Electricity Board

Application Disposed With Directions

Date: 8th February, 2012

Order of the Tribunal

This application is filed seeking a direction to the Respondents to inspect the unit of Sri Lakshmi Minerals (the Applicant) and to consider the representation made by it to The District Environmental Engineer Tamil Nadu Pollution Control Board (Respondent No. 2) on 10th June, 2011 and 11th July, 2011 for grant of consent to operate the Unit.

It appears that by an order dated 31st May, 2010 passed by the Respondent No. 1, the Unit of the applicant was directed to be closed and further directed the The Tamil Nadu Electricity Board (Respondent No. 3) to stop supply of electricity, purported to be Under Section 31-A of Air (Prevention and Control of Pollution) Act 1981 and Under Section 33-A of Water (Prevention and Control of Pollution) Act 1981. The applicant has not availed any appeal as provided under the respective Acts. However, it had made two representations requesting the Respondent No. 2 to inspect the Unit and to grant letter of consent, after visiting the unit, as per law. Though no appeal is filed against the order dated 31st May, 2010 the above mentioned representations were filed after rectifying the defects pointed out by the authorities under the said Acts earlier. Now, the grievance of the applicant is that the said representations were not considered by the Respondent No. 2, till date.

The learned judges do not agree with the submissions made by the learned counsel Shri P. Prashanth. Whether appeal is filed or not against the order of the Tamil Nadu Pollution Control Board (Respondent No. 1) dated 31st May, 2010, this application is not maintainable seeking a direction to the Respondent No. 2 to dispose of representation filed on 10th June, 2011 and 11th July, 2011. Further, no substantial question of law relating to environment had arisen as contemplated under section 14 of the National Green Tribunal Act. May be the applicant has rectified the defects pointed out earlier, which were the basis for the closure of the unit.

a) Under these circumstances, the application is disposed of at admission stage with the following direction the applicant to approach the Respondent No. 2 seeking disposal of his representation dated 10th June, 2011 and 11th July, 2011 and it is always open for the Respondent No. 2 to dispose of the said representations as expeditiously as possible, as per law.

b) the applicant is also at liberty to file an appeal against the order passed by the Respondent No. 1 dated 31st May, 2010, if he is so advised and it is always open for the appellate authority to consider the same as per law, including the limitation aspect of the matter.The application stands disposed of

accordingly. No costs.

Bhai
Vs
Ministry of Environment & Forests

REVIEW APPLICATION NO. 1 OF

2012 IN

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, Uttarakhand State, dam, river Alakhnanda, Forest Clearance, Cumulative Impact Assessment, Review Application

Application Disposed with directions

Date: 8th February, 2011

Orders of the Tribunal

This Review Application is filed under section 19(4) (f) of the NGT Act 2010 read with Rule 22 of the NGT (Practice and Procedure) Rules 2011 seeking review of the judgment dated 14th December, 2011 in *Appeal No. 5 of 2011* where under, the appeal was disposed of (refer to the original order); in which grant of Forest Clearance in favour of Tehri Hydro Development Corporation (Respondent No. 2) by the Ministry of Environment and Forest (MoEF) was challenged. (This review application is filed only by Vimal Bhai, Applicant No. 1, though three Applicants were shown in the cause title). The Learned Counsel for the Review Applicant raised mainly the following points and submitted that non-consideration of these points amounted to error apparent on the face of record and as such the order made in the appeal dated 14th day of December 2011 is liable to be reviewed by setting aside the said order and allowing the appeal:

1. Error apparent on the face of record in the judgment of the Tribunal regarding cumulative impact analysis report and fixation of environmental flow are not in consonance with the principles of sustainable development and precautionary principles.
2. The conclusions drawn with respect to the cost benefit analysis is contradictory to the findings recorded.

It appears that the review applicant failed to understand the spirit of the judgment. If the appellant is aggrieved by this finding, the remedy may be an appeal and not a review application of this nature. The power of review requires to be exercised sparingly that too in exceptional circumstances when the order sought to be reviewed suffers from any error apparent on the face of record or permitting the error to stand will lead to failure of justice. Neither there is any error apparent on the face of record nor any error which, if permitted, will lead to failure of justice. The applicant has taken inspiration from the findings recorded by the Tribunal on the basis of voluminous record examined by it produced by the Respondent No. 1. Therefore, it does not lie in the mouth of the applicant to say that there is any error apparent on the face of record for seeking review of the said findings. Further the conclusions arrived at cannot be said to be contrary to the reasons recorded.

For all the reasons recorded the review application is devoid of merits and accordingly dismissed

Husain Saleh Mahmad Usman Bhai Kara
Vs
Gujarat State Level Environment Impact Assessment Authority and Others

APPEAL NO. 19 OF 2011
JUDICIAL AND EXPERT MEMBERS: Justice A.S. Naidu and Dr. G.K. Pandey

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

Application Disposed With Directions

Date: 8th February, 2012

1. **Appeal No. 19/2011: Hussain Saleh Mahmad Usman Bhai Kara Vs Gujarat State Level Environment Impact Assessment Authority and Others**

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

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

The matter in the aforesaid two Appeals as well as the Application, relates to setting up of a 300 MW (2 x150 MW) imported / Indian Coal Based Thermal Power Plant at Village Bhadreshwar, Taluka Mundra, District Kutch, in the State of Gujarat by OPG Power Gujarat Pvt. Ltd. The facts of all the aforesaid three cases being similar, by consent of parties, the same were heard together and are disposed of by this common judgment.

In *Appeal No. 19/2011*, (*NEAA Appeal No. 22/2010*) four Appellants claiming to be fishermen, Saltpan worker, and residents of Bhadreshwar Village respectively assailed the Environmental Clearance (EC) granted in favour of M/s OPG Power Gujarat Pvt. Ltd. (Respondent No. 3) in the said appeal, by the Gujarat State Level Impact Assessment Authority, vide letter dated 11th June, 2010, for setting up the Thermal Power Plant.

Appeal No.37/2011 was filed by three Appellants, assailing the grant of Coastal Regulation Zone (CRZ) clearance for the proposed intake and outfall of sea water by M/s OPG Power Gujarat Pvt. Ltd. for utilisation in the power plant proposed to be set up at Village Bhadreshwar**.** The said clearance was granted vide letter dated 16th September, 2011 by the Ministry of Environment and Forests (in short MoEF).

Application No.32/2011 was filed by Husain Saleh Mahmad Usman Bhai Kara, alleging violation of the provisions stipulated under Schedule-1 of National Green Tribunal Act, 2010, namely the violation of Environment Protection Act, 1986 and specially the conditions stipulated in EC granted to the Thermal Power Plant set up by M/s OPG Gujarat Power Ltd., and also violation of the guidelines issued under the Forest (Conservation) Act, 1980. In the said Application, it is averred that EC was granted by the Gujarat State Level Environment Impact Assessment Authority without insisting upon Forest Clearance (FC)

though the project area of Respondent No. 3 include reserved forest. A number of other allegations are also made with regard to suppression of true facts from the authorities.
Learned Counsel for Respondent No. 3 admitted that in the Application filed by the Project Proponent under the Forest (Conservation) Act, 1980 seeking permission to use land for non-forest activities, i.e., to lay down the pipeline from the project area to the sea has been returned. It is also submitted that Respondent No. 3 is endeavouring to find out alternative ways to avoid use of forest land and also sea water. According to Mr. Venugopal, Learned Sr. Advocate, if the new technique is adopted, then there would not be any need for forest and / or CRZ clearance.
In the course of hearing, an Application was filed by Respondent No. 3, inter-alia, praying to call for a report from the State Level Environment Impact Assessment Authority as to whether it would be environmentally feasible for the Respondent to shift to an alternate Cooling process for the project, i.e., Close-Cycle Dry Cooling and also with regard to other ancillary questions. However, as the learned judges are proposing to dispose of this Appeal with certain directions, without expressing any opinion they grant liberty to the petitioner to file such a petition before the State Level Environment Impact Assessment Authority, and direct the said Authority to deal with it in proper perspective, as expeditiously as possible.
It is well settled that in the absence of permission under the Forest (Conservation) Act and CRZ clearance, the EC granted in favour of Respondent No. 3 becomes redundant in as much as the said EC is subject to the permission and clearance granted under the Forest (Conservation) Act, 1980 as well CRZ Regulations. Therefore, we have no hesitation to hold that until the Respondent No. 3 obtains clearance to use reserve forest land and clearance from the CRZ Authorities, it cannot go ahead with the project. But then Mr. Venugopal, Learned Counsel, as well as the agents / officers of the Project Proponents who are present in Court submitted that steps are being taken to adopt alternative Cooling process for the project and Respondent No. 3 is not keen to either use the reserve forest land and / or the sea water. Consequently it is submitted that no permission need be required under the Forest (Conservation) Act and / or clearance under the CRZ Regulation.
After hearing learned counsel for the parties, in view of the discussions made above and the present day scenario, the learned judges feel that it would be just, proper and equitable to dispose of all the three cases with the following directions:-
The Respondent No. 3 shall adhere to the terms and conditions laid down in the EC granted by Gujarat State Level Impact Assessment Authority vide letter dated 11th June, 2010 for setting up of 300 MW imported /Indian Coal Based Thermal Power Plant at Village Bhadreshwar vide Annexure- A-1.
If the Respondents propose any deviation of their original project plan, by implementing Technical change, they shall apply to the concerned Authorities who shall consider the same strictly in consonance with law and dispose of the same as expeditiously as possible, but not later than four months.
In the event Respondent No. 3 intends to follow the original project technique then it shall make further applications under the Forest (Conservation) Act, 1980, which shall be dealt with in its own merits and disposed of in accordance with law also within a span of two months.
Respondent No. 3 has liberty to submit his show cause before the MoEF in response to the notice dated 6th February, 2012 under the provision of the Coastal Regulation Zone Notification, 2011. If such a show cause is filed, the same shall be disposed of by the Competent Authority in accordance with the law.
With the aforesaid directions, the two Appeals and the Application stands disposed of.

Jan Chetna
Vs
Ministry of Environment and Forests

APPEAL NO. 22 of 2011(T)
JUDICIAL AND EXPERT MEMBERS: Justice A.S. Naidu and Dr. G.K. Pandey

Key words: Chhattisgarh Environment conservation Board, M/s Scania Steel and Power Ltd., Sponge Iron Plant, Environmental Clearance, Public Hearing, locus standi

Application partly allowed

Date: 9th February, 2012

M/s. Scania Steels & Power Ltd. (formerly known as Sidhi Vinayak Sponge Iron Ltd.) was operating a Sponge Iron Plant in Village Punjipatra, Tehsil Gharghoda, District Raigarh in the State of Chhattisgarh, before 2004 i.e. prior to issuance of Environmental Impact Assessment (EIA) Notification, 2006. The production capacity of the said existing unit was 66,000 TPA of Sponge Iron (2 x 100 TPD kilns). In the year, 2008, M/s Scania Steels & Power Ltd. (hereinafter called as Scania for the sake of brevity) applied to the Ministry of Environment and Forest (in short MoEF) for expansion of the existing project. It proposed to enhance the production of Sponge Iron from 66,000 TPA to 1,32,000 TPA by adding another unit or 66,000 TPA, install a Steel Melting Shop (Induction Furnace, 3x15 tons) with CCM facility of 1,35,000 TPA capacity, a Ferro Alloy Plant (5MVA) of 7,5000 TPA and Captive Power Plant of 25 MW, (AFBC 17 MW + WHRB 8 MW). The proposal was considered by the MoEF and environment clearance (in short EC) was granted by letter dated 5th November, 2008 for the proposed expansion.

Jan Chetna (Appellant No.1) claiming to be a social and environmental group formed with the objective of working for the welfare of the local communities and creating awareness on social and environmental issues, represented through one or its Member Shri Ramesh Agrawal, and Shri Rajesh Tripathi claiming to be a Project affected person, having agriculture land adjacent to the project site and also claiming to be a social activist and a member of Jan Chetna, assailed the order dated 5th November, 2008, passed by the Ministry of Environment and Forests (MoEF) granting EC for expansion of the project in question before the then National Environment Appellate Authority (NEAA). The NEAA dismissed the Appeal. The said order was assailed by the present Appellant before the High Court of Delhi in *WPC No.11157 of 2009*, which set aside the order passed by NEAA and directed the said Authority to dispose of the Appeal on merits, as expeditiously as possible. While NEAA was in session of the case, The NGT Act was promulgated and in consonance with the provisions of the said Act, the Appeal stood transferred to this Tribunal.

The learned judges heard the counsel for the parties at length; perused the pleadings, documents annexed by the parties and notes of submissions, meticulously; and considered the submissions of all the Learned Counsel diligently. The controversies involved in this Appeal are as follows:-

i) Whether the Appellants have locus-standi to prefer the Appeal and assail the EC granted in favour of M/s. Scania Steels & Power Ltd. (Respondent No. 3)?

ii) Whether the proposal submitted to enhance the production of existing Sponge Iron Unit from 66,000 TPA to further 66,000 TPA by installing a new unit, setting up a Steel Melting Shop with CCM facility of 1,35,000 TPA capacity, a Ferro Alloy Plant of 7,500 TPA and Captive Power Plant of 25 MW, would amount to expansion of the existing Sponge Iron Plant of 66,000 TPA established prior to 2004 or amounts to installing new projects?

iii) As to whether the proposal satisfies the requirement of Clause-7(ii) of EIA Notification, 2006 and Public Hearing / consultation can be exempted?
iv) Whether the Authorities have duly applied their mind to the facts and circumstances, the scientific data and other particulars submitted by the Project Proponent, and the decision taken to grant EC was justified or proper?

Before entering into the area of controversy, the learned judges recapitulate the principles relating to Industrial Development vis-à-vis sustainable development. It is now well settled by a series of judgments of the Supreme Court that though the industrial development is of vital importance to the country as it generates foreign exchange and provides employment avenues, it has no right to destroy the ecology, degrade the environment and pose health hazards. In view of the constitutional and statutory provisions (as mentioned in the original judgement), the Court held that "Precautionary Principle" and the "Polluter Pays Principle" are part of the environment law of the country.

The expression "aggrieved persons" cannot be considered in a restricted manner. The Tribunal has no hesitation to hold that that the Appellants satisfy the definition of "Person aggrieved" and they have locus-standi to file this Appeal.

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

project, they further feel that the public in general should have given an opportunity of putting forth their views with regard to the projects.

In view of the infirmities noticed during the course of hearing, the MoEF is directed to develop appropriate mechanism, to check the authenticity of environmental data reported in the EIA/EMP report which would facilitate a more realistic environmental appraisal of project. Steps should also be taken for black listing Consultants found to have reported "cooked data" or "wrong data" and for producing sub-standard EIA/EMP report.

Strict reading of Clause 7(ii) of EIA Notification, 2006 clearly provides power to EAC or State Level EAC to decide on due diligence necessary including preparation of EIA and Public Consultations only for those expansion proposals or modernization of existing units, which were accorded prior environmental clearance, under this Notification (EIA Notification, 2006). In the present case, as has been held, neither exemption from Public Consultation is applicable under expansion category nor under modernization pretext as the expansion proposal of M/s Scania Steel and Power Ltd., which is an existing Sponge Iron Plant, was not accorded prior environmental clearance under the EIA Notification, 2006. It also does not satisfy the category of modernization of the existing unit, as a number of new facilities such as Induction Furnace, Ferro Allow Plant and Captive Power Plant have been proposed to be added which would certainly result in additional pollution load in the area. The legislators, while framing Clause 7(ii) of EIA Notification, 2006, might have kept in mind that if Public Consultation has already been done earlier under EIA Notification, 2006 while giving prior EC, the same Public Hearing (in short PH) need not be required again at the time of expansion or modernization of unit.

Only because, the authorities have exempted Public Consultation in respect of some other projects, cannot be ground for exempting the same so far as Scania is concerned. Law is well settled that each case has to be determined and decided in consonance with the facts and circumstances relating to the said case and

there cannot be a universal decision to either conduct or exempt public hearing while granting EC.

In view of the discussions made in the preceding paragraphs, the MoEF is directed to get public consultation (Public Hearing) conducted for the proposed projects at the site or nearby area of the site as per the provisions contained in the EIA Notification, 2006. This direction is necessary in order to achieve the object and purpose of the Notification 31 vis-a-vis the Statute. Till the aforesaid exercise is completed, the EC granted on 5th November, 2008 for the proposed expansion of Integrated Steel Plant and Captive Power Plant at Village Kunjipatra, District Raigarh, Chhattisgarh by M/s. Scania Steel and Power Limited, shall remain suspended. It is needless to say that the MoEF shall take prompt steps for completing the exercise of public consultation (Public Hearing) and curing the deficiency in EIA/EMP, and re-visit the entire project in the light of the observations made by this Tribunal and complete the entire exercise as expeditiously as possible. It is needless to be said that the EC granted would be subject to the decision to be taken by the MoEF after public consultation, and other directions.

The Appeal is allowed in part.

M/S P Manokaran Power Loom
Vs
Tamil Nadu Pollution Control Board

APPEAL NO. 19 of 2011

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

Key words: Tamil Nadu Pollution Control Board, Tharamangalam Tamil Nadu, condonation of delay

Application Dismissed

Date: 15th February, 2012

This appeal is directed against an order dated 28th October, 2010 made under Section 31 -A of Air (Prevention and Control of Pollution) Act 1981, (for short Air Act) where the Unit of the Appellant was directed to be closed and further the electricity Board was directed to stop supply of electricity for certain violations under the said Act. Aggrieved thereby, the Appellant appears to have approached the Hon'ble High Court of Madras in *Writ Petition No. 2389 to 2408 of 2010*. However, the said writ petition papers were directed to be returned to the Appellant to enable him to approach the Green Tribunal.

When the matter had come up for hearing on 14th February, 2012, the Tribunal entertained a doubt as to the maintainability of the application. The learned counsel for the appellant vehemently submitted and argued that though the impugned order is passed under Section 31-A of the Air Act and an appeal is available under Section 31 of the same Act to the named authority, this appeal is also maintainable for various reasons.

It is an admitted fact that against the impugned order dated 28th October, 2010, an appeal under Section 31 of the Air Act is available. Instead of availing of that remedy, appellant had approached the Hon'ble High Court of Madras under Article 226 of the Constitution of India. No doubt, the Hon'ble High Court of Madras returned the papers to enable the Petitioners to approach this Tribunal. This does not mean that this Tribunal can allow Petitioners to bypass the appeal available under Section 31 of the Air Act.

Further, this Tribunal is the Appellate Authority against any order that may be passed by the Appellant Authority under Section 31 of the Air Act. *"We are not a constitutional body which can bypass the appeal provided under Air Act by invoking discretionary powers against the impugned order herein, particularly in the absence of any direction from the Hon'ble High Court of Madras to entertain the appeal and dispose it of on merits. We are of the considered opinion that this appeal is not maintainable. Therefore, the appeal stands dismissed. No cost.*"

However, it is open to the Petitioner to file an appeal under Section 31 of the Air Act before the authority concerned and also seek condonation of delay in filing the appeal in view of the pendency of the Writ Petition before the Hon'ble Madras High Court and the appeal filed before this Tribunal

N. Chellamuthu
Vs
The District Collector and Others

APPLICATION NO. 20/2011
JUDICIAL AND EXPERT MEMBERS: Justice Shri C.V. Ramulu and Dr. Prof R.Nagendran

Key words: Jhansi Nagar, Tamil Nadu, Tamil Nadu Pollution Control Board, Powerlooms, Noise, District Environment Engineer

Application Disposed With Directions

Date: 24th February, 2012

Orders of the Tribunal

This application is filed seeking relief for protection of environment against K. Sampath (Respondent No. 5), who is said to be causing noise and dust pollution round the clock by running three powerlooms at Ward No. 13, Jhansi Nagar, Veerapan Chatram, Erode District, Tamil Nadu.

The complaint of the applicant in a nut shell is that he is a resident of Jhansi Nagar, Veerapan Chatram, Erode District, Tamil Nadu and Respondent No. 5 has three Powerlooms operating in Survey No. 164/2, 192/2, 199/2 of Jhansi Nagar, Veerappan Chatram, Erode District, which are making loud noise round the clock in the locality. The school going children are not able to do their homework and the elderly people are not able to sleep due to heavy noise. Some of them are in fact affected by so many health problems like asthma, sinusitis, etc., due to emission of cotton dust. Though he made a representation on 24th January, 2011 to Tamil Nadu Pollution Control Board (Respondent No. 2), ventilating the grievances of residents and to remove all the powerlooms from the residential locality, nothing was done. However, a team from the Tamil Nadu Pollution Control Board visited the powerloom units of Respondent No. 5 on 18th November, 2011 and the Chief Scientific Officer, Tirupur submitted a report dated 24th November, 2011 to the District Environment Engineer (Respondent No. 3). Tamil Nadu Pollution Control Board authorities also found that noise pollution control measures are not yet installed in any of the powerlooms.

Air sampling and noise level surveys were done but nothing happened. In the reply filed by Respondent No. 2 and Respondent No. 3, inter alia, it was stated that the unit was inspected last on 7th July, 2011 by the District Environmental Engineer and he observed the following:

The unit was in operation and it has 18 powerlooms.

The Survey report of Ambient Noise Level survey conducted in the vicinity of M/s. Sampath Power loom Unit-III revealed that the noise level in idle condition and in operation, in the complainant houses varies from 49.1 dB(A) to 72.2 dB(A) and 54.4 dB(A) to 79.1 dB(A), respectively. The Ambient Noise Level during operation of the power loom exceeds the limit of 55 dB(A) prescribed for residential area.

The unit has not taken any steps to reduce the Noise Level.

The unit is located amidst residential area.

The unit is operating without the consent of the Board

Frequent complaints are being received against the operation of the unit from the public.

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

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

If there is any violation by the Respondent No. 5 as to the suggestions given by the authorities, the District Environmental Engineer and Executive Officer of Veerappan Chatram are at liberty to take appropriate steps as per law after issuing notices under concerned Acts. The applicant is also at liberty to file complaint, if any, in this regard before the Respondents No. 3 and Veerappan Chatram Municipality (Respondent No. 4). The same shall be considered and suitable action taken is intimated to the applicant in writing by the Respondent No. 3 and Respondent No. 4.

If Respondent No. 5 has no consent to operate the unit, the District Environmental Engineer shall insist upon the same for regulating the running of power looms as per law

V. Srinivasan
Vs
Tamil Nadu State Level Environment Impact Assessment Authority and Others

APPEAL NO. 18 OF 2011 (T)
JUDICIAL AND EXPERT MEMBERS: Justice Shri C.V. Ramulu and Dr. Prof R. Nagendran

Key words: Tamil Nadu Pollution Control Board, Corporation of Chennai through the Commissioner, Integrated Municipal Solid Waste Processing Plant, Environmental Clearance, 2006 notification

Application Allowed

Date: 24th February, 2012

Orders of the Tribunal

This appeal is directed against the Environmental Clearance (EC) granted in favour of the Corporation of Chennai (Respondent No. 3) by the Tamil Nadu State Environment Impact Assessment Authority vide letter dated 30th June, 2010 for setting up of Integrated Municipal Solid Waste Processing Plant of 1400 TPD capacity at Pallikaranai village for the treatment of Municipal Solid Waste.

After elaborate arguments, it came to light that the Tamil Nadu State Environment Impact Statement Authority has no jurisdiction to grant EC of this nature. Since Guindy National Park is located within a distance of 10 km from the project site, the EC should have been obtained from the Central Government, that is, the Ministry of Environment and Forest (in short MoEF), New Delhi.

It is pertinent to refer here to the Notification dated September 14, 2006, issued by the MoEF in regard to EC (relevant portion from the said notification can be seen in the original judgement). The Principal Chief Conservator of Forest cum Chief Wildlife Warden, Tamil Nadu, submitted a report dated 25th November, 2011 and also filed a reply stating that the aerial distance between the two nearest points of the project site and the boundary of the Guindy National Park as 5.6 km and 6.2 km. Thus there is no difficulty to say that this project falls under *category A* (under the MoEF notification dated 14th September, 2006). For grant of EC for *category A* projects the jurisdiction lies with the Central Government (MoEF) and not with the Tamil Nadu State Environment Impact Assessment Authority. Thus the Tamil Nadu State Environment Impact Assessment Authority has no jurisdiction to deal with the project for which the clearance was granted which is under challenge, and the EC is required to be set aside.

When the process of issuance of EC has to be initiated by the Central Government, it is for that Government (MoEF) to call for afresh EIA study etc. Therefore, the learned judges make it clear that the appellant is at liberty to file all the objections as raised in this appeal before the Central Government (MoEF), whenever application is made by the project proponent for grant of EC. Also, the Central Government (MoEF) shall issue notices to all the parties before granting EC in favour of the project proponent whenever it is considered.

The learned counsel for the appellant also vehemently submitted that the EIA consultant of Project Proponent who furnished the details for the purpose of obtaining EC as to the distance between the project site and the Guindy National Park, which is proved to be false must be dealt with seriously and if necessary, strictly warned in writing.

It may not be out of place to mention that this Tribunal had deprecated such practice adopted by the EIA consultant in furnishing false information and the Central Government (MoEF) had issue suitable guidelines to deal with such project proponents who are guilty of furnishing false information resulting in grant of projects, unmindful of the legal and environmental consequences.

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

The appeal stands allowed and the EC issued by the Tamil Nadu State Environment Impact Assessment Authority is set aside.

Nanthivaram Radha Nagar Residential Welfare Association
Vs
Tamil Nadu Pollution Control Board

APPEAL NO. 20/2011

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

Key words: Kanchipuram District, Chennai, Tamil Nadu, District Environmental Engineer, Tamil Nadu Pollution Control Board, dumping

Application solved by external factors

Date: 24th February, 2012

Orders of the Tribunal

This matter came up last time for hearing on 4th January, 2012. The Tribunal was informed that in so far as Radha Nagar residential area is concerned there is no dumping of solid waste. But in case of the water body the garbage is still being dumped and this is polluting the water body and the water-area is shrinking. On 10th January, 2012 the learned judges directed the Nandhivaram Grama Panchayat as well the District Environmental Engineer, Tamil Nadu Pollution Control Board (TNPCB), Kanchipuram District, Marai Malai Nagar, to monitor the situation and also to take out video graphic evidence of the entire area including the water body.

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

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

1) The District Environmental Engineer, TNPCB, Kanchipuram District, Marai Malai Nagar who is present in this Court to monitor the situation periodically and report the same to Member Secretary of the TNPCB. The Executive Officer, Nandhivaram Panchayat to take appropriate steps by deputing personnel every alternate day to ensure that there is no dumping of garbage in the water body or Radha Nagar residential area.
2) The District Environmental Engineer, TNPCB, Kanchipuram District, Marai Malai Nagar as well as Executive Officer, Nandhivaram Panchayat to display a Notice Board showing the importance of keeping the water body clean and also warning the people that action will be taken as per law, if any violation is noticed.
3) The petitioner is at liberty to approach this Tribunal, if no reasonable orders are passed and the situation monitored as per law by both the authorities.

Appeals are disposed of.

I.P. Bhaskar
Vs
The District Collector Kancheepuram District and Others

APPEAL NO. 21/2011
JUDICIAL AND EXPERT MEMBERS: Justice Shri C.V. Ramulu and Prof. R. Nagendran

Key words: Kanchipuram District, Chennai, Tamil Nadu, District Environmental Engineer, Tamil Nadu Pollution Control Board, dumping

Application solved by external factors

Date: 24th February, 2012

Orders of the Tribunal

This matter came up last time for hearing on 4th January, 2012. The Tribunal was informed that in so far as Radha Nagar residential area is concerned there is no dumping of solid waste. But in case of the water body the garbage is still being dumped and this is polluting the water body and the water-area is shrinking. On 10th January, 2012 the learned judges directed the Nandhivaram Grama Panchayat as well the District Environmental Engineer, Tamil Nadu Pollution Control Board (TNPCB), Kanchipuram District, Marai Malai Nagar, to monitor the situation and also to take out video graphic evidence of the entire area including the water body.

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

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

4) The District Environmental Engineer, TNPCB, Kanchipuram District, Marai Malai Nagar who is present in this Court to monitor the situation periodically and report the same to Member Secretary of the TNPCB. The Executive Officer, Nandhivaram Panchayat to take appropriate steps by deputing personnel every alternate day to ensure that there is no dumping of garbage in the water body or Radha Nagar residential area.
5) The District Environmental Engineer, TNPCB, Kanchipuram District, Marai Malai Nagar as well as Executive Officer, Nandhivaram Panchayat to display a Notice Board showing the importance of keeping the water body clean and also warning the people that action will be taken as per law, if any violation is noticed.
6) The petitioner is at liberty to approach this Tribunal, if no reasonable orders are passed and the situation monitored as per law by both the authorities.

Appeals are disposed of.

M/S Balaji Minerals
Vs
Tamil Nadu Pollution Control Board

APPLICATION NO. 22/2011

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

Key words: Tamil Nadu, District Environmental Engineer, Tamil Nadu Pollution Control Board, The Tamil Nadu Electricity Board, Unit

Application Disposed with directions

Date: 28th February, 2012

This application is filed seeking to direct the Respondents to inspect the applicant's unit and permit M/S Balaji Minerals (the applicant) to operate the unit which was closed on 13th August, 2010.

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

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

On 19th January, 2012 reply was filed by the Tamil Nadu Pollution Control Board (Respondent No. 1) and the District Environmental Engineer (Respondent No. 2). However, they failed to reply to *para 10* of the *Application No. 22 of 2011* (refer to the original judgement). Therefore, the Tribunal directed the Respondents No. 1 and 2 to inspect the Unit of the applicant and submit a fresh report on or before 15th February 2012. There was no report submitted by Respondents No. 1 and 2. Under these circumstances, without keeping the application pending for a long time, the learned judges are of the opinion that the application can be disposed of with the following:

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

M/S Maharaja Minerals
Vs

Tamil Nadu Pollution Control Board

APPLICATION NO. 23 OF 2011

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

Key words: Tamil Nadu Pollution Control Board, Air (Prevention and Control of Pollution) Act, Assistant Engineer, District Environmental Engineer, Unit

Application Allowed

Date: 28th February, 2012

This application is filed seeking to direct the Respondents to inspect the applicant's unit and permit the applicant to operate the unit which was closed on 25th June, 2010.

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

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

On 19th January, 2012 reply was filed by the Tamil Nadu Pollution Control Board (Respondent No. 1) and the District Environmental Engineer (Respondent No. 2). However, they failed to reply to *para 10* of the *Application No. 22 of 2011* (refer to the original judgement).

Therefore, the Tribunal directed the Respondents No. 1 and 2 to inspect the Unit of the applicant and submit a fresh report on or before 15th February 2012. There was no report submitted by Respondents No. 1 and 2. Under these circumstances, we are of the opinion that without keeping the application pending for a long time, the application can be disposed of with the following:

Respondents No. 1 and 2 are directed to consider the representation dated 26th June, 2010 made by the applicant and take appropriate decision after inspecting the unit within a period of six weeks from the date of this order and communicate the decision to the matter on or before 10th April, 2012.

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

M/S Amman Plastics
Vs
Tamil Nadu Pollution Control Board

APPLICATION NO. 25 OF 2011

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

Key words: Tamil Nadu Pollution Control Board, District Collector Erode, Tamil Nadu, plastic recycling unit

Application Allowed

Date: 28th February, 2012

This application is filed seeking a direction to Tamil Nadu Pollution Control Board (Respondent No. 1) and the District Environmental Engineer (Respondent No. 2) to inspect the unit of the applicant and consider the representations made by him dated 27th August, 2010 and pass orders giving consent to operate the Unit.

It appears the applicant is running a small plastic recycling unit at Door No. 1/1, Ramamurthy Street, Raghupathinaicken Palayam, Erode-2, Tamil Nadu. The implead party petitioner here filed Writ Petition before the Hon'ble High Court of Madras and the same was disposed of with a direction by the High Court of Madras on 18th January, 2010 (for said direction, refer to the original judgement).

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

The learned judges are of the opinion that the application be disposed of with the following:

"Respondent- 1 and Respondent- 2 are directed to take appropriate steps as per law in regard to the functioning of the Unit of the applicant while taking the representations filed by the petitioner into consideration by revisiting and inspecting the unit of the applicant. If necessary, issue notice to all the parties concerned including implead party petitioner and appropriate order may be passed within a period of eight weeks from today."

Mahameghabahan Aira Kharable Swain
Vs
Ministry of Environment and Forest

APPEAL NO. 12/2011 (T)

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

Key words: M/S Anil Agarwal Foundation, Government of Orissa, Pune, "Vedanta University",

Application Dismissed

Date: 28th February, 2012

This appeal is directed against Environmental Clearance (EC) and Coastal Regulation Zone (CRZ) clearance granted by Ministry of Environment and Forest (MoEF) on 16th April, 2010 for the construction of proposed "Vedanta University" at Pune by M/S Anil Agrawal Foundation. The appeal was filed before National Environment Appellate Authority (in short NEAA) on 11th May, 2010 and subsequently stood transferred to the National Green Tribunal (in short NGT). It was brought to the notice of this Tribunal on 5th July 2011 during the first hearing that the MoEF has kept the Environment Clearance granted earlier in abeyance with effect from 11th May, 2010 as it is stated that as on that day, no activity was being conducted by the Respondents.

Under those circumstances, the matter was adjourned on 8th September, 2011 and further on 14th December 2011. Even today, as per the response of learned counsel for M/S Anil Agrawal Foundation, the MoEF has not taken any decision after keeping the Environment Clearance in abeyance.

The matter cannot be kept pending by this Tribunal indefinitely since the MoEF has not taken any decision. The learned judges feel appropriate to close this matter at this stage leaving liberty to the appellant to approach this Tribunal whenever any decision is taken by the MoEF, if necessary. Thus, the appeal stands dismissed with liberty to the Appellants to file a fresh case whenever necessary.

Utkal Bikas Yuva Parishad
Vs
Union of India (Ministry of Environment and Forest and Others)

APPEAL NO. 13/2011 (T)

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

Key words: M/S Anil Agarwal Foundation, Government of Orissa, Pune by M/S Anil Agrawal Foundation, "Vedanta University",

Application Dismissed

Date: 28th February, 2012

This appeal is directed against Environmental Clearance (EC) and Coastal Regulation Zone (CRZ) clearance granted by Ministry of Environment and Forest (MoEF) on 16th April, 2010 for the construction of proposed "Vedanta University" at Pune by M/S Anil Agrawal Foundation. The appeal was filed before National Environment Appellate Authority (in short NEAA) on 11th May, 2010 and subsequently stood transferred to the National Green Tribunal (in short NGT). It was brought to the notice of this Tribunal on 5th July 2011 during the first hearing that the MoEF has kept the Environment Clearance granted earlier in abeyance with effect from 11th May, 2010 as it is stated that as on that day, no activity was being conducted by the Respondents.

Under those circumstances, the matter was adjourned on 8th September, 2011 and further on 14th December 2011. Even today, as per the response of learned counsel for M/S Anil Agrawal Foundation, the MoEF has not taken any decision after keeping the Environment Clearance in abeyance.

The matter cannot be kept pending by this Tribunal indefinitely since the MoEF has not taken any decision. The learned judges feel appropriate to close this matter at this stage leaving liberty to the appellant to approach this Tribunal whenever any decision is taken by the MoEF, if necessary. Thus, the appeal stands dismissed with liberty to the Appellants to file a fresh case whenever necessary.

Shiva Cement Ltd.

Vs

Union of India and Others

APPEAL No. 3 of 2012

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

Key words: State of Odisha represented by its Commissioner-Cum-Secretary, Odisha State Pollution Control Board, Mini Cement Plant and Lime Stone Mines, EIA notification 2006

Application Allowed

Date: 1st March, 2012

Orders of the Tribunal

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

While matter stood thus, the period of mining lease of the Appellant in respect of lime stone mines was about to expire on 14th January, 2012. The Appellant had filed an Application for renewal of the lease but the Mining Authorities intimated the Appellant that the lease cannot be renewed in the absence of Environment Clearance (in short EC) to be granted by the MoEF. Appellant approached this Tribunal on 11th January, 2012.

The soul grievance of the Applicant in this Appeal is that, though the process of granting EC has commenced since long after award of TORs by MoEF, the concerned State Authorities, without any rhyme or reasons, adopting *dilli dally* tactics in completing the procedure, consequently the Appellant is subject to un-surmountable hardship.

There is no dispute to the legal preposition that an Authority is required to discharge the statutory duties vested upon it as expeditiously as possible. Delay in complying with the mandatory provision of the Statute, not only causes prejudice but also throttles the aims and objectives meant to be achieved. In the case in hand the grievance of the Appellant being very simple, the learned judges feel ends of justice and equity would be better served if this case is disposed of with the following directions/ observations:

a) The Public Consultation which is scheduled to be held on 16th March, 2012, shall be conducted on the said date without any fail. The Collector, Sundargarh should take adequate steps in this regard. The report of the Public Consultation should be sent to the MoEF within 8 days by OSPCB as laid down in Appendix IV of Environmental Impact Assessment (in short EIA) Notification, 2006.

b) Based on the Public Consultation report, the Project Proponent (Respondent No. 4) shall finalize the EIA/EMP report and submit the Final EIA/EMP report to MoEF for environmental appraisal within a period of one month.
c) After receipt of the final EIA report, the MoEF shall deal with it with utmost promptitude and take a decision with regard to EC as per the provisions of the EIA Notification, 2006 and as per law.
d) The renewal of the mining lease would be subject to the final outcome of the EC.

It is made clear that all the Authorities shall complete their part of obligations in strict consonance of law and complete the procedure as required under EIA Notification, 2006 within the time frame prescribed and take a final decision with regard to EC, till then *status quo* shall be maintained.

With the aforesaid observations the Appeal is disposed of.

Janajagrithi Samithi (Regd.)
Vs
Union of India and Others

APPEAL No. 10 of 2012

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

Key words: Karnataka Power Transmission Corporation Ltd, Yellur Village of Udupi District, to Shantigram (Hassan), Forest Clearance

Application Allowed

Date: 7th March, 2012

Diversion of forest land measuring 172.53 ha for construction of 400KV Double Circuit Transmission Lines from the generation station of Udupi Power Corporation Limited at Yellur Village of Udupi District, to the receiving stations situated at Shantigram (Hassan), in favour of the Karnataka Power Transmission Corporation Ltd. (Respondent No. 3), by the Ministry of Environment and Forest (in short MoEF) in exercise of power conferred under Section 2 of the Forest (Conversion) Act, 1980 vide order dated 17th January, 2012, is assailed in this Appeal, on the grounds enumerated in the Memorandum of Appeal.

The total length of the line to connect the generating stations to the sub-station is 180.09 km. The said line passes through private lands and also through stretch of forest land. The total length of the line passing through forest, including reserve forest and deemed forest comes to 33.66 km. In other words out of the total extent of 828 ha of land, the forest land involved comes to 172.53 ha. Out of the said area the land involved in reserve forest is 88.643 ha through which the line will pass to a total length of 33.67 km.

Environment Clearance (EC) for establishing the Power Plant was granted by the MoEF way back in the year 1997. Of course, it appears that some modification, addition and alternations, were made by the MoEF in September, 2011. The order granting EC was assailed 4before the then National Environment Appellant Authority (in short NEAA) by filing an Appeal. The Appeal was dismissed by the Authority and the said order has been assailed before Hon'ble Karnataka High Court in *WPC No.21439 of 2005*. Thus, this Appeal is confined only to the Forest Clearance (in short FC).

The Appellant is not against the installation of the project but then is aggrieved by the decision granting FC, thereby permitting diversion of 172.53 ha of forest land. The only question which needs to be considered in this Appeal is to determine the potential impact of de-reservation of forest land for the purpose of the project and the impact thereof on wild life and biodiversity in the perspective of the Forest (Conservation) Act, 1980.

The only question which needs to be considered in this Appeal is to determine the potential impact of de-reservation of forest land for the purpose of the project and the impact thereof on wild life and biodiversity in the perspective of the Forest (Conservation) Act, 1980.

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

The learned judges find that out of the major portion of the power line passes through waste land and land of relatively low biodiversity value whereas, certain sections of the line crosses through areas of rich wild life and biodiversity and are of greater ecological value. Out of the said lands, a portion measuring about 8.3 km. long, as would be evident from the map produced before the bench, between the proposed tower locations AP 100 to AP 107 passes through Vallur Reserve forest. The said section of line crosses through high biodiversity ever green forests and shola – grass lands, which harbours a variety of endangered wild life. Drawing overhead lines of the proposed 400 KVA transmission line over the said section may cause significant adverse impacts not only on wild life and biodiversity but also would cause restrictions in habitat connectivity and corridor values of the forest.

The learned judges are conscious of the fact that the project in question has great economic importance not only for the State of Karnataka but also for the entire country, and that there is a sense of urgency in view of the shortage of power. Considering all these facts, and in order to meet the ends of justice, applying the principles of sustainable development, the Tribunal disposes of this appeal with the following directions:

I) That Respondent No. 3 shall not fell any trees nor destroy the biodiversity in the stretch of Reserve Forest land measuring 8.3 km. i.e. AP 100 to AP 107 (Annexure-R1).
II) It shall fell minimum number of trees in rest of the forest lands for which clearance has been granted and shall adopt the procedure of trimming the branches than uprooting the trees, as and when possible.
III) It shall ensure maximum height of the towers in the forest area which should be 70 mts or above, following the contour of the terrain.
IV) Below the conductor, width clearance of 3 mts would be permitted for taking the tension stringing equipment. The trees on such strips would have to be felled as and where required but after stringing work is completed, the natural regeneration of vegetation will be allowed to come up. Felling / pollarding / pruning of trees will be done with the permission of the local forest officer whenever necessary to maintain the electrical clearance.
V) Steps shall be taken to promote and nourish the undergrowth and for afforestation with endemic species.

Also, "*we call upon the MoEF to take steps and notify the detailed fresh guidelines for laying transmission line through forest area, incorporating necessary changes to mitigate the difficulties which arise during granting forest clearance, as expeditiously as possible preferably within a period of two months from the date of communication of this order."*

Real Gem Buildtech
Vs
State of Maharashtra

APPEAL NO. 1/2012

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

Key words: Basements, Environmental Clearance

Application Dismissed

Date: 15th March, 2012

Orders of the Tribunal

The appellant filed an affidavit on 7th March, 2012 stating that State Environment Impact Assessment Authority in its 44th meeting had granted Environment Clearance (in short EC) on 23rd / 24th February, 2012. Thus, the matter has become infructuous.

However, the learned counsel for the appellant states that appellant is entitled for grant of approval for 3 basements (from the current amended proposal of 2 basements), as the appellants original proposal was for 3 basements and various other projects in the vicinity of the appellant project have been granted EC with 3 basements. Whereas, in case of appellant EC was granted only for 2 basements.

Whether appellant is entitled for 3 basement or 2 basements cannot be gone into by this Tribunal. The appellant is at liberty to work out remedies as available under law by way of filing representation before the appropriate authority, if any.

With the observation the matter stands closed as infructuous. No cost.

Hindustan Coca cola Beverages Pvt. Ltd.

Vs

West Bengal Pollution Control Board

Appeal No. 10 OF 2012

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

Key words: West Bengal Pollution Control Board, Raninagar Industrial Growth Centre, P.S. and District Jalpaiguri, West Bengal, Coca-Cola Plant

Application Allowed

Date: 19th March, 2012

Appellant is a company incorporated under the provisions of the Companies Act, 1956 and is engaged in the business of manufacturing and sale of carbonated soft drinks under the brand name of Coca-Cola Sprite, Limca, Mazza, Thmps Up etc. and has a plant at Raninagar Industrial Growth Centre, P.S. and District Jalpaiguri, West Bengal.

The directions issued by West Bengal Pollution Control Board (in short WBPCB) to the Appellant Company by letter dated 2nd May, 2011 is sought to be assailed in this Appeal. (Directions of the WBPCB can be seen in the original judgement.)

The directions are impugned mainly on the following grounds:

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

In the alternative it is contended that the procedure prescribed under the Air Act and Water Act and Rules made there under were not followed by the WBPCB before imposing the fine/penalty.

To appreciate the *inter-se* controversy it would be just and proper to refer to some of the facts. The Appellant was granted consent under Section 25 and 26 of the Water (Prevention and Control of Pollution) Act, 1974 (Water Act) and Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 (Air Act) by the WBPCB, for operating, a manufacturing and bottling plant at Raninagar Industrial Growth Centre, Jalpaiguri, on 19th September, 2000. The said consent was extended time and again in consonance with the provisions of both Water and Air Act.

On 5th August, 2010, the WBPCB issued a notice for collection of samples from the Appellant's plant. In consonance with said notice samples were collected by the officials of WBPCB from the premises of the Appellant's plant on 6th August, 2010. According to the Appellant the specific procedure stipulated under Section 21 of the Water Act for collection of the samples were not followed, in as much as neither the

samples were divided into two parts in the presence of the occupier or his agent of the Appellant nor they were sealed, nor the signature of the occupier or his agent was taken by the officers of WBPCB while collecting the samples. Another set of samples were also collected from the premises of the Appellant on 9th December, 2010. It is alleged, the said samples were also collected without following the mandatory procedure laid down in Section 21 of the Water Act.

On 16th December, 2010, WBPCB on the basis of the analysis report of the samples which were collected on 6th August, 2010, and 9th December, 2010, issued a show-cause notice alleging violation of the regulatory standards, and called upon the Appellant to show-cause, and to take necessary steps to comply with the prescribed standards. The Appellant was also asked to inform the office, the action taken in that regard. It is averred that necessary cause was shown by the Appellant, within the time prescribed indicating the measures taken for eradicating the deficiencies. WBPCB, on 29th December, 2010 once again took samples from the Appellant's plant and got the same analyzed. The analysis report dated 11th February, 2011 revealed that the samples collected on 29th December, 2010 were within the prescribed parameters.

While matter stood thus, on 14th February, 2011 the WBPCB issued another notice and directed personal appearance of the Appellant before the Board, at Kolkata. The grievance of the Appellant is that without properly appreciating the fact that the effluents of the plant satisfy / meet the standards prescribed and that there is no violation, the WBPCB mechanically issued the impugned order dated 2nd May, 2011 in purported exercise of the power conferred upon it under Section 33 A of the Water Act, and as such the said order cannot be sustained in law.

According to the Appellant the specific procedure stipulated under Section 21 of the Water Act for collection of the samples were not followed, in as much as neither the samples were divided into two parts in the presence of the occupier or his agent of the Appellant nor they were sealed, nor the signature of the occupier or his agent was taken by the officers of WBPCB while collecting the samples. Questioning the propriety of the WBPCB, with regard to the directions to submit Bank guarantee of Rs. 5,00,000/- (five lakhs), it is contended that the settled principal of law being that a penalty cannot be construed as punishment or commission of crime, no such direction can be issued under Section 33A of the Act.

The precautionary principle and the principle of polluter pays are the integral part and parcel of National environmental law. An Industry or a person who pollutes the surrounding area or environment is bound to compensate the persons who have suffered the loss because of the activity. An industry or a person being responsible for causing the pollution cannot escape the responsibility of not meeting the expenses of removing the damages caused and restoring the environment to its original position. Section 20 of the National Green Tribunal (NGT) Act, 2010 clearly lays down the principle upon which this Tribunal should function. Thus it is no more *res-integra,* with regard to the legal proposition that a polluter is bound to pay and eradicate the damage caused by him and restores the environment. He is also responsible to pay for the damages caused due to the pollution caused by him.

According to the learned judges, the most crucial issue which needs to be determined is with regard to the power of the WBPCB to issue directions under Section 33A of the Water Act. According to Mr. Sibal, learned counsel appearing for the Appellants, the power under the said Section cannot be construed to be an unbridled one and should always be subject to other provisions of Act and Rules. Whereas according

to Mr. Chakraborty, leanrned counsel appearing for WBPCB, exercising the powers under Section 33A, the WBPCB can issue any direction in writing and such powers cannot be restricted or curtailed.

Section 33A of the Water Act, stipulates that notwithstanding anything contend in any other law, but subject to the portions of the said Act, and to any direction issued by the Central Government, a Board may, in exercise of the powers and performance of its functions under the Act, issue any directions.

Law is well settled that a direction issued by an Authority should be not only fair, legitimate and above-board, but also should be without any affection or aversion. It can be, therefore, safely concluded that Section 33A of the Water Act does not vest an unbridled power upon the Board and the said power is always subject to reasonable restrictions prescribed by the provisions of Act and Rule.

In view of the discussions made during the course of hearing, the learned judges allow the Appeal and set aside the direction dated 2nd May, 2011 issued by the WBPCB and call upon the said Respondent to proceed in accordance with law. The Tribunal also directs the Central Pollution Control Board (in short CPCB), New Delhi / Zonal office at Kolkata, West Bengal to collect the effluent discharged from the Appellant's plant following the paraphernalia laid down under law, analyze the same in all aspects, particularly with regard to presence of heavy metals (Pb, Cd etc.) and prepare a report. It is needless to be said that the expenses for the said purpose shall be borne by the Appellant Company. The cost shall be assessed by the CPCB within two weeks from the date of service/production of certified copies of this judgment and same shall be deposited by the Appellant with the CPCB within two weeks. The renewal of the consent to operate the plant would be dependent on the report of the Central Pollution Control Board

Jeet Singh Kanwar R/o Village Dhanrash
Vs
Ministry Of Environment and Forests

M.A NO. 45/2012

arising out of

APPEAL NO. 10/2011(T)

(NEAA APPEAL NO. 11/2010)

JUDICIAL AND EXPERT MEMBERS: Justice A.S. Naidu and Dr. R. Nagendran

Key words: Chhattisgarh Environment Conservation Board, M/s Dheeru Powergen Private Limited, Dhanras, Khatgora Tehsil, Korba Distt, Coal Based Thermal Power Plant, Condonation of delay

Application Allowed

Date: 22nd March, 2012

Order dated 18th January, 2010 passed by the Ministry of Environment and Forests granting Environmental Clearance to 3x350 MW Coal Based Thermal Power Plant at village Dhanras, in Khatgora Tehsil, in Korba Distt., in Chhattisgarh is assailed in this Appeal.

In course of hearing, however, it appears that the Appeal was presented beyond the time prescribed under the Act. Being conscious about the said fact, Appellants have filed an Application for Condonation of Delay. M/s Dheeru Powergen Private Limited (Respondent No. 3), the Project Proponent has also filed an affidavit, repudiating the stand taken in the Application for Condonation of Delay.

There is a delay of only 88 days in filing the Appeal. After going through the averments made in the Application of Condonation of Delay and the fact that protection of environment is more important than prohibiting a person to approach this Tribunal on technical objections and the fact that Appellants belong to the remote villages of Chhattisgarh, the learned judges feel ends of justice and equity will be better served if the delay is condoned. The Tribunal is also satisfied that the reasons assigned are sufficient to condone the delay. Accordingly, the Application for Condonation of Delay is allowed, and the delay is condoned.

M/S KIOCL Limited
Vs
Union of India and Others

APPEAL NO. 38/2011
JUDICIAL AND EXPERT MEMBERS: Justice A.S. Naidu and Dr. G.K. Pandey

Key words: State of Karnataka, Karnataka Power Transmission Corporation Limited, Mangalore Electricity Supply Company Limited, power supply

Application Dismissed

Date: 23rd March, 2012

Kudremukh Iron Ore Company Limited has filed this Appeal invoking jurisdiction under Section 18(1) read with Section 16 of the National Green Tribunal Act, 2010, inter-alia, seeking to declare that Condition No. 12 of the direction of the Ministry of Environment and Forest (First Respondent) issued to the Karnataka Power Transmission Corporation Limited (Respondent No. 3) to dismantle the existing 220 KV line and power supply bay from Kemmar to Kudremukh, issued vide order dated 17th February, 2011 at Annexure-A9 is untenable and illegal.

The Forest Clearance (in short FC) dated 5th January, 2011 was assailed before this Tribunal in a separate Appeal (*Appeal No. 10 of 2012*) and the same has already been disposed of by judgment dated 7th March, 2012. This Tribunal did not interfere with the Forest Clearance granted for deviation of the forest land for non-forest activities, but then imposed certain conditions as well as restrictions following the principles of sustainable development.

M/S KIOCL Limited (the Appellant) in the present case seems to assail Condition No. 12 of the FC quoted *Supra* mainly on the ground that removal or dismantling of the older power line, supplying power to the Appellant mine has nothing to do with laying down of fresh power line as per the FC granted in favour of Karnataka Power Transmission Corporation Ltd. (Respondent No. 3) and as such the said condition should be deleted.

The Appellant is being provided with electricity by Respondent No. 3 by a separate line. In other words the power lines which exist on the forest land are no more needed for supply of electricity to the Appellant. In view of the decision of the Supreme Court, the Appellant's mine has to be closed down permanently and thus there is no necessity to retain the electricity line and thereby lose forest corridor through which the power line is laid down to the Appellant mines, resulting in causing hindrance in the forest growth and affecting the biodiversity values.

In view of the discussions made above, and the admitted facts, the learned judges are not inclined to grant any relief to the Appellant and dismiss this Appeal. The Respondent No. 3 is directed to comply with Condition No. 12 of the Forest Clearance Order dated 17th January, 2011. It shall also provide the required power to M/s KIOCL Ltd., till the mines are finally closed down without causing any adverse impact on the forests.

K. G. Mathew
Vs
State of Kerala and Others

ORIGINAL APPLICATION NO. 1/2011
JUDICIAL AND EXPERT MEMBERS: Justice C. V. Ramulu and Prof. R. Nagendran

Key words: Kerala, The Kerala State Pollution Control Board, the Environment Engineer, public stadium of Kozhencherry Grama Panchayath, Solid Bio Waste treatment plant, Environment Impact Assessment, Municipal Solid Waste (Management and Handling) Rules, 2000

Application Dismissed

Date: 26th March, 2012

This application has been filed purported to be under section 15(i) (c) & 15(3) of the National Green Tribunal Act, 2010, seeking a direction to the State of Kerala (Respondent No. 1), Kozencherry Grama Panchayat (Respondent No. 2), The Kerala State Pollution Control Board (Respondent No. 3) and the Environmental Engineer (Respondent No. 4) to take immediate steps, for the removal of the entire Solid Bio-waste Treatment Plant set up, as per Ext P1 and P2, in the public stadium of Kozhencherry Grama Panchayat in Survey Nos. 251/22, 251/25, 251/27 of Kozhencherry Village, Pathanamthitta District, Kerala State, for the restitution of the public stadium to its original state and to award adequate compensation to the petitioner for the damages caused to public health and environment due to the erection of Bio-waste Treatment Plant.

According to the applicant, erection of the Solid Bio-waste Treatment Plant in the public stadium of Kozhencherry Grama Panchayath, which is very close to his residence, is in blatant violation of Rules 6 and 7 of the Municipal Solid Wastes (Management and Handling) Rules, 2000.

According to the applicant, *inter alia*, the Respondent No. 4 issued the Consent to operate on 27th March, 2010 for the Solid Bio-waste Treatment Plant. Environmental Impact Assessment (in short EIA) is an important management tool for ensuring optimal use of natural resources for sustainable development and was introduced in the year 1978-79 in India, to facilitate project proponents in collection of environmental data and formulation of environmental management plans. It is now mandatory under the Environment (Protection) Act, 1986 and the *Notification No. SO 1533(E)* dated 14th September, 2006 issued by the Government of India governs the law in this respect. The site of the plant is selected in violation of the specification for "landfill site" as per Article 8, Schedule III of the Municipal Solid Waste (Management and Handling) Rules, 2000.

The Respondent had not obtained views of the Town Planning Department and Ground Water Board. Site clearance for setting up the aforesaid plant was not obtained as per law in force. The site of the plant is totally unfit as the same is within the vicinity of residential houses, water bodies, wetlands and is inside the stadium, a place of cultural importance.

The detailed report submitted by the District Environmental Engineer dealing with all aspects of the environmental parameters *vis-à-vis* the Solid Bio-waste Management Plant at Kozhencherry Grama Panchayat is self explanatory. The technical report submitted by the District Environmental Engineer is not disputed except making some general allegation that the report was not properly prepared.

In the considered opinion of the learned judges, the application is devoid of merits both on legal and technical aspects; therefore, the application is liable to be dismissed.

However, the District Environmental Engineer, Pathanamthitta District is directed to monitor the environmental parameters in respect of the Solid Bio-waste Management Plant of Kozhencherry Grama Panchayat, once a month and maintain the records for a period of one year. Further, the District Environmental Engineer shall take appropriate steps as required under the law, whenever there are violations by the project in maintaining the environmental standards in an around the plant.

The learned judges also make it clear that the applicant is entitled to work out his legal remedies as available under the law, whenever there is violation of environmental standards due to the operation of the plant.

The application accordingly stands dismissed subject to the above directions.

A.S. Mani President of Amman Lift Irrigation Society

Vs
The State Level Environment Impact Assessment Agency, Tamil Nadu

M.A NO. 12/2012

arising out of

APPEAL NO. 5 of 2012

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

Key words: Tamil Nadu Pollution control Board, Namakkal District, Kabilarmalai Panchayat Union, Perunkuruchi Village, condonation of delay

Application Dismissed

Date: 27th March, 2012

A.S. Mani (the Appellant) claims to be an agriculturist possessing lands adjacent to the project proposed to be set up by M/s. Sri Raasi Industries India Pvt. Ltd. He is aggrieved by the Environmental Clearance (for short EC) granted by the State Level Environment Impact Assessment Authority, Tamil Nadu to M/s Sri Raasi Industries India Pvt. Ltd. (Respondent No. 6) for establishment and production of MS Ingots and TMT Bars and Rods at S.F. No.100/2,100/3A, Perunkuruchi Village, Paramati Vellur Taluk, Namakkal District, in the State of Tamil Nadu vide order dated 9th February, 2011 (Annexure A/1). In this Appeal the Appellant has made following prayer:

i) Call for the records of The State Level Environment Impact Assessment Agency (Respondent No. 1) culminating in order Letter No. *SEIAA/TN/EC/3(a)/013/F-271/2011* dated 9th February, 2011, and quash the same.
ii) Pass such other order/s as may be deemed fit and proper in the facts and circumstances of the case.

This Miscellaneous Application is filed along with the Memorandum of Appeal and is purported to be one under Section 16 of the National Green Tribunal Act, 2010 (in short "NGT Act"). The prayer in this Miscellaneous Application is to condone the delay in filing the Appeal.

Admittedly the impugned order was passed on 9th February, 2011. The time prescribed for preferring an Appeal as per Section 16 of the NGT Act is 30 days. The Appellant filed a Writ petition before the Madras High Court on 18th March, 2011. The said Writ Petition was disposed of on 24th August, 2011 and the brief was returned to the Appellant. The Appellant presented the Appeal before this Tribunal on 20th January, 2012.

The expression of sufficient cause is found in various Statutes including in Section 16 of the NGT Act, 2010. The said expression essentially means to be "adequate or enough". There cannot be any tight jacket formula for accepting or rejecting the explanation furnished explaining the delay caused for filing the Appeal. In the instant case, the explanation offered by the Appellant is that, he bonafidely approached the Hon'ble Madras High Court and the case was pending before the said Hon'ble High Court from August, 2011 till January, 2012.

Be that as it may, the language of Section 16 of the NGT Act is very explicit. It clearly stipulates the

period of limitation for filing of an appeal to be thirty days and further mandates that the Tribunal may, on given circumstances, extend the time for filing for a further period not exceeding sixty days. The language used thus, makes the position very explicit to the extent that the legislature intended the Tribunal to entertain the Appeal by condoning the delay only up to sixty days after the expiry of thirty days, which is the normal period for preferring an Appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The proviso to Section 16 of the NGT Act unambiguously makes the position crystal clear that the Tribunal, has no power to allow the Appeal to be entertained beyond the period of thirty plus sixty i.e. **ninety days** on any account. In other words an Appeal before the Tribunal is required to be filed within thirty days from the date of the communication of the decision or order.

In the case in hand, after excluding the period spent by the Appellant before the Madras High Court, and even after excluding the time spent for obtaining the copies, there is a delay of more than 90 (ninety) days. The delay beyond 90 days cannot be condoned and the Appeal cannot be entertained having become barred by time. The Miscellaneous Application accordingly stands dismissed. Consequently the Appeal is also dismissed.

Janajagrithi Samiti
Vs
Union of India and Others

APPEAL No. 34 of 2011
JUDICIAL AND EXPERT MEMBERS: Justice A.S. Naidu and Dr. G.K. Pandey

Key words: M/s Udipi Power Corporation Ltd., Yellur Village of Udupi District, to Shantigram (Hassan), Forest Clearance

Application Allowed

Date: 27th March, 2012

Janajgrithi Samithi, a Society registered under the provisions of Societies Registration Act, has filed this Appeal, assailing the order dated 1st September, 2011, passed by the Ministry of Environment and Forests (in short MoEF), allowing amendment of Environment Clearance (in short EC) for installation / expansion of 2x600 MW imported Coal Base Thermal Power Plant, at Udupi in the District of Karnataka.

The factual scenario reveals that on 20th March, 1997 EC was accorded by the MoEF to M/s Udupi Power Corporation Ltd. (Respondent No. 4) for establishing 2x500 MW Power Project. On the basis of a further application filed by the Respondent No.4, the MoEF amended the earlier EC on 25th January, 1999 and 9th September, 2009 respectively, permitting enhancement of the capacity of the said Thermal Power Plant to 2x507.5 MW and subsequently to 2x600 MW.

While matter stood thus, on the basis of further approach made by Udupi Power Corporation (Respondent No. 4), the MoEF once again modified the EC and allowed certain amendment to the conditions of EC, vide impugned order dated 1st September, 2011. Perusal of the said order clearly reveals that the same is in the shape or amendment of the original EC granted by the MoEF on 20th March, 1997. The order also specified that the amendment issued merges with the EC granted earlier. The said order as stated earlier is assailed in this Appeal.

The order impugned before this Tribunal being only amendment to the Environment Clearance granted in 1997, and as the order dated 20th March, 1997 is the subject matter of dispute before the Hon'ble Karnataka High Court in *WP No. 21439 of 2005*, and the said case is still subjudiced, the present Appeal is not maintainable before this Tribunal. Therefore, to avoid conflicting decisions, and also for effectual adjudication of the entire controversy, the learned judges feel it would be just an equitable to dispose of this Appeal giving liberty to the Appellant to work out his remedies in accordance with law by approaching the Hon'ble Karnataka High Court where *W.P. No. 21439 of 2005* is pending.

With the aforesaid observations the Appeal is disposed of.

Suresh Banjan
Vs
State of Maharashtra and Others

MISCELLANEOUS APPLICATION NO. 20/2012
arising out of

APPEAL NO. 35 OF 2011

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

Key words: State of Maharashtra, Jai Shanker Yagnik Marg, Mumbai, slum rehabilitation of Indira Nagar Hutment Dwellers, Environmental Clearence

Application disposed by consent of parties

Date: 27th March, 2012

Orders of the Tribunal

The State Environment Impact Assessment Authority (in short SEIAA), vide order dated 14th October, 2011, granted Environment Clearance (in short EC) to a project of Slum Rehabilitation, or Indira Nagar Hutment Dwellers CHS Ltd., situated at Jai Shanker Yagnik Marg, Mumbai in favour of Ms Harekrishna Builders. The said order was assailed by Shri Suresh Banjan in *Appeal No. 35/2011*. After hearing Learned Counsel for the parties by judgment dated 31st January, 2012, the Appeal was disposed of by a mutually agreed order imposing certain directions.

The present Miscellaneous Application has been filed on behalf of Ms. Harekrishna Builders (Respondent No. 4) for modification of condition no. (V) (*Quoted in the original judgement*) mainly on the ground that unless the builder is permitted to sell the flats constructed under the scheme, it shall not be viable for it to construct further. In short Respondent No. 4 seeks permission to sell the flats to outsiders, before allotment of the same to members.

The learned judges heard the learned counsel for the parties at length. The original appeal was about correctness or otherwise of the EC granted by SEIAA in favour of Respondent No. 4 for aforesaid construction project. After considering the pros and cons of the arguments, and in order to curtail the span of pollution created by the construction work which was prolonging for years together, by consent of parties, the Tribunal disposed of the appeal without interfering with the EC, but then directing the parties to abide by the conditions imposed in the judgment, and protect the environment.

After giving our censuses thought to the facts and circumstances and the arguments advanced before this Tribunal, the learned judges feel that the conditions imposed being on the basis of consent given before them, there is no reason to modify the same. It appears that the liability of the parties flow from an agreement mutually entered *inter se* between the Builder and Indira Nagar Hutment Dwellers Cooperative Housing Society Ltd. Therefore, while not interfering with the other conditions, stipulated in our judgment, the learned judges modify condition no. IV to the extent that Respondent No. 4 shall ensure

that all the members who have been found eligible for flats and are staying in transit accommodation are provided with flats as early as possible. He is, permitted to sell the flats to outsiders strictly in accordance with the terms of the agreement entered *inter se* between Respondent No. 4, and the Society as well as conditions imposed by the Slum Rehabilitation Authority and not otherwise.

With the aforesaid calcifications/modifications this case is disposed of.

Ramana Industries
Vs
Tamil Nadu Pollution Control Board

APPLICATION NO. 19/2011

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

Key words: Kanchipuram District, Chennai, Tamil Nadu, chairman, Tamil Nadu Pollution Control Board

Application solved by external factors

Date: 29th March, 2012

This application is filed challenging the order in Preceeding No: *T-7/YNPCB/F.19425/MMN/Compl/2011-1* dated 13th September, 2011 of the Chairman, Tamil Nadu Pollution Control Board (Respondent No. 1), whereunder the applicant was directed, while exercising provision under section 31A of the Air (Prevention and Control of Pollution) Act, 1981 as amended in 1987, directing the concerned authority to stop the power supply to the unit of the applicant with immediate effect. This was preceded by an order of even dated 13thSeptember, 2011, asking the applicant to close down the unit with immediate effect.

The only controversy arisen in this matter is as to whether the location of the unit falls within Coastal Regulation Zone (in short CRZ) or not. The matter came up for hearing on 4th January, 2012.

Thereafter the matter was examined by none other than Chairperson of the Tamil Nadu Pollution Control Board (in short TNPCB) and passed order on 28th March, 2012, wherein the direction issued earlier to close down the industry and stop electricity supply was revoked with immediate effect and the unit shall comply with all the conditions stipulated in the Consent Orders. Further by an order of even dated 28th March, 2012 The Chairman, TNPCB directed to the Assistant Environmental Engineer, TNGEDCO (TNPCB), Chennai, Tamil Nadu to restore power supply to the applicant unit with immediate effect. Thus no cause of action remains to be adjudicated.

Ramana Industries (the applicant) who is present in the court in person also stated that the license of the unit has been renewed on 1st March, 2012.

Prafulla Samantray Vs
Union of India and Others

APPLICATION NO. 8/2011

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

Key words: Orissa State Pollution Control Board, M/S Posco India Pvt. Ltd., Jagatsingpur, Orissa, steel cum captive power plant, Environmental Clearance, Public Hearing, Environment Impact Assessment, Forest Clearance

Application Disposed with directions

Date: 30th March, 2012

This appeal is filed against the final order dated 31st January, 2011 of the Ministry of Environment and Forests, imposing additional conditions to the Environmental Clearances (for short ECs) in respect of steel cum captive power plant project and captive minor port project of M/s POSCO India (for short POSCO), the Respondent No. 1, during the year 2007. The Forest Clearance granted for the project by the Ministry of Environment and Forest (for short MoEF) appears to be under challenge in a *WP(C) No. 14885 of 2011* before the Hon'ble High Court of Orissa, Cuttack and the same is pending.

According to Prafulla Samantray (Appellant No. 1), he is a social and environmental activist from Orissa State. With regard to the present project i.e. POSCO, the appellant had sent detailed objections in writing to the Orissa State Pollution Control Board (for short OSPCB) even prior to the Public Hearing (for short PH) held on 15th April, 2007.

Biranchi Samantray (Appellant No. 2) is a resident of Dhinkia in Kujang District and a marginal farmer and also a priest in a village temple. He is directly affected by the proposed project as the same will require a takeover of his land on which he and his family carry out paddy cultivation and also '*paan-kheti'* (betel vine cultivation). He has been protesting against the proposed POSCO project and apprehends loss of livelihood and adverse impact on environment and agriculture and water resources as a result of setting up of the project.

According to the Appellants, the main components of the project, for which a Memorandum of Understanding (for short MOU) for setting up an integrated steel plant with captive port with the total capacity of 12 million tons per annum at Paradip in Jagatsinhpur district of Orissa wherein an estimated investment of Rs. 51,000/-crore (approximately 12 million US Dollars), are as under:

(i) The integrated steel plant with captive power plant project at Kujang, near Paradip in Jagatsinhpur district of Orissa
(ii) Captive Port at Jatadhar in Jagatsinhpur district of Orissa
(iii) Mining project
(iv) Integrated township and water supply infrastructure.

As per the MOU, the Government of Orissa agreed to facilitate and use its best efforts to enable the Project Proponent (POSCO) to obtain a 'No Objection' through the State Pollution Control Board in the minimum time possible.

It is the case of the Appellant that the manner in which the entire appraisal starting from preparation of the Environment Impact Assessment (for short EIA) report to conduct of PH to examination by the respective Expert Appraisal Committee (for short EAC) of MoEF for Industries and Infrastructure

respectively was done, including the reappraisal in the year 2010 based on the findings of Review Committee constituted for the purpose and subsequently the issuance of final order regarding ECs shows that the provisions of EIA Notification 2006 were not followed in letter and spirit.

The following issues arise for consideration in this appeal:

i) Whether the Appeal has been filed within the period of limitation in so far as challenging the ECs granted in May/June, 2007 and whether appeal can be entertained to that extent?

A review of an administrative order and a judicial order has to be seen with different perspective. The administrative review cannot be equated to that of a judicial review to say that the original order merged with the final order. Here, it may be necessary to notice that mainly the Terms of Recommendation (for short TOR) are to examine the conditions already attached and the effect, the compliances with the statutory provisions and ascertainment of status of implementation of the rehabilitation and resettlement provisions in respect of the projects compliance with EIA, Coastal Regulation Zone (for short CRZ) and other clearances/ approvals granted by the MoEF and other Central, State and Local authorities. This was in the nature of a legal audit vis-à-vis, the applicability of EIA Notification of 1994 and 2006 and other instructions issued from time to time. Thus, this appeal can be entertained only to the extent of challenging the final order and its immediate background i.e. the review committee reports and not the appeal in respect of the original ECs granted in May/July, 2007. Thus the appeal is hopelessly barred by limitation and is not maintainable in respect of challenging the ECs granted in May/July, 2007.This appeal is maintainable only in respect of the final order dated 31st January, 2011 and the conditions attached thereto.

ii) Whether the Public Hearing was properly conducted following the prescribed procedure applicable at the relevant point of time and same is valid?

The project proponent submitted schedule–II application, questionnaire and rapid EIA/EMP Report for consideration of proposals as per the provisions of the EIA Notifications 1994 and 2006. PH for the project was also held on 15th April, 2007 as per the prescribed procedure at the relevant point of time. The District Magistrate appears to have drawn the summary at the end the PH proceedings and made it known to the public. Thus, it is clear that procedural wise, there is no substantial error committed by the authority in conducting the PH. Therefore, the allegation of the Appellant that the PH was not conducted in accordance with the law cannot be countenanced, though; it does not fall within the ambit of challenge of this appeal, as discussed above.

iii) Whether the MoEF was right in accepting the review report submitted by Ms. Meena Gupta who participated in the issue of grant of original ECs since she was the Secretary to the Government of India, MoEF and whether the Government was right in rejecting the majority report of the review committee. And whether the apprehensions/issues raised by the Review Committee are properly addressed while issuance of the final order under challenge?

The executive summary submitted by Ms. Meena Gupta was not endorsed by the majority members. Of course, the report submitted by majority members was also not endorsed by Ms. Meena Gupta. The report submitted by Ms. Meena Gupta was a minority one and the report submitted by other members was majority i.e. 1:3. Though the report of Ms. Meena Gupta appears to be balanced one, even this was not taken into consideration in totality by the EACs. Further, it is also seen that she was the Secretary, MoEF at the time of issuance of clearances earlier which are sought to be reviewed through the TOR. Here, there is a clear bias to defend her previous acts as Secretary, MoEF. Apart from this, there is a major shift in the approach made by her in defending the ECs. Whether the act of Ms. Meena Gupta is fair or not, they are

definitely hit by personal / official / departmental bias, in other words, she supported the decision made by her earlier. This is in gross violation of principles of natural justice. Therefore, the entire process of review is vitiated under the law.

However, the learned judges have kept in mind the need for industrial development, employment opportunities created by such projects that involve huge foreign investment, but at the same time the Tribunal is conscious that any development should be within the parameters of environmental and ecological concerns and satisfying the principles of sustainable development and precautionary measures.

Study of the Records: A close scrutiny of the entire scheme of the process of issuing final order in the light of the facts placed before us and material placed on record together with the observations made by the review committee though in two separate volumes; reveals that a project of this magnitude particularly in partnership with a foreign country has been dealt with casually, without there being any comprehensive scientific data regarding the possible environmental impacts. The learned judges are extremely conscious that we are dealing with only the review and post review proceedings in granting final order of 31st January, 2011 (*refer to original judgement*).

For all the above discussion and deliberation on the issues and the study of records made by the learned judges and keeping in view the need for industrial development, employment opportunities, etc. but not compromising with the environmental and ecological concerns, they propose to dispose of this Appeal with the following directions:

1. The MoEF shall make a fresh review of the Project with specific reference to the observations/ apprehensions raised by the Review Committee in both the reports by issuing fresh TOR accordingly.
2. However, the final order dated 31st January, 2011 made by the MoEF shall stand suspended till such fresh review, appraisal by the EACs and final decision by MoEF is completed,
3. The MoEF shall constitute the said fresh review committee by engaging subject matter specialists for better appreciation of environmental issues.
4. The MoEF shall define timelines for compliance of the conditions in the ECs and considering the nature and extent of the project, MoEF should establish a special committee to monitor the progress and compliance on regular basis.
5. The MOEF shall consider optimizing the total land requirement for the MTPA Steel plant proportionately instead of allotting entire land required for 12 MTPA steel plants which is an uncertain contingency.

6. The MoEF shall consider feasibility of insisting upon every major industry that requires large quantity of water to have creation of its own water resource facility rather than using/ diverting the water that is being meant for drinking/ irrigation purposes.
7. It is desirable that the MoEF shall establish clear guidelines/directives for project developers that they need to apply for a single EC alone if it involves components that are essential part to the main industry such as the present case where main industry is the Steel plant, but it involves major components of port, captive power plant, residential complex, water supply, etc.
8. It is desirable that MoEF shall undertake a study on Strategic Environmental Assessment for establishment of number of ports all along the coastline of Orissa with due consideration to the issues related to biodiversity, risks associated, etc.
9. It is also desirable that MoEF shall take a policy decision that in large projects like POSCO where MOUs are signed for large capacities and up scaling is to be done within a few years, the EIA right from the beginning, should /be assessed for the full capacity and EC granted on this basis.

M/s Om Shakthi Engineering Works
Vs
The Chairman Tamil Nadu Pollution Control Board

M.A. NO. 27/2012 in

APPEAL NO. 11/2011

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

Key words: Iyappantangal, Chennai, Tamil Nadu, Tamil Nadu Pollution Control Board, noise survey

Application Allowed

Date: 10th April, 2012

Orders of the Tribunal

This appeal was dismissed for default earlier on 23rd November, 2011. However, an application is filed by the appellant seeking to set aside the order dismissing the appeal for default. The learned judges considered it appropriate to restore the appeal. It is suffice to note the following facts for the purpose of disposal of the appeal.

The appellant is running an engineering work shop in the name and style of M/s Om Shakthi Engineering Works, Iyappantangal, Chennai, Tamil Nadu. It appears, on a complaint made by Mr. E. Sivanathan (Respondent No. 3) herein, the Tamil Nadu Pollution Control Board (for short TNPCB) Officials visited the unit on 7th June, 2010 and carried out a noise level survey and directed the appellant to take certain precautionary measures to reduce the noise levels, otherwise the unit would be directed to be closed.

The appellant, however, did not take measures as suggested by the TNPCB in its order dated 7th June, 2010 for reduction of the noise levels. Therefore the TNPCB passed a final order dated 29th September, 2010 in file *No. AM (T)/TNPCB/F.3256/AMB-TLR/ORANGE/2010/W-2*, directing the closure of the unit and also directing the electricity authority to cut the supply of electricity.

The bone of contention of the appellant is that when TNPCB officials visited the unit and conducted noise level survey, he had no notice of any kind as to the inspection of the officials; nor the appellant was present when the noise levels were recorded on 7th June, 2010. The learned judges deem it appropriate to disposed of the appeal with the following directions:

1. The TNPCB officials shall conduct a fresh noise level survey etc., while the unit of the Respondent No. 3 is in operation, in the presence of both the parties, after issuing a notice indicating the date of inspection etc. Respondent No. 3 shall be at liberty to submit any written objections and the same shall be taken into consideration and appropriate action taken as per law. This exercise shall be completed within a period of six weeks from today
2. Till a final decision is taken by the TNPCB officials the appellant shall be permitted to operate the unit by restoring the electricity supply forthwith.
3. Against any decision made by the TNPCB authorities, it is always open for both the parties to invoke appropriate remedies as available under the law.

Mayur Karsanbhai Parmar
Vs
Union of India and Others

APPLICATION No. 28/2011
and

APPLICATION No. 9/2012

JUDICIAL AND EXPERT MEMBERS: Justice A.S. Naidu and Prof. R. Nagendran

Key words: Gujarat Pollution Control Board, District Junagadh, Shapoorji Paloonji and Company Ltd., AFCONS Infrastructure Ltd., Forbes Gokak Ltd., Consortium, Sea Coast of Village Chhara Taluka Kodinar, Greenfield Port (Seema Port) and the Thermal Power, Environmental Clearance, Public Hearing, Environment Impact Assessment

Application Dismissed

Date: 20th April, 2012

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

According to the Applicants, a Port has been proposed to be set up to import coal from Indonesia. The said coal is proposed to be transported by a conveyer belt to be used in the Thermal Power Plant; therefore, the said port is to be construed as a captive port for the Thermal Power Plant. According to the said Respondent, the above said two projects are not composite to one another; on the other hand they are separate and independent projects.

According to the Applicants, the Environment Impact Assessment (EIA) reports prepared for both the projects do not disclose the correct facts and there is deliberate suppression and of concealment of vital informations. The same also contain false or misleading information with respect to material facts. Further, there has been violation in the process of public hearing, as prescribed under EIA Notification, 2006 as well as the Office Memorandum dated 19th April 2010 issued by the MoEF. It is submitted that in the event EC is granted ignoring aforesaid infirmities, there would be likelihood of infringement of legal right, *vis-a-vis* the environment.

Section 16 of the NGT Act, authorizes a person aggrieved by an order granting environmental clearance (for short EC) for any project to file an appeal before this Tribunal within a period of thirty (30) days from the date on which the order or decision is communicated to him. In the case in hand, the Ministry of Environment and Forest (for short MoEF) admittedly has not taken any decision with regard to granting EC to either of the project and as such, the jurisdiction conferred upon this Tribunal under Section 16 of the Act cannot be invoked at this stage. According to Mr. Grover, learned Sr. Advocate for the appellant, a combined reading of Section 14 and Section 2 (m) leads to a conclusion that violation of any specific Statutory obligation which has direct access to the cause and which is likely to affect the community at large can be raised before this Tribunal invoking jurisdiction under Section 14

of the Act. Expanding the said argument Mr. Grover further submitted that the appellate power of the Tribunal to exercise jurisdiction under Section 16 (h) being specific, under the said provision the order granting environmental clearance can be assailed by a person aggrieved, On the other hand, the jurisdiction under Section 14 is much broader and deals with cases where substantial question relating to the environment, which arises out of implementation of the enactments listed in schedule 1 of the Act, are concerned.

The learned judges heard the learned counsel for the parties diligently and perused the relevant documents annexed to the pleadings meticulously. There is no dispute that the paraphernalia as well as formalities for considering as to whether EC should be granted to both the projects or not, are still in process and till date the MoEF has neither taken any decision nor passed any order.

The Environment Protection Act is a self-contained legislature. In consonance with the provisions of the said Act, and Rules, Notifications are issued, laying down a full-fledged procedure required to be adopted for imposing restrictions and prohibitions on the new project or activities, or on the expansion or modernisation of existing Projects or activities based on their potential environmental impacts as indicated in the Schedule to the Notification. It is well settled that unless prior environmental clearance is granted in accordance with the objectives of National Environment Policy, no new project can commence. Environmental Impact Assessment Authority is constituted by the Central Govt. in consultation with the State Govt. or Union Territory Administration concerned under Sub Section (3) of Section 3 of the Environment (Protection) Act 1986, for conducting the assessment and impacts.

In the case in hand admittedly, the procedure / assessment under EIA Notification 2006, read with the Environment (Protection) Act and Rules for determining as to whether EC can be granted to the Project or not is in progress. The Competent Authorities under the said Notification are required to conduct scrutiny of the projects, and consider the pros and cons stage by stage. The persons having interest or likely to be effected / aggrieved if the Project is set up have access to take part and put forward their grievances. In course of assessment, the Competent Authorities are authorised to take into consideration the grievances put forth before them. The Authorities shall also in course of assessment, work-out the impact of the projects on the environment, and arrive at such conclusions as would be just and proper and in consonance with law.

The only grievance which is made out before this Tribunal is that the Project Proponent had suppressed vital facts and furnished erroneous and concocted materials and that the public hearing has not been conducted in proper perspective.

The jurisdiction of Section 14 of the NGT Act, can be invoked only if the matter in controversy is not under consideration of any Competent Authority and or by afflux of time a project is likely to cause harm to the environment. None of the aforesaid eventualities are satisfied in the present case. The learned judges are, therefore, not inclined to entertain these applications and dispose of the same granting liberty to the Applicants to file detailed objection before the Expert Appraisal Committee (EAC) and or before

the MoEF as the case may be. The Tribunal, further, directs that in the event such objections are filed by the Applicants, the same should be considered and only thereafter a decision should be taken either for granting of Environment Clarence to the aforesaid two projects or not. The learned judges make it clear that they have not examined the merits of the case nor considered the submissions as to whether the two projects are composite to each other or are independent. The Authorities have the liberty to decide the said issue also in accordance to law and materials available. Both the Appeals are accordingly disposed of, granting liberty to the Applicants to approach this Tribunal once again if exigencies arise.

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 C.V. Ramulu and Prof. Dr. R. Nagendran

Key words: M/s Jindal Steel Power Ltd, private land, coal mining, Environmental Clearance, Public Hearing, Cumulative Impact Assessment, Environment Impact Assessment

Application Allowed

Date: 20th April, 2012

This appeal is filed challenging the Environmental Clearance (for short EC) granted to Gare – IV/6 Coal Mining Project (4 MTPA) and a Pithead Coal Washery (4 MTPA) of M/s Jindal Steel and Power Limited located at Raigarh District of Chhattisgarh State, by the Ministry of Environment and Forests (for short MoEF), the First Respondent herein, on 18th May, 2009.

Mainly the following points arise for consideration in this appeal:

i) Whether the Public Hearing in the present case was conducted as contemplated under the Environment Impact Assessment for (short EIA) Notification 2006 and the written representations filed by the appellant were considered by the Expert Appraisal Committee (for short EAC) and the same is valid or not:

According to the Learned Counsel for the Appellant, the Public Hearing was held on 5th January 2008 and the procedure provided for conducting Public Hearing in Appendix IV of the EIA Notification of 2006 was not properly followed. The Public Hearing was not conducted systematically and in a transparent manner ensuring widest public participation at the Project Site(s) or in the close proximity to the Chhattisgarh Environment Conservation Board (for short CECB). Khamariya village was fixed as the venue for public hearing. Neither the summary of the draft EIA was posted on website nor made available for reference at a notified place. The Respondents conducted the Public Hearing without following the procedure. Thus the public hearing held on 5th January, 2008 was in gross violation of the procedure and the principles of natural justice.

In the case on hand, after viewing the CD of the public hearing conducted on 5th January, 2008, the learned judges note to their dismay that the same was a "farce". It was a mockery of the public hearing and the procedure required to be followed thereof. All the norms required in conducting a smooth and fair procedure was given a go by. It appears even the EAC has commented the way in which the public hearing was conducted and suggested for a fresh public hearing in the matter. The MoEF has simply recommended, for grant of the EC, without taking care of a substantive procedure, which was found to be defective, into consideration.

"This is not a case where there are a few ignorable procedural lapses in conducting the public hearing. This is a case of a mockery of public hearing, which is one of the essential parts of the decision making process, in the grant of Environmental Clearance. This is a classic example of violation of the rules and

the principles of natural justice to its brim. Therefore, we consider it appropriate to declare that the public hearing conducted in this case is nullity in the eye of law and therefore is invalid."

ii) Whether the EAC ignored the mandatory requirement of Cumulative Impact Assessment as required under the EIA Notification 2006 (Form I Para 9):

We consider that there is no necessity of going into all the details as to this issue since against issue No. 1 we have already come to the conclusion that the public hearing conducted was not proper and the same is invalid. Further, the suggestions made by the EAC for conducting public hearing afresh were brushed aside. The MoEF simply ignored the mandatory procedure under clause 8 of the EIA Notification 2006 and granted the EC in favour of the project proponent. Therefore, the EAC recommendation and the grant of EC are liable to be set aside. Accordingly the appeal is disposed of as under:

i) The EC granted on 18th May, 2009 by the MoEF is set aside.
ii) The MoEF is at liberty to direct the appropriate authority to re-conduct a Public Hearing by taking all steps as required under the law.
iii) The public hearing may be directed to be conducted by an experienced ADM, other than the present one who conducted the public hearing on 5th January, 2008, and special care may be directed to be taken while recording the statements of the people participates.

Accordingly the appeal is allowed.

Mehnatksh Kishan Ekta Sangathan
Vs
Union of India and Others

APPEAL NO. 6 / 2012

JUDICIAL AND EXPERT MEMBERS: A.S. Naidu and Prof. R. Nagendran

Key words: Chhattisgarh Environment Conservation Board, M/s Jindal Power Ltd., Tamnar, Taluk, Raigarh in the District of Chhatisgarh, Coal Based Thermal Power Plant, Environmental Clearance

Application Ongoing

Date: 26th April, 2012

Orders of the Tribunal

The Environmental Clearances (for short EC) dated 18th March, 2011 and 4th November, 2011 granted by the Ministry of Environment and Forests (for short MoEF) to M/s. Jindal Power Limited for expansion of 4x600 MW (2400 MW) Coal Based Thermal Power Plant at Tamnar, Taluk, Raigarh in the District of Chhatisgarh is assailed in this appeal on several grounds. It is clear that expansion of the project and further enhancement to 2x600 MW was subject to appropriate consideration and was not automatic.

The learned judges find some force in the contentions raised by Mr. Mishra, Learned Sr. Advocate to the effect that on the guise of challenging the EC granted for expansion of the project dated 4th November, 2011, Mehnatkash Mazdoor Kishan Ekta Sangathan (the Appellant) cannot be permitted to assail or challenge the EC granted way back on 18th March, 2011. Admittedly, the project was installed according to the EC dated 18th March, 2011. The said EC having not been assailed within time specified cannot be assailed at this belated stage. That apart, the cause of action for challenging the order dated 18th March, 2011 has became grossly barred by afflux of time and thus has attained finality.

In view of the discussions made, the learned judges hold that *Appeal no. 6 of 2012* shall be confined only to EC granted by the MoEF by Order dated 4th November, 2011. In other words, the propriety or otherwise of the EC granted on 18th March, 2011 shall not be considered in this Appeal.

"The Respondents are granted liberty to file their replies confining to the EC dated 4th November, 2011 on or before 10th May, 2012."

Thervoy Gramam Munnetra Nala Sangam
Vs
Union of India Ministry and Others

APPEAL NO. 14 of 2011

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

Key words: Tamil Nadu Pollution Control Board, M/s State Industries Promotion Corporation of Tamil Nadu (SIPCOT), Thervoy Kandigai, Thiruvallur District, Tamil Nadu, Industrial Park at SIPCOT, forest reserve, Environmental Clearance

Application Dismissed

Date: 26th April, 2012

It appears that the Ministry of Environment and Forests, Government of India granted Environment Clearance (for short EC) in its file *No. 21041/2009-IA-III* dated 9th August, 2010 to M/s State Industries Promotion Corporation of Tamil Nadu (SIPCOT), the Respondent No. 3 herein, for the development of Industrial Park at SIPCOT, Thervoy Kandigai, Thiruvallur District, Tamil Nadu. Against the said order, an appeal was available under Section 11 of the National Environmental Appellate Authority (NEAA) Act to the NEAA, within (30) days from the date of such an order. However, the NEAA would entertain an appeal before expiry of (30) days subject to limitation provision - but not later than (90) days. Though, the impugned order was passed on 9th August, 2010, no appeal under Section 11 of the NEAA Act was filed within (30) days or on or before 17th November, 2010.

According to the Appellant, the project of the Respondent No. 3 is being established at Thervoy Kandigai village which is adjacent to Reserve Forests of Pallavakam and Peria Pulyur. Adjoining the Reserve Forest, there are about 250 hectares of land in survey No. 32/2 and 33/2 which is classified as *Meikkal paramboke* (grazing land), which is being used traditionally for several hundred years, as grazing land, and the landscape is almost similar to the adjacent Reserve Forest area. There are thousands of trees and the local people collect minor forest produce and medicinal herbs. There are more than 27 varieties of wild fruits and herbs which is a source of livelihood to the local people.

On 13th November, 2011, the Revenue Department of State of Tamil Nadu issued G.O. (MS) No. 650 ordering transfer of title lands comprised in Thervoy Kandigai Village, Survey No. 32/2 and 33/2 measuring 1127 acres, to the Project Proponent, SIPCOT. The Appellant has raised many procedural and environmental issues. The Respondent No. 3 filed a preliminary reply and raised an objection as to the maintainability of the very Appeal by this Tribunal. Therefore, with the consent of the parties, we have taken up the preliminary issue as to the maintainability of the Appeal.

The impugned order was passed by the Ministry of Environment and Forest (Respondent No. 1) on 9th August, 2010 and no Appeal, as available under Section 11 of the NEAA Act, was filed before the NEAA on or before 17th October, 2010 (even after 70 days). The National Green Tribunal (for short NGT Act) came into force on 18th October, 2010. The Appellant filed *WP No. 46718 of 2011* on 26th April, 2011. Thus, the remedy of Appeal available under Section 11 of NEAA Act was not availed and the NEAA Act

stood Repealed under the NGT Act 2010 with effect from 18th October, 2010. Under these circumstances, as a statutory Tribunal, we have to examine whether the present Appeal is maintainable.

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

Learned Senior Counsel Mr. Raj Panjwani, stated that Section 6 of the General Clause Act 1897 speaks that Repeal shall not affect any right acquired or accrued under any enactment so repealed unless a different intention appears. The Appellant acquired / accrued right of Appeal under Section 11 of the Repealed Act (NEAA Act) before the Act could be repealed, unless a different intention appears, he is entitled to maintain the Appeal.

The words anything done or any action taken under Section 38(2) of the Repealed Act shall be construed to be taken under the NGT Act, 2010. For example – an Appeal was preferred before NEAA and the same was not processed or not admitted or the condone delay petition was pending, or a decree passed for compensation, restoration of environment, etc. was not executed as on 17th October, 2010. The Section 38(2) cannot be stretched to mean more than this.

Under Section 38(5) of NGT Act, the Appeals already filed and pending, whatever may be the stage, are protected and stood transferred to this Tribunal. Unfortunately, there is no provision expressly providing Appeals against the orders made on or before 17th October, 2010. Further, the language of Section 16 makes it clear that Appeals are available only against the orders passed on or after 18th October, 2010. If the intention was otherwise, nothing prevented the legislature to say that an Appeal lies against any order made in granting / rejecting environmental clearances by the Central / State Governments. Thus, it must be deemed that the Appeal against an order made on or before 17th October, 2010 and no Appeal has been filed before NEAA, are impliedly and implicitly excluded in view of Section 16, 38(2) and 38(5) since no right has been accrued under Section 6 (c) of the General Clauses Act, 1897.

The provisions of a Repealed Act cannot be relied upon after it has been repealed. The only thing that cannot be disturbed is what has been acquired under the Repealed Act. The Appellant has not accrued any right which is protected by applying the provisions of Section 6 (c) of the General Clauses Act, 1897. The distinction between what is, and what is not a right preserved by the provisions of Section 6 of the General Clauses Act is often one of great fineness. What is unaffected by the repeal of a statute is a right acquired or accrued under it and not a mere "hope or expectation of", or liberty to apply for, acquiring a right. In the present case, the EC was granted on 9th August, 2010 and no Appeal was filed before 18th October, 2010 under NEAA Act. Therefore, nothing was done, though legally any person was entitled to file Appeal under Section 11 of the NEAA Act. Further, it cannot be called as a pending case to be decided under Section 38 (5) of the NGT Act. Section 6 of the General Clauses Act cannot be relied upon to expand the operation of Section 16 or Section 38 (5) beyond their plain language. The Appellant

neither accrued any right under the Repealed Act, nor, the intention of the Repealing Act is to allow an Appeal of this nature to be maintained.

Then the question that arises is as to whether the Appellant is left remediless. The Learned Attorney General of India, stated that the Appellant is not remediless, and he committed a mistake in filing an Application before the Hon'ble High Court of Madras, seeking return of the papers for filing before this Tribunal, without examining the legal provisions of the NGT Act. He also stated that the Appellant could have pursued the matter before the High Court of Madras under Article 226 of Constitution of India. It appears cases of this nature are very few and this matter relates to environment and this Tribunal is specially constituted to deal with all environmental disputes and throwing away the Appeal as not maintainable, appears to be unreasonable, at the first instance. But, being statutory Tribunal; the learned judges are bound by the language of the statute. Had there been a direction from the Hon'ble High Court of Madras, to entertain the Appeal and dispose of the same on merits, the Tribunal could have done so, as it is bound by the orders passed by the Constitutional Courts. The Appellant sought withdrawal of the Writ Petition from the Hon'ble High Court of Madras, to enable him to approach this Tribunal and papers were returned. Without there being any order from the Hon'ble High Court of Madras, to entertain and dispose of the Appeal, we cannot confer jurisdiction on ourselves and deal with the matter on merits.

For all the above reasons, the learned judges are of the considered opinion that the present Appeal is not maintainable and the Appeal is liable to be dismissed in liming, on this ground alone.

Consumer Federation Tamil Nadu
Vs
Union of India Ministry and Others

MISC. APPLICATION NO. 21 / 2012
arising out of

APPEAL NO. 33 / 2011

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

Key words: Cuddalore District, Tamil Nadu Pollution Control Board, SRM Energy Ltd, Imported Coal Based Thermal Power Plant, condonation of delay

Application Dismissed

Date: 30th April, 2012

Orders of the Tribunal

The Order dated 18th May, 2011, granting Environmental Clearance (for short EC) to M/s SRM Energy Limited for installation of 3x660 MW Super-Critical Imported Coal Based Thermal Power Plant, at villages Poovalai, Alamelumangapuram and adjoining Palavuttanan, Vilangipattu, Manikollai, of Chidambaram Taluk, in CuddaloreDistt., in Tamil Nadu is assailed in *Appeal no. 33 of 2011*. The said Appeal was filed on 20th November, 2011 along with application for condonation of delay. The said application is the subject matter of this Miscellaneous case.

After coming to know or the order granting EC, it is stated, the appellant filed an application under the Right to Information Act, seeking certain information.

According to the Appellant, the Respondent no. 1 adopted deli-dilly tactics in furnishing all the information sought for and due to lack of information, the appellant was prevented from preferring an appeal within the time prescribed. It appears that the appeal was initially filed in the month of November, 2011 but then the same was not registered as the fees required Under Section 12 or the National Green Tribunal Act, 2010 (for short "NGT Act"), was not deposited and also there were some other defects. After receiving notice from the Tribunal, the appellant took steps for removal of the defects and finally the appeal was registered on 29th November, 2011. According to the appellant, there were a delay of 69 days and the same could not be attributed to the appellant who was pursuing the lis diligently.

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

The learned judges have diligently considered the submissions advanced. The Tribunal being a creature under a Statute cannot act beyond the provisions contemplated in the Statute. The learned judges carefully went through each of the decisions referred to supra which deal with the powers of the Hon'ble Apex Court. This Tribunal does not passes the extra ordinary power vested under Article 34 of the Constitution nor it can exercises the powers under Article 226 or 227 of the Constitution. The language of Section 16 of the NGT Act, 2010 is very explicit and clearly stipulates the period of limitation for filing an appeal to be thirty days from the date of communication of the Order. The Act further empowers the Tribunal, on given circumstances, to entertain appeal filed within a period *not exceeding sixty days* thereafter, the language used by the Statute is unambiguous and clear, and is binding.

The legislature in its wisdom having explicitly provided the period of limitation and a bar not to entertain any Appeal after (30+90 = 90) ninety days this Tribunal, constituted under the said Act, cannot expand the period of limitation any further. In other words, the Tribunal can condone delay only up to sixty days after expiry of thirty days, if it is satisfied with the reasons assigned. Thus, there is a complete exclusion of Section 5 of the Limitation Act. That apart, the period prescribed under the NGT Act, 2010, which is a special Statute, shall over ride normal acts.

Consequently, the delay of more than ninety days cannot be condoned under Section 16 of the NGT Act, 2010. Accordingly, this application for condonation of delay is dismissed, so also the Appeal.

Nirma Limited
Vs
Ministry of Environment and Forests and Others

MISC. APPLICATION NO. 27 OF 2012
IN

APPEAL NO. 4 OF 2012

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

Key words: Gujarat Pollution Control Board, Shree Mahuva Bandhara Khetiwadi, cement plant, coke oven plant, captive power plant

Application Allowed

Date: 1st May, 2012

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

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

The present controversy is limited only with regard the revocation of the order which has been passed by the MoEF and thus the petitioners association does not have any right to take part in the proceedings.

Section 16 of the National Green Tribunal Act, 2010 (for short "NGT Act") stipulates that the person aggrieved by an order passed under any of the Acts set forth as (a to j) thereof can prefer an Appeal. Accordingly, Nirma Ltd. has assailed the order passed by the MoEF under Environmental (Protection) Act, 1986. It is needless be said that as the Applicant is not aggrieved by the order cancelling the EC it has no right to prefer an Appeal but then being a party to the entire proceeding culminating in the order

cancelling the EC, it has a right to file an application to be impleaded as an Respondent, and pray for granting opportunity of hearing. The dispute and controversy arising out of the seven acts enumerated in Schedule 1 of the NGT Act, 2010 are not adversary in nature. In other words in such type of litigation neither there is a plaintiff nor a defendant. The controversy is more in the nature of litigations involving public interest. The procedure adopted for considering an application filed for granting EC for any proposed project, has to be dealt with in consonance with the provisions of Environment Impact Assessment (for short EIA) Notification, 2006 coupled with the provisions of Environment (Protection) Act, 1986 and rules framed thereunder. The provisions of the said Act Rules and Notifications grant extensive access to the public in general to take part and participate in the decision making process. Perusal of the report submitted by the Expert Body constituted by the MoEF in accordance with the direction of the Hon'ble Supreme Court also reveals that the applicant and many others took active part and raised objections to the proposal of granting EC to the project. The orders passed by the Hon'ble Supreme Court also reveal that the Applicant was immensely interested in the subject matter. It has not only raised objections but also moved the Gujarat High Court and thereafter Hon'ble Supreme Court, for redressal of its grievances. Thus it is clear that the members of the applicants Associations are not strangers to the 'lis' on the other hand they have taken part in all stages of the decision making process.

It is no more *resintegra* that where the Court finds that addition of a new party is absolutely necessary to enable it to adjudicate affectively and completely the mater in controversy, it will permit addition of the party. In the case in hand, as would be evident from the discussions made, the applicant Association and its members all along took keen interest in the controversy in issue and they took active part, by filing objections and otherwise. They had also approached the Gujarat High Court and Hon'ble Supreme Court in pursuit of their grievances. That apart, by order dated 18th March, 2011, the Hon'ble Supreme Court specifically directed the Expert Body to give hearing to Nirma Ltd., as well as to all objectors. It is needless to say that the applicant and or its members were among the objectors. Thus, they have vested interest in the subject matter of the Appeal and unless an opportunity is granted to them, to put forth their grievance, great prejudice shall be caused, which cannot be mitigated otherwise. The learned judges therefore, allow the application for impletion of party and direct that the applicant be added as a Respondent No. 5 to the Appeal.

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

Kishan Ekta Sangathan
Vs
Union of India and Others

APPEAL NO. 6 / 2012

JUDICIAL AND EXPERT MEMBERS: A.S. Naidu and Prof. R. Nagendran

Key words: Chhattisgarh Environment Conservation Board, M/s Jindal Power Ltd., Tamnar, Taluk, Raigarh in the District of Chhatisgarh, Coal Based Thermal Power Plant, Environmental Clearance

Application Ongoing

Date: 26th April, 2012

Orders of the Tribunal

The Environmental Clearances (for short EC) dated 18th March, 2011 and 4th November, 2011 granted by the Ministry of Environment and Forests (for short MoEF) to M/s. Jindal Power Limited for expansion of 4x600 MW (2400 MW) Coal Based Thermal Power Plant at Tamnar, Taluk, Raigarh in the District of Chhatisgarh is assailed in this appeal on several grounds. It is clear that expansion of the project and further enhancement to 2x600 MW was subject to appropriate consideration and was not automatic.

The learned judges find some force in the contentions raised by Mr. Mishra, Learned Sr. Advocate to the effect that on the guise of challenging the EC granted for expansion of the project dated 4th November, 2011, Mehnatkash Mazdoor Kishan Ekta Sangathan (the Appellant) cannot be permitted to assail or challenge the EC granted way back on 18th March, 2011. Admittedly, the project was installed according to the EC dated 18th March, 2011. The said EC having not been assailed within time specified cannot be assailed at this belated stage. That apart, the cause of action for challenging the order dated 18th March, 2011 has became grossly barred by afflux of time and thus has attained finality.

In view of the discussions made, the learned judges hold that *Appeal no. 6 of 2012* shall be confined only to EC granted by the MoEF by Order dated 4th November, 2011. In other words, the propriety or otherwise of the EC granted on 18th March, 2011 shall not be considered in this Appeal.

"The Respondents are granted liberty to file their replies confining to the EC dated 4th November, 2011 on or before 10th May, 2012."

Thervoy Gramam Munnetra Nala Sangam
Vs
Union of India Ministry and Others

APPEAL NO. 14 of 2011
JUDICIAL AND EXPERT MEMBERS: Justice C.V. Ramulu and Dr. Devendra Kumar Agrawal

Key words: Tamil Nadu Pollution Control Board, M/s State Industries Promotion Corporation of Tamil Nadu (SIPCOT), Thervoy Kandigai, Thiruvallur District, Tamil Nadu, Industrial Park at SIPCOT, forest reserve, Environmental Clearance

Application Dismissed

Date: 26th April, 2012

It appears that the Ministry of Environment and Forests, Government of India granted Environment Clearance (for short EC) in its file *No. 21041/2009-IA-III* dated 9th August, 2010 to M/s State Industries Promotion Corporation of Tamil Nadu (SIPCOT), the Respondent No. 3 herein, for the development of Industrial Park at SIPCOT, Thervoy Kandigai, Thiruvallur District, Tamil Nadu. Against the said order, an appeal was available under Section 11 of the National Environmental Appellate Authority (NEAA) Act to the NEAA, within (30) days from the date of such an order. However, the NEAA would entertain an appeal before expiry of (30) days subject to limitation provision - but not later than (90) days. Though, the impugned order was passed on 9th August, 2010, no appeal under Section 11 of the NEAA Act was filed within (30) days or on or before 17th November, 2010.

According to the Appellant, the project of the Respondent No. 3 is being established at Thervoy Kandigai village which is adjacent to Reserve Forests of Pallavakam and Peria Pulyur. Adjoining the Reserve Forest, there are about 250 hectares of land in survey No. 32/2 and 33/2 which is classified as *Meikkal paramboke* (grazing land), which is being used traditionally for several hundred years, as grazing land, and the landscape is almost similar to the adjacent Reserve Forest area. There are thousands of trees and the local people collect minor forest produce and medicinal herbs. There are more than 27 varieties of wild fruits and herbs which is a source of livelihood to the local people.

On 13th November, 2011, the Revenue Department of State of Tamil Nadu issued G.O. (MS) No. 650 ordering transfer of title lands comprised in Thervoy Kandigai Village, Survey No. 32/2 and 33/2 measuring 1127 acres, to the Project Proponent, SIPCOT. The Appellant has raised many procedural and environmental issues. The Respondent No. 3 filed a preliminary reply and raised an objection as to the maintainability of the very Appeal by this Tribunal. Therefore, with the consent of the parties, we have taken up the preliminary issue as to the maintainability of the Appeal.

The impugned order was passed by the Ministry of Environment and Forest (Respondent No. 1) on 9th August, 2010 and no Appeal, as available under Section 11 of the NEAA Act, was filed before the NEAA on or before 17th October, 2010 (even after 70 days). The National Green Tribunal (for short NGT Act) came into force on 18th October, 2010. The Appellant filed *WP No. 46718 of 2011* on 26th April, 2011. Thus, the remedy of Appeal available under Section 11 of NEAA Act was not availed and the NEAA Act

stood Repealed under the NGT Act 2010 with effect from 18th October, 2010. Under these circumstances, as a statutory Tribunal, we have to examine whether the present Appeal is maintainable.

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

Learned Senior Counsel Mr. Raj Panjwani, stated that Section 6 of the General Clause Act 1897 speaks that Repeal shall not affect any right acquired or accrued under any enactment so repealed unless a different intention appears. The Appellant acquired / accrued right of Appeal under Section 11 of the Repealed Act (NEAA Act) before the Act could be repealed, unless a different intention appears, he is entitled to maintain the Appeal.

The words anything done or any action taken under Section 38(2) of the Repealed Act shall be construed to be taken under the NGT Act, 2010. For example – an Appeal was preferred before NEAA and the same was not processed or not admitted or the condone delay petition was pending, or a decree passed for compensation, restoration of environment, etc. was not executed as on 17th October, 2010. The Section 38(2) cannot be stretched to mean more than this.

Under Section 38(5) of NGT Act, the Appeals already filed and pending, whatever may be the stage, are protected and stood transferred to this Tribunal. Unfortunately, there is no provision expressly providing Appeals against the orders made on or before 17th October, 2010. Further, the language of Section 16 makes it clear that Appeals are available only against the orders passed on or after 18th October, 2010. If the intention was otherwise, nothing prevented the legislature to say that an Appeal lies against any order made in granting / rejecting environmental clearances by the Central / State Governments. Thus, it must be deemed that the Appeal against an order made on or before 17th October, 2010 and no Appeal has been filed before NEAA, are impliedly and implicitly excluded in view of Section 16, 38(2) and 38(5) since no right has been accrued under Section 6 (c) of the General Clauses Act, 1897.

The provisions of a Repealed Act cannot be relied upon after it has been repealed. The only thing that cannot be disturbed is what has been acquired under the Repealed Act. The Appellant has not accrued any right which is protected by applying the provisions of Section 6 (c) of the General Clauses Act, 1897. The distinction between what is, and what is not a right preserved by the provisions of Section 6 of the General Clauses Act is often one of great fineness. What is unaffected by the repeal of a statute is a right acquired or accrued under it and not a mere "hope or expectation of", or liberty to apply for, acquiring a right. In the present case, the EC was granted on 9th August, 2010 and no Appeal was filed before 18th October, 2010 under NEAA Act. Therefore, nothing was done, though legally any person was entitled to file Appeal under Section 11 of the NEAA Act. Further, it cannot be called as a pending case to be decided under Section 38 (5) of the NGT Act. Section 6 of the General Clauses Act cannot be relied upon to expand the operation of Section 16 or Section 38 (5) beyond their plain language. The Appellant neither accrued any right under the Repealed Act, nor, the intention of the Repealing Act is to allow an Appeal of this nature to be maintained.

Then the question that arises is as to whether the Appellant is left remediless. The Learned Attorney

General of India, stated that the Appellant is not remediless, and he committed a mistake in filing an Application before the Hon'ble High Court of Madras, seeking return of the papers for filing before this Tribunal, without examining the legal provisions of the NGT Act. He also stated that the Appellant could have pursued the matter before the High Court of Madras under Article 226 of Constitution of India. It appears cases of this nature are very few and this matter relates to environment and this Tribunal is specially constituted to deal with all environmental disputes and throwing away the Appeal as not maintainable, appears to be unreasonable, at the first instance. But, being statutory Tribunal; the learned judges are bound by the language of the statute. Had there been a direction from the Hon'ble High Court of Madras, to entertain the Appeal and dispose of the same on merits, the Tribunal could have done so, as it is bound by the orders passed by the Constitutional Courts. The Appellant sought withdrawal of the Writ Petition from the Hon'ble High Court of Madras, to enable him to approach this Tribunal and papers were returned. Without there being any order from the Hon'ble High Court of Madras, to entertain and dispose of the Appeal, we cannot confer jurisdiction on ourselves and deal with the matter on merits.

For all the above reasons, the learned judges are of the considered opinion that the present Appeal is not maintainable and the Appeal is liable to be dismissed in limini, on this ground alone.

Consumer Federation Tamil Nadu
Vs
Union of India Ministry and Others

MISC. APPLICATION NO. 21 / 2012
arising out of APPEAL NO. 33 / 2011

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

Key words: Cuddalore District, Tamil Nadu Pollution Control Board, SRM Energy Ltd, Imported Coal Based Thermal Power Plant, condonation of delay

Application Dismissed

Date: 30th April, 2012

Orders of the Tribunal

The Order dated 18th May, 2011, granting Environmental Clearance (for short EC) to M/s SRM Energy Limited for installation of 3x660 MW Super-Critical Imported Coal Based Thermal Power Plant, at villages Poovalai, Alamelumangapuram and adjoining Palavuttanan, Vilangipattu, Manikollai, of Chidambaram Taluk, in CuddaloreDistt., in Tamil Nadu is assailed in *Appeal no. 33 of 2011*. The said Appeal was filed on 20th November, 2011 along with application for condonation of delay. The said application is the subject matter of this Miscellaneous case.

After coming to know or the order granting EC, it is stated, the appellant filed an application under the Right to Information Act, seeking certain information.

According to the Appellant, the Respondent no. 1 adopted deli-dilly tactics in furnishing all the information sought for and due to lack of information, the appellant was prevented from preferring an appeal within the time prescribed. It appears that the appeal was initially filed in the month of November, 2011 but then the same was not registered as the fees required Under Section 12 or the National Green Tribunal Act, 2010 (for short "NGT Act"), was not deposited and also there were some other defects. After receiving notice from the Tribunal, the appellant took steps for removal of the defects and finally the appeal was registered on 29th November, 2011. According to the appellant, there were a delay of 69 days and the same could not be attributed to the appellant who was pursuing the lis diligently.

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

The learned judges have diligently considered the submissions advanced. The Tribunal being a creature under a Statute cannot act beyond the provisions contemplated in the Statute. The learned judges carefully went through each of the decisions referred to supra which deal with the powers of the Hon'ble Apex Court. This Tribunal does not passes the extra ordinary power vested under Article 34 of the Constitution nor it can exercises the powers under Article 226 or 227 of the Constitution. The language of Section 16 of the NGT Act, 2010 is very explicit and clearly stipulates the period of limitation for filing an appeal to be thirty days from the date of communication of the Order. The Act further empowers the Tribunal, on

given circumstances, to entertain appeal filed within a period *not exceeding sixty days* thereafter, the language used by the Statute is unambiguous and clear, and is binding.

The legislature in its wisdom having explicitly provided the period of limitation and a bar not to entertain any Appeal after (30+90 = 90) ninety days this Tribunal, constituted under the said Act, cannot expand the period of limitation any further. In other words, the Tribunal can condone delay only up to sixty days after expiry of thirty days, if it is satisfied with the reasons assigned. Thus, there is a complete exclusion of Section 5 of the Limitation Act. That apart, the period prescribed under the NGT Act, 2010, which is a special Statute, shall over ride normal acts.

Consequently, the delay of more than ninety days cannot be condoned under Section 16 of the NGT Act, 2010. Accordingly, this application for condonation of delay is dismissed, so also the Appeal.

Nirma Limited
Vs
Ministry of Environment and Forests and Others

MISC. APPLICATION NO. 27 OF 2012
IN

APPEAL NO. 4 OF 2012

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

Key words: Gujarat Pollution Control Board, Shree Mahuva Bandhara Khetiwadi, cement plant, coke oven plant, captive power plant

Application Allowed

Date: 1st May, 2012

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

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

The present controversy is limited only with regard the revocation of the order which has been passed by the MoEF and thus the petitioners association does not have any right to take part in the proceedings.

Section 16 of the National Green Tribunal Act, 2010 (for short "NGT Act") stipulates that the person aggrieved by an order passed under any of the Acts set forth as (a to j) thereof can prefer an Appeal. Accordingly, Nirma Ltd. has assailed the order passed by the MoEF under Environmental (Protection) Act, 1986. It is needless be said that as the Applicant is not aggrieved by the order cancelling the EC it has no right to prefer an Appeal but then being a party to the entire proceeding culminating in the order cancelling the EC, it has a right to file an application to be impleaded as an Respondent, and pray for

granting opportunity of hearing. The dispute and controversy arising out of the seven acts enumerated in Schedule 1 of the NGT Act, 2010 are not adversary in nature. In other words in such type of litigation neither there is a plaintiff nor a defendant. The controversy is more in the nature of litigations involving public interest. The procedure adopted for considering an application filed for granting EC for any proposed project, has to be dealt with in consonance with the provisions of Environment Impact Assessment (for short EIA) Notification, 2006 coupled with the provisions of Environment (Protection) Act, 1986 and rules framed thereunder. The provisions of the said Act Rules and Notifications grant extensive access to the public in general to take part and participate in the decision making process. Perusal of the report submitted by the Expert Body constituted by the MoEF in accordance with the direction of the Hon'ble Supreme Court also reveals that the applicant and many others took active part and raised objections to the proposal of granting EC to the project. The orders passed by the Hon'ble Supreme Court also reveal that the Applicant was immensely interested in the subject matter. It has not only raised objections but also moved the Gujarat High Court and thereafter Hon'ble Supreme Court, for redressal of its grievances. Thus it is clear that the members of the applicants Associations are not strangers to the 'lis' on the other hand they have taken part in all stages of the decision making process.

It is no more *resintegra* that where the Court finds that addition of a new party is absolutely necessary to enable it to adjudicate affectively and completely the mater in controversy, it will permit addition of the party. In the case in hand, as would be evident from the discussions made, the applicant Association and its members all along took keen interest in the controversy in issue and they took active part, by filing objections and otherwise. They had also approached the Gujarat High Court and Hon'ble Supreme Court in pursuit of their grievances. That apart, by order dated 18th March, 2011, the Hon'ble Supreme Court specifically directed the Expert Body to give hearing to Nirma Ltd., as well as to all objectors. It is needless to say that the applicant and or its members were among the objectors. Thus, they have vested interest in the subject matter of the Appeal and unless an opportunity is granted to them, to put forth their grievance, great prejudice shall be caused, which cannot be mitigated otherwise. The learned judges therefore, allow the application for impletion of party and direct that the applicant be added as a Respondent No. 5 to the Appeal.

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

T. Mohana Rao
Vs
Ministry of Environment and Forests and Others

APPEAL NO. 23/2011
(NEAA Appeal No. 1/2010)

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

Key words: Andhra Pradesh State Pollution Control Board, M/s Nagarjuna Construction Company Ltd, Coal Based Thermal Power Plant, wetland, Environmental Clearance, Public Hearing, Environment Impact Assessment
Application partly allowed Date: 23rd May, 2012
APPEAL NO. 23/2011 (NEAA Appeal No. 1/2010): T. Mohana Rao Vs MoEF and Others
APPEAL NO. 24/2011 (NEAA Appeal No. 2/2010): Maddu Raja Rao Vs MoEF
APPEAL NO. 25/2011 (NEAA Appeal No. 3/2010): Forum for Sustainable Development Vs MoEF and Others
APPEAL NO. 26/2011 (NEAA Appeal No. 4/2010): Paryavarana Parirakshana Sangham Vs MoEF and Others
APPEAL NO. 27/2011 (NEAA Appeal No. 5/2010): Donnu Behara Vs MoEF and Others
APPEAL NO. 28/2011 (NEAA Appeal No. 6/2010): Sandhi Kamaraju Vs MoEF and Others

All these appeals involve same question of facts and point of law. Even the order impugned and proposed Project is one and the same, therefore by consent of Parties all the six appeals were heard together and are disposed of by this common Judgment.
M/s Nagarjuna Construction Company Limited,(hereinafter referred to as NCC for the sake of brevity) Respondent in all the appeals proposed to set-up a Coal Based Thermal Power Plant at Villages Golagandi and Baruva appertaining to Sompeta Mandal, Srikakulam District of Andhra Pradesh. The Project was proposed to be implemented in two phases i.e. Phase I – 2x660 MW and Phase II – 2x660 MW. The Project Report revealed that the Power Plant would be based on Super-Critical Technology and would be using coal as the main feed stock. For the purpose of the project, approximately 762 hectare of land was the estimated requirement.
The Project Proponent in consonance with the prevailing Rules approached the Ministry of Environment and Forests (for short MoEF) seeking prior Environment Clearance (for short EC) in accordance with the provisions of Environment Impact Assessment (for short EIA) Notification, 2006. The MoEF after examining the viability from environmental angle of the project and other pros and cons vide order dated 9th December, 2009 granted EC to the project.
The said order dated 9th December, 2009 issued by the MoEF granting EC to NCC was assailed by the appellants before the National Environment Appellate Authority (NEAA). The then, Member of the Authority conducted a site visit and on the basis of the impressions gathered by him during the said site inspection allowed all the appeals by order dated 14th July, 2010 and set aside the order of the MoEF dated 9th December, 2009 granting EC. The respondent not being satisfied with the judgment dated 14th July, 2010 filed six Review Petitions before the NEAA, inter-alia, praying to review / recall the order dated 14th July, 2010. While matter stood thus the National Green Tribunal Act was promulgated in the year 2010 and the National Environment Appellate Authority Act got repealed. Consequently, the NEAA was abolished and all the Review Petitions stood transferred to this Tribunal.
In course of hearing of the Review Petitions, the Tribunal noticed that no opportunity was granted to the respondent to answer or clarify the impression gathered by the Member of NEAA in course of site inspection thus there was gross violation of principle of natural justice and equity. Further, the NEAA relying upon the inspection report alone disposed of the Appeals. On the basis of aforesaid conclusions, the Review Petitions were allowed and the judgment dated 14th July, 2010 was recalled, consequently all the six cases were once again posted for hearing.
The first and foremost contention of the Project Proponent is that the site over which the project is

proposed to be constructed is not WETLAND. That apart, 400 acres of land which sometimes become water logged have been left out of the layout plan, thus, the apprehension is neither justified nor tenable under law. The allegation that the project would affect ground water level is also stoutly denied. The maincontention of the Appellant is that the Power Plant should not be permitted to be located on the swamp / wet land, as the same would create adverse impact on fisheries, agriculture, horticulture, ground water recharging, availability of drinking water, irrigation facilities etc. and also create other hazards to the environment and ecology.
The controversy in the present six appeals centers on mainly on three issues:

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

The Environment Assessment Committee (EAC) has not properly dealt with the proposal submitted by the Project Proponent and has violated and / or by passed certain mandatory requirements stipulated under the EIA Notification, 2006 basing on false data submitted by the Project Proponent.
Scrutiny of the EIA report filed before this Tribunal reveals that the Terms of Reference (for short ToR) was issued on 14th May, 2009 basing on the minutes of discussions of the EAC meeting held on 15-16th April, 2009. Surprisingly, it appears that the same was based upon environmental data which was collected on a much earlier date i.e. on or from 1st March, 2009 i.e. earlier to the grant of TOR. That apart, dates for sampling period of water quality monitoring with respect to ground water and sea water are not clearly reflected in the EIA report. Dates for soil sampling have also not been indicated in the EIA report. So also no dates with regard to noise survey have been indicated in the EIA report. All the aforesaid errors and inadequacies could have been avoided by EIA consultant, but then it appears that there was a callous attitude which created unnecessary hurdles in appreciation of the report. Further, it appears that EIA report did not contain the findings of the special studies carried out by the various agencies at the time of Public Consultation. As the EIA Report is the key on which the EIA process revolves, it is important that EIA report prepared should be scientific and trustworthy and without any mistakes or ambiguity. MoEF may ensure that the quality of the EIA report remains fool proof and any consultants whose EIA reports are not found satisfactory, should be blacklisted.
The Public Hearing was not conducted in proper manner. Consequently, the entire procedure culminating in grant of EC has become vitiated and a nullity in the eye of law.
Public Hearing / consultation is based on the principles of participatory democracy and ensures community participation and is aimed to ensure that the affected persons have a say and their voice is heard and respected. What is important to note that the information about the project and particulars about the EIA report were not made available to anyone in the public till the time of the public hearing. The same was available only with the Project Proponent and the MoEF. After going through the entire EIA report vis-a-vis the manner in which the Public Hearing / Public Consultation was carried on, the learned judges feel that the public was deprived of the relevant information of different reports and other materials basing upon which the EC was granted. Therefore another opportunity should be given to the public for tendering their views /suggestions on the basis of the materials and the updated EIA report. The learned judges, therefore, direct the MoEF to revisit the EIA report from the stage of Public Hearing.
MoEF may also finalise and notify the important wetlands in the country as early as possible so that location of developmental projects in and around such ecologically sensitive areas could be avoided in future. In the light of the observations made above, the learned judges direct that the MoEF to finalise

the guidelines and citing criteria for Thermal Power Plant urgently and file a copy thereof before this Tribunal as early as possible but not later than three months as the same is the most important component of EIA process and cannot be delayed any more. All the six Appeals are partly allowed.

T. Murugandam
Vs
Ministry of Environment and Forests and Others

APPEAL No. 17 OF 2011(T)
NEAA NO. 20 OF 2010

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

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

Application partly allowed

Date: 23rd May, 2012

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

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

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

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

account the concerns raised during the public hearing etc.

In course of hearing, it was submitted by the Learned Counsel for Respondent No. 3 that due to non-availability of adequate data in respect of the proposed / existing industrial activities, cumulative impact assessment could not be done. The learned judges, however, do not subscribe to the submission of Learned Counsel as it is quite possible to work out likely cumulative impacts based on the capacity of the Coal based Power Plant (2x660 MW), Nagarjuna Refinery etc., theoretically by applying mathematical models. The cumulative impact assessment exercise is considered necessary in this particular case, as Pichavaram Mangroves are located at a distance of 8 km from the Southern boundary of the proposed Power Plant, added to it the issues pertaining to the cumulative impacts were raised during the public hearing. As such, the learned judges strongly feel keeping in view the precautionary principle and sustainable development approach, cumulative impact assessment studies are required to be done in order to suggest adequate mitigative measures and environmental safeguards to avoid any adverse impacts on ecologically fragile eco-system of Pichavaram Mangroves and to the biological marine environment in the vicinity. The Tribunal, therefore, directs that cumulative impact assessment studies be carried out by the Project Proponent especially with regard to the proposed Coal Based Power Plant (2x660 MW) of Cuddalore Power Company Ltd. and the Nagarjuna Oil Refinery and other industrial activities within a radius of 25 km from the Power Project of M/s. IL&FS Tamil Nadu Power Co. Ltd. (3600 MW) and be submitted to MoEF for review of Environmental Clearance accorded on 31st May, 2010 in order to stipulate any additional environmental conditions and safeguards required for the protection and preservation of Pichavaram Mangroves and Marine environment.

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

The learned judges also feel that there is need to have more transparency in the EIA process and as such, whatever relevant information regarding the projects are used during the time of the appraisal of the project from environmental angle by the EAC and MoEF should also be made available in public domain including the executive summary of specific studies. Therefore, the court directs MoEF to make available the relevant information other than EIA report and report of the public hearing considered during the appraisal of the project through its website. Similarly, the concerned State Pollution Control Board (SPCB) should also make available in their website the pertinent information regarding the public hearing proceedings, “Consent to Establish” and “Consent to Operate”, compliance status etc. The MoEF should also upload from time to time the compliance status of the various stipulated conditions during the grant of EC to projects so as to bring compliance status in public domain in case of all the projects granted EC under EIA Notification, 2006. The project proponent must also upload the compliance status of EC conditions including the Executive Summary of the specific studies done in respect of the project and update the same periodically.

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

The Appeal is partly allowed.

Dyaneshwar Vishnu Shedge
Vs
Ministry of Environment & Forests Government of India

MISC. APPLICATION NO. 19 OF 2012
arising out of

APPEAL NO. 9 OF 2012

JUDICIAL AND EXPERT MEMBERS: Justice A.S. Naidu and Prof. Dr. R. Nagendran

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

Application Allowed

Date: 24th May, 2012

Orders of the Tribunal

The Environment Clearance (for short EC) dated 9th November, 2012, issued by the Ministry of Environment and Forests (for short MoEF) to M/s Lavasa Corporation Ltd., Respondent No. 3 for the development of hill station, township at Village Munshi appertaining to Velhi Talukas, District Pune, Maharashtra is sought to be assailed in *Appeal No. 9 /2012*.

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

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

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

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

In view of the discussions made above, the delay being less than ninety days, this Tribunal after appreciating the pleadings and documents referred is satisfied that there was sufficient reasons and that

deliberate latches cannot be attributed to the Appellant. The law as on date mandates that the EC granted under the Environment (Protection) Act, 1986 can only be challenged before this Tribunal, the learned judges condone the delay and allow the petition for condonation of delay.

Janahit Seva Samiti
Vs
Ministry of Environment & Forests Government of India

MISC. APPLICATION NO. 59/2011
arising out of

APPEAL No. 16 of 2011

JUDICIAL AND EXPERT MEMBERS: Justice A.S. Naidu and Prof. Dr. R. Nagendran

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

Application Dismissed

Date: 24th May, 2012

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

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

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

Admittedly, in the case in hand the order impugned was passed on 26th November, 2010, the NGT was established on 18th October, 2010, thus an appeal against the order was required to be filed before this Tribunal within the time prescribed by NGT. However, the NGT started functioning in a full-fledged manner from the month of June 2011, thus there was no embargo for filing any appeal in June 2011. That apart, the Hon'ble Supreme Court further extended the period for filing an appeal by sixty days commencing from 30th May, 2011, thus the last date for filing an appeal extended till 30th July, 2011. The appellant failed to avail the opportunity granted by the Hon'ble Supreme Court and did not file the appeal within extended period too. The appeal was filed only in the month of September, 2011. Thus, the same is grossly barred by time.

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

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

M. A. 78/2012 In APPEAL No. 4 of 2011

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

Key words: Withdrawal

Application Dismissed

Date: 30th May, 2012

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

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

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

Ossie Fernandes Coastal Action Network
Vs
Ministry of Environment and Forest and Others

APPEAL NO. 12/2011

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

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

Application disposed with directions

Date: 30th May, 2012

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

Appellant No. 1 is the Co-convenor of Coastal Action Network, which consists of group of organizations, fishing communities, environmental activists and lawyers. The objective of the network is to ensure protection of the environment and bio-diversity in coastal area and protection of livelihood of the persons living in the area. Appellant No. 2 is a trade union and it has nearly 3005 members on its rolls and appellant No. 3 is a fisherman from Nambiar Nagar Village, which is considered as head village of 64 fishing villages, in Nagapattinam and Karaikal Districts. Fishing is the sole source of livelihood for 90% of the population in these villages. Appellant No. 4 is a resident of Vellakkovil which is a fishing village near Tarangambadi, Nagapattinam District and is situated near the proposed Power Plant. Appellant Nos. 3 and 4 had appeared before the Public Hearing (for short PH) panel constituted to conduct PH under the Environment Impact Assessment (for short EIA) Notification, 2006.

The following points arise for consideration:

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

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

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

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

3. Whether the EAC has committed any error in recommending the grant of EC which might result in environment and ecological threat?

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

i. Modalities of data collection and EIA reports (terrestrial and marine ecology) preparation;
ii. Archaeological importance of vicinity area;
iii. Fly ash Pollution and Health hazards with respect to coal quality (clarity on use of imported or domestic coal);
iv. Sea water requirement, use and disposal mechanism;
v. Impact of Olive Ridley Turtles;
vi. Impact on Marine Ecology;
vii. Violation of CRZ notification;
viii. Cumulative impact of large number of thermal power projects coming in the area, and
ix. Option assessment of port facility or common jetty for cluster of thermal power projects

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

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

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

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

The MoEF, GoI may consider in granting all the clearances together, against a particular project, that are required under the Environment Protection Act instead of making a piecemeal approach, which may result in fragmented and incomplete/lopsided evaluation of the project, both environmentally and ecologically.

(Refer to the original judgement for suggestions for preparing and publication of draft EIA and final EIA and in conducting public hearing.)

Ossie Fernandes Coastal Action Network
Vs
Ministry of Environment and Forest and Others

M.A. No. 52 OF 2012

in

APPEAL NO. 12/2011

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

Key words: M/s Chettinad Power Corporation, Manickapanngu, Nagapattinam District, Coal Based Thermal Plant

Application Dismissed

Date: 30th May, 2012

This appeal is filed challenging the order dated 2nd June, 2011 by the Ministry of Environment and Forests, Government of India, where under M/s Chettinad Power Corporation (Respondent No. 3) was granted Coastal Regulation Zone (for short CRZ) Clearance for setting up of jetty, intake and outfall facility for 1200 MW (2X600) Coal Based Thermal Plant at Manickapanngu, Nagapattinam District.

There is a delay of (58) days in filing the appeal, the present Miscellaneous Application has been filed seeking condonation of delay in filing the appeal against the order dated 2nd June, 2011.The Respondent No. 3, filed a counter opposing the condone delay application. Therefore, the matter was taken up with the consent of both the parties for deciding the preliminary issue of limitation.

The learned judges are not in agreement with the arguments advanced by the learned counsel for the appellant. This Tribunal can entertain an appeal filed within 30 days from the date of communication and it may condone a further delay of 60 days in presenting the appeal in an appropriate case, if sufficient cause is shown. The assertion made by the appellant and the Standing Counsel for Ministry of Environment and Forests that the CRZ Clearance dated 2nd June, 2011 was very much available on the website of the Ministry of Environment and Forests and the same was further published in the local newspapers both in English and vernacular (Tamil) on 8th June, 2011 could not be met with properly, by the applicant/appellant except making a vague denial. The publication of the grant of CRZ clearance dated 2nd June, 2011 in the local and vernacular (Tamil) newspaper on 8th June, 2011 is part of the record placed before the bench.

Therefore, the present *MA no. 52 of 2012* seeking conodonation of delay is liable to be dismissed and is accordingly dismissed. In the result the appeal also is liable to be rejected and accordingly rejected.

Ramesh Agrawal
Vs
Member Secretary, State level Environment Impact Assessment Authority

APPEAL NO. 20/2011 (T)
JUDICIAL AND EXPERT MEMBERS: Justice C. V. Ramulu and Prof. R. Nagendran

Key words: M/s. Salasar Steel and Power Ltd., Chhattisgarh Environment Conservation Board, Expansion Steel melting shop and CFBC-based 65 MW Power Plant, Environmental Clearance, Public Hearing, Enviornment Impact Assessment, Cumulative Environment Impact Assessment

Application Dismissed

Date: 31st May, 2012

Initially, an appeal was filed under Section 11 of the NEAA Act before the National Environment Appellate Authority, New Delhi, aggrieved by the grant of Environment Clearance (for short EC) for the installation of Steel Melting Shop with a capacity of 97,000 TPA and CFBC-based 65 MW Power Plant at village Gerwani, District Raigarh by M/s Salasar Steel & Power Ltd (SSPL) on 21st August, 2010 by State Level Environment Impact Assessment Authority (for short SEIAA) of the State of Chhattisgarh. On repeal of the NEAA Act and disbanding the National Environment Appellate Authority with effect from 18th October, 2010, the appeal stood transferred to this Tribunal under Section 38 (5) of the National Green Tribunal Act, 2010.

According to the appellant, he is working in the field of environment and has been involved in raising issues relating to environment. He also asserted that he lives near the project area and his residence is within 10 km of the project area. He had participated in the public hearing (for short PH) conducted on 29th November, 2009 and raised issues concerning environment and they were not considered by the State Level Environment Impact Assessment Authority.

The following points arise for consideration in this appeal -

1. Whether the PH was properly conducted following the procedure as prescribed by EIA Notification, 2006:

We are of the opinion that there is no irregularity or illegality in conducting the PH. In fact, while considering the legality or otherwise of the conduct of Public Hearing the material which was placed on the website as a draft Environment Impact Assessment (for short EIA) alone can be looked into. May be the project proponent is supposed to prepare the draft EIA in consonance with the Terms of Reference (for short ToR) awarded. If there is any deviation in the preparation of draft EIA and concealment of some information which might result in the environmental and ecological threat the matter must be viewed seriously by the MoEF and the project proponent as well as the consultant shall be punished suitably. Unfortunately there is no mechanism evolved to check as to whether the draft EIA is strictly in consonance with the ToR awarded which gives scope to the project proponent/ his EIA consultant to conceal certain information or furnishing incomplete information which fact was not within the reach of

public before the Public Hearing could be conducted. Therefore, merely because the draft EIA was not in consonance with the ToR, the Public Hearing conducted cannot be faulted with.

2. Whether EIA report was in accordance with the ToR prescribed:

We are satisfied that though there are some discrepancies in the draft EIA report when compared to ToR, all the deficiencies pointed out have been adequately addressed and included with data support in the final EIA report. Thus, the allegation that contour map with the plant site is not shown, plant coordinates not properly marked, TCLP test results are lacking in the EIA report, impact of raw materials, fuel, solid wastes are not given, generation of fugitive emission is not properly projected, storage yards are not delineated properly etc., are baseless and deserves to be rejected. No substantial irregularities were brought to our notice to hold that the EIA report was not in accordance with law or the same conceals any potential environmental threat, due to the implementation of the project.

3. Whether the authority granting EC ought to have called for a Cumulative Impact Study of the several Steel & Power plants on the ground water:

At the outset, we may notice that there is no plea for conducting cumulative impact study on air pollution and other environmental parameters. The only cumulative study sought for is the exploitation of ground water by the cluster of industries located in and around the proposed project. It is unfortunate that such an issue without any basis has been raised. Firstly, there is no proposal for drawl of ground water. The proponent categorically stated that the surface water alone will be used drawing from the Gerwani Nala by constructing an anicut, that too at a distance of 7 km from the project site. Practically there was no reply to this by the appellant. Therefore, we are of the opinion that there was no necessity for conducting a cumulative study with regard to the usage of ground water. We are in full agreement with the submission made by respondent that this issue is irrelevant and misconceived.

4. Whether there are any serious environmental lapses committed by the project proponent in relation to the existing unit which would result in environmental threat.

So far as this issue is concerned it is in a way irrelevant for the purpose of this appeal. However, the reply filed by the Chhattisgarh Environmental Conservation Board (for short CECB) reveals that a case was registered against the project proponent along with others in relation to the existing unit in the year 2005 and the same is pending.

However, the learned judges cannot ignore certain lapses being committed by the authorities and the project proponent in the preparation of the draft EIA and final EIA reports. Therefore we are of the considered opinion that unless and until the Ministry of Environment and Forest (the rule making authority) takes steps to follow the suggestions made below, the situation may not improve -

i. The Ministry of environment and forest (for short MoEF) shall evolve a mechanism to check the correctness or otherwise of the draft EIA prepared by the project proponent in consonance with the ToR awarded by EAC.
ii. The MoEF shall also ensure that after evaluating the draft EIA and if the same is inconsonance with the ToR awarded, may permit it to be placed on the website for the information of the general public before conducting the PH.

iii. If the draft EIA report prepared by the project proponent is not in consonance with the ToR awarded, it may reject the same and ask for fresh draft EIA.
iv. After conducting the PH and submission of the final EIA the MoEF may again evaluate the same as to whether the same is in tune with the ToR and the proceedings of the PH.
v. The MoEF may consider displaying the final EIA in public domain before the grant of EC – this may enable in making representations before the EAC in a given case.

Verinder Singh
Vs
Land Acquisition Collector-Cum- DRO, Haryana

APPLICATION NO. 24 OF 2012

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

Key words: Disputed land, Village Kambopura, Karnal, Land Acqusition Act 1894, Environment (Protection) Act, Environment (Protection) Rules

Application Dismissed

Date: 13th July, 2012

Orders of the Tribunal

This application has been filed invoking jurisdiction under Section 14 and 15 read with Section 18 of the National Green Tribunal Act, 2010, inter-alia, seeking certain reliefs (*refer to the original judgement*).

According to the Applicant, late Brig. Verinder Singh was allotted a portion of the disputed lands situated at 119/6 km Stone G.T. Road, Village Kambopura, Karnal. In the year 2006, the Government of Haryana issued a notification under Section 4 of the Land Acquisition Act, 1894 for acquisition of different partial of the lands, including the disputed lands, for development of Phase-3 Industrial Estate for HSIIDC, Karnal, Haryana. The said notification was assailed in *Civil Suit No. 303 of 2005* in the Court of Learned Civil Judge, Karnal.

While matter stood thus, Government of Haryana issued notification under Section 6 of the Land Acquisition Act, 1894 on 26th April, 2007, followed by notification under Section 7 and another notification under Section 9(1) of the said Act. After completion of the paraphernalia, the land was acquired and compensation was awarded.

Thereafter, the applicant filed an application for amendment of the plaint under Order 6, Rules 17 read with Section 151 of the Civil Procedure Code in *Civil Suit No. 159 of 2011* and sought to include a prayer regarding violation of the provisions of the Environment (Protection) Act, 1986. Learned Civil Judge, Junior Divison, Karnal by order dated 30th May, 2012 rejected the application. Thus, it appears that the cause of action for approaching this Tribunal is the order dated 30th May, 2012 passed in the Civil Suit. There is no dispute with regard to the legal position that in consonance with the provisions of the National Green Tribunal Act, 2010, this Tribunal has no jurisdiction to sit over appeal or otherwise deal with any order passed in a Civil Suits arising out of Land Acquisition Act.

Admittedly, the lands belonging to the applicant and / or his predecessor in interest have been acquired under the Land Acquisition Act and compensation has been received by the applicant with protest. Further litigations arising out of land acquisition proceedings are pending before the Civil Court. The allegation that the State Government is acting contrary to the provisions of the Environment (Protection) Act, 1986 by handing over possession to HSIIDC for industrial purpose and the latter is trying to set-up

industries without obtaining prior permission, are to be dealt under the Environment (Protection) Act, 1986 or acts dealing with the subject, cannot be adjudicated in this application as HSIIDC has not been impleaded as a party in this application.

That apart, Section 5 of the Environment (Protection) Act, 1986 read with Rule 5 of the Environment (Protection) Rules, 1986 deal with prohibition for setting up any industries without following the provisions of law. If the applicant has any grievances he has to work out his remedies under the said provisions and / or any procedure available to him under law. Section 5A of the Environment (Protection) Act, 1986 provides for an appeal before this Tribunal against the order passed by the Government. Thus, according to the learned judges the present application assailing transfer of lands to HSIIDC vis-a-vis attempt to set-up Industries without Environmental Clearance is premature.

That apart, the applicant has also not impleaded the Ministry of Environment and Forests or the concerned State Government. In the absence of the said authorities, no effectual adjudication can be made.

In view of the aforesaid discussions, the learned judges are not inclined to entertain the present application at this stage and dismiss the same giving liberty to the applicant to work out his remedies in accordance with law.

Swami Gyan Swarup Sanand and Others
Vs
Union of India and Others

APPLICATION NO. 26 OF 2012

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

Key words: Indian Institute of Technology, Roorkee, Wildlife Institute of India, Ganga river, cumulative environmental impact, hydro electric projects

Application disposed with observations

Date: 17th July, 2012

This application has been filed invoking jurisdiction Under Section 14 read with Section 18 of the National Green Tribunal Act, 2010, inter-alia, seeking certain reliefs (*refer to the original judgement*).

The Applicant it appears is aggrieved by the study conducted by the Indian Institute of Technology, Roorkee with regard to cumulative impact of hydropower dam on the Ganga river.

As per the directions issued both IIT, Roorkee and Wildlife Institute of India constituted separate teams comprising of very senior and scientific officers and conducted the study confining to the cumulative environmental impacts likely to be caused by various hydro-electric projects in general, and on the riverine eco system, and land as well as aquatic bio-diversity in particular.

The grievance of the applicants before this Tribunal is that the study, though entrusted to IIT, Roorkee, the same was conducted on individual capacity by Dr. Arun Kumar who is the head of Alternate Hydro Energy Centre, Indian Institute of Technology (IIT), Roorkee and as such the same should not be treated to be that of IIT, Roorkee. Several acts of omissions and commissions said to have been committed by Dr. Arun Kumar in course of his study are enumerated in the application.

Fact remains the report prepared by IIT, Roorkee as well as the report submitted by WII have already been forwarded to the Competent Authority (MoEF) for due consideration. That apart in the meanwhile by order dated 15th June, 2012 an office memorandum has been issued by the Ministry of Environment and forest (for short MoEF) constituting an Inter Ministrial Group on issues related to Ganga river.

It appears that the relief sought for in this application was also before the Hon'ble Supreme Court, more or less on the same grounds, though at the relevant time the study was in progress, whereas, in the meanwhile, after completion of the study the report has been submitted.

In course of hearing, it further appears that on behalf of the applicant's representations / objections to the studies have already been filed before the Competent Authorities. Fact remains the report prepared by IIT, Roorkee and WII are yet to be considered by the High Level Committee constituted on 15th June, 2012 and other authorities, and the same has not been accepted till now. In the aforesaid scenario, the learned judges are not inclined to grant any of the reliefs prayed for in the application and dispose of the same with an observation that the MoEF or the Committee constituted, may examine the suggestions /

objections / representations, if any, said to have been filed by the applicants, along with the other materials available while dealing with the Reports / Study conducted by the IIT, Roorkee and WII. This application accordingly stands disposed of.

Vinod R. Patel
Vs
Gujarat State Level Impact Assessment Authority and Others

APPEAL NO. 25/2012

JUDICIAL AND EXPERT MEMBERS: Justice V. R. Kingaonkar and Dr. Devendra Kumar Agrawal

Key words: condonation of delay, villagers

Application Allowed

Date: 9th August, 2012

Orders of the Tribunal

This is an application for condonation of delay. The delay is said to be 48 days. According to the appellants, the delay was caused in filling of the appeal due to the fact that initially the establishment of National Green Tribunal was not within their knowledge, they were required to organize a meeting and after due consultation of villagers, a common decision was arrived to file the appeal. They alleged that the process of taking common decision is a contributory cause for the delay. The application is strongly opposed on behalf of the project proponent. The response of the project proponent i.e., Respondent No. 3 is filed by way of counter. It is contention of the Respondent No. 3 that the delay is not properly explained. It is alleged further that the appellants were well aware of the prescribed period of limitation and yet did not approach the National Green Tribunal within a reasonable time. It is contended that the delay of 58 days is actually caused from date of the order impugned in the appeal. It is categorically denied that time was consumed in calling a meeting and reaching a common decision. According to the Respondent No. 3, the appellants are exporting agricultural produce to foreign countries and were having means to approach the National Green Tribunal within the prescribed limitation and yet failed to do so.

In the opinion of the learned judges, this is not a case based upon ignorance of law that the delay is sought to be condoned. In fact, the main ground of the appellants is that they were required to organize a meeting of villagers, thereafter a common decision was taken and the process for filling of the appeal was undertaken. It may be that the appellants are knowledgeable persons. Still however, one cannot overlook the fact that establishment of new Tribunal like NGT could not be immediately noticed by a common man. It requires certain time span to get information about such new development. Secondly, the fact that the appellant were required to assemble together for taking appropriate action is a satisfactory reason to explain the delay. Section 16 of the NGT Act, 2010 provide that delay up to 60 days beyond the prescribed limitation period may be condoned on satisfaction of the Tribunal that the appellant has been prevented from filling of the appeal within a prescribUed period.

"*In view of the above discussion, we allow the application and condone the delay*."

Antarsingh Patel

Vs.

Union of India & Ors.

APPEAL NO. 26/2012

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

Key words: Hydro Power Project, Narmada River, Madhya Pradesh, implementation of rehabilitation and resettlement plan, principle of sustainable development

Application dismissed with directions

Date: 9th August, 2012

The controversy in this Appeal is with regard to the decision dated 1st May, 2012 taken by the Ministry of Environment and Forests (for short MoEF) to permit the Project Proponent of Maheshwar 400 MW Hydro Power Project constructed over Narmada River in Madhya Pradesh to fill-up the reservoir up to 154 meter, on the ground that there would be no submergence up to that level. The decision is assailed in this appeal on several grounds.

Before traversing into the controversy, it would be proper to refer to the background of the case. The MoEF initially accorded Environmental Clearance (for short EC) in favour of Narmada Valley Development Authority, an instrumentality of State of Madhya Pradesh, way back on 7th January, 1994, for construction of Maheshwar Hydro Power Project on river Narmada. It appears that the said EC was later transferred in favour of Shree Maheshwar Hydel Power Corporation Limited (SMPHCL) on 1st May, 2001.

One of the pre-conditions for construction of the project was that rehabilitation and resettlement of project affected people should be in conformity with the Rehabilitation Policy for the oustees of Narmada Projects evolved by Narmada Valley Development Department, Government of Madhya Pradesh, and that the rehabilitation and resettlement work should be completed by December 2003 or six months prior to commencement of submergence, whichever is earlier.

Though several contentions have been raised the main issue appears to be regarding unsatisfactory implementation of rehabilitation and resettlement plan *pari pasu* with the construction work.

In the process of development, the State cannot be permitted to displace local inhabitants, a vulnerable section of our society, suffering from poverty and ignorance, without taking appropriate remedial measures of rehabilitation. The Court is not oblivious of the fact that social and economic reasons had caused disaffection, and thus, the village areas are today in deep trouble and have become victim of modernization in the grab of social and industrial development.

Section 20 of the National Green Tribunal Act, 2010, vests an onerous duty upon this Tribunal to apply the principles of sustainable development while passing an order or decision. In the case in hand the environment clearance was granted by the MoEF to the project as long back as in the year 1994. The said environment clearance was not assailed and Maheshwar Hydro Power Project was constructed over Narmada River incurring huge cost. All the machineries have been installed and even there was a

successful trial run for generating electricity. While dealing with this type of controversies, this Tribunal is required to take a pragmatic approach and strike a balance between the development and environment. While considering the loss and harassment expected to be caused to land oustees, to their property as well as to ecology and environment in particular, this Tribunal should provide ways and means to mitigate such loss. The protection of the land oustees or the villagers whose lands are going to be sub-merged is the paramount lookout of the Government.

It appears that steps were taken and directions were issued to the Project Proponent to go ahead with the construction work *pari-pasu* with the rehabilitation and resettlement work.

After going through the ToR the learned judges are satisfied that adequate measures have been taken by the MoEF for protection of the villagers. In the aforesaid scenario of facts and circumstances, applying principles of sustainable development, the learned judges feel ends of justice and equity would be better served, if the Project Proponent is permitted to fill up the reservoir at the dam site up to 154 mtr. and commence generation of 40 MW electricity on trial basis for a period of three months. The Committee constituted by the MoEF shall remain vigilant and assure that the conditions imposed in the ToR are observed sacrosanctly without any deviation whatsoever. It is needless to say that if there is any likelihood of submergence of abadi lands, then the process will be stopped / discontinued forthwith.

The Government of Madhya Pradesh (Respondent No. 2) is directed to keep their officers on alert to meet any untoward incidence. They are also further directed to complete the entire process of rehabilitation and resettlement work, supply of drinking water and electricity to the affected persons within three months.

Realizing the gravity of the situation, the learned judges feel it would be prudent to monitor the same for the protection of environment and proper implementation of rehabilitation and resettlement plan to the affected persons, therefore we direct to list this case after three months. All the parties are directed to file further affidavits and status reports in the meanwhile.

IL & FS Tamil Nadu Power Company Ltd.

Vs

Ministry of Environment and Forest and Others

APPLICATION NO. 25/2012

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

Key words: Chidambaram Taluk, Tamil Nadu, coal based thermal power plant, environment clearance, cumulative impact assessment, Expert Appraisal Committee

Application disposed with direction

Date: 9th August, 2012

Orders of the Tribunal

This application has been filed with a prayer to modify the Tribunal's order directing suspension of Environment Clearance for the project and to allow the Project Proponent to resume the civil works at the project site.

The Environment Clearance (for short EC) granted in favour of the applicant for installing a Coal Based Thermal Power Plant at Chidambaram Taluk in Tamil Nadu was assailed in *Appeal No. 17/2011(T)*. The said Appeal was disposed of by Judgment dated 23rd May, 2012. While directing the Ministry of Environment and Forest (for short MoEF) to review the EC based on cumulative impact assessment study and to impose any additional environmental conditions, if required, this Tribunal directed that till a decision is taken by the MoEF the impugned EC shall remain suspended.

The learned judges heard the learned counsel for the parties at length. Fact remains, the decision of the Expert Appraisal Committee has already been forwarded to the Ministry (for short MoEF) and the same is under consideration. At this juncture, according to the learned judges, it would not be proper to make any observations and thereby prejudice the decision making authorities. They therefore, refrain from examining the objections raised before the Tribunal and dispose of this application with a direction to MoEF to consider the report and take decision within a period of 25 days from the date of communication of this order.

Rana Sen Gupta
Vs
Union of India and Others

APPEAL NO. 32/2011

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

Key words: M/s Rashmi Metalika Limited, West Bengal Pollution Control Board, Ministry of Environment and Forest, steel plant, expansion, Environment Clearance

Application disposed of on its own merits

Date: 24th August, 2012

Orders of the Tribunal

Rana Sen Gupta (the Appellant) claims to be a public spirited citizen having experience in working with Steel and Iron industries. He has knowledge with regard to the impact caused by the aforesaid industries in the ecology, environment and human lives. He has approached this Tribunal, inter-alia, assailing the Environmental Clearance (for short EC) dated 1st June, 2012, granted by the Ministry of Environment and Forests (for short MoEF) to M/s. Rashmi Metaliks Limited (Respondent No. 3) for expansion of its existing steel plant by adding 1.5 mtpa Beneficiation cum Pellet Plant which would enable it to produce 1.2 mtpa pellets with Producer Gas Plant. The Appellant in this Appeal seeks certain reliefs. (*Refer to the original judgement for a detailed list of the reliefs sought*)

In course of hearing, it appears that a proposal for expansion had been forwarded to MoEF and the said proposal was still under consideration. In other words, no decision had been taken by the competent authority on the date on which this appeal was presented.

First relief sought for by the Appellant is to restrain Respondent No. 3 from making further expansion of its present plant. Law is well settled that expansion of existing plant can only be made after obtaining necessary environmental clearance from the Competent Authority. It appears that no clearance has been granted when the Appeal was filed for expansion and the matter was pending before the Competent Authority. According to Respondent No. 3, he has clearly submitted that without obtaining prior permission, no extension shall be made.

The Appellant prays to quash the Environment Clearance granted by the West Bengal Pollution Control Board (Respondent No. 2) on 9th January, 2009. In consonance with Section 16 of the National Green Tribunal Act, 2010, an order passed, has to be assailed before this Tribunal within a period of thirty days. Thus, the said relief is grossly barred by time and cannot be entertained. Other reliefs sought are more or less consequential to such prayer also cannot be entertained at this stage.

Learned counsel for the Appellant, in course of hearing, submitted that the appellant has preferred another Appeal assailing the Environment Clearance said to have been granted by the MoEF on 1st June, 2012. The said submission clearly reveals that by afflux of time this appeal has become infructuous.

Considering the facts and circumstances narrated above, we dismiss this Appeal. It is needless to be said that the appeal said to have been filed assailing the alleged Environment Clearance granted on 1st June, 2012, shall be disposed of on its own merits in accordance with law.

Rudresh Naik
Vs
State of Goa and Others

APPEAL NO. 23/2012

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

Key words: Goa Coastal Zone Management Authority, survey no. 41/2 of Vaghurme Village, Ponda Taluka, Goa, geological and ecological loss

Application Allowed

Date: 27th August, 2012

The order dated 11th April, 2012 passed by Goa Coastal Zone Management Authority (GCZMA), in exercise of powers conferred upon it under Section 5 of the Environment (Protection) Act, 1986 is assailed in this Appeal. By the said order, GCZMA directed Rudresh Naik (the Appellant) to make good of the Geological and Ecological loss caused at the site, by back filling the cut portion and the cavity formed to lands appertaining to survey no. 41/2 of Vaghurme Village, Ponda Taluka and restore the area back to its original status and carry out plantation in the area, within thirty (30) days from the date of receipt of the said order. According to the Appellant, the order suffers from non-consideration of vital and important materials and is based on errors of facts which are apparent on the face of the records.

The Appellant is the proprietor of "Sudarshan Dry Docks" and also claims to be the partner of the Firm commonly known as "M/s. Swastik Cruises". The said firm is involved in tourism business, mainly in the State of Goa, which includes boat cruises in the rivers of Goa. That in order to carry out the business the firm, it is averred, had engaged three vessels which are routinely used in organising boat cruises.

The perusal of the impugned order dated 11th April, 2012 reveals that several overt acts said to have been committed by the Appellant, but then in the Memorandum of Appeal Appellant has denied all the allegations. The averments made in the Appeal Memorandum are not controverted by filing any reply, though opportunity was given to the respondents to controvert the same. Thus, the facts stated and averments made in the writ application have to be *prima-facie* accepted, applying the principles of non-traverse.

Be that as it may, this Tribunal is conscious with regard to any danger caused to the environment by felling of trees and digging portions of sandy hill, thereby affecting the coastal eco system. Felling indiscriminately trees and bushes also have great impact on the ecology.

After going through the records meticulously and hearing the counsel for the Appellant in the absence of any counter submissions, the learned judges feel that the order dated 11th April, 2012 passed by the GCZMA (Respondent No. 2) which is impugned in this appeal, cannot be sustained, more so because the respondents have failed to appear and controvert the allegations made in the memorandum of Appeal.

It appears that the dispute has a checkered career, in as much as it has travelled to the Hon'ble High Court twice and is prolonging for quite some time. Protection of environment being the paramount concern/duty of this Tribunal while setting-aside the impugned order dated 11th April, 2012, the petitioner is directed to deposit a sum of Rs. 1 lakh without prejudice to his rights, and the contentions raised and submissions advanced within a period of three weeks from the date of this order before Respondent No. 2. The said amount shall be kept in Fixed Deposits by Respondent No. 2 in a Nationalized Bank. On depositing the said amount, Respondent No. 2 authorities shall afford an opportunity of hearing to the Appellant and decide the matter once again in accordance with law on its own merits without being influenced by any of the observations made in this judgment. It is needless to say that if the contentions of the Appellant are accepted the amount of one lakh shall be refunded with interest. On the other hand, if the Appellant is found guilty, the amount shall be utilised for restoration of the Environment.

The entire exercise shall be completed within three weeks from depositing of the amount, as directed above. It is made clear that, if the amount of Rs. 1 lakh is not deposited within one month, it would be open for the respondents to implement the impugned order. With the aforesaid observations, this appeal is allowed with cost of Rs. 3,000/- (Rupees Three Thousand).

K. Karthi
Vs
Tamil Nadu Pollution Control Board and Others

APPEAL NO. 42/2012

JUDICIAL AND EXPERT MEMBERS: Justice V. R. Kingaonkar and Prof. Dr. R. Nagendran

Key words: condonation of delay, Tamil Nadu Pollution Control Board, Steel Rolling factory in Perunkurukhi, Village, Paramthi TK, Namakkal District, Environmental Clearance

Application Dismissed

Date: 28th August, 2012

This application is filed for condonation of delay.

Briefly stated, the case of K. Karthi (the appellant) is that his agricultural land is situated in the proximity of the site of the proposed project pertaining to establishment of Steel Rolling factory in Perunkurukhi, Village, Paramthi TK, Namakkal District. The project was objected to by the villagers. At public hearing, such objections were raised. The EC was granted by order dated 19th February, 2011 by the Tamil Nadu Pollution Control Board (Respondent No. 2). The order was not known to him. He gathered information about the said order when he came across the work of the leveling the ground at the site of the proposed project. He thereafter obtained copy of the EC order. The order was challenged by filing a writ petition in the High Court of Madras. The *writ petition No. 13443 of 2011* came to be dismissed with observation that the applicant may approach the Green Tribunal for redressal of his grievances. According to the applicant, the time spent in the High Court of Madras could be condoned under Section 14 of the Limitation Act 1963. It is stated that the applicant bonafidely filed such writ petition as he laboured under the impression that the said petition was maintainable. It is further stated that he immediately filed the present appeal after the order of the High Court which was rendered on 2nd July 2012 and therefore there are sufficient reasons to condone the delay.

It appears from the record that the EC order was passed by the Respondent No. 2 on 19th February, 2011. It is obvious that the time started running from the date of such order. It is well -settled that once time started running, the same cannot be arrested unless there is specific provision in the law which may permit exclusion of time spent in a bona fide litigation. The applicant has made an attempt to seek filing of the said writ petition as a lee-way to claim exclusion of time spent in filing of writ petition before the Madras High Court. The learned judges are of the opinion that the applicant has made an attempt to resurrect life in the litigation which has become lifeless much earlier.

"We may point out at this juncture that the Division Bench in earlier Appeal No. 5/2012 gave a categorical finding that the delay cannot be condoned beyond a period of 60 days after the initial prescribed period of 30 days. The statutory provision cannot be eroded by claiming exclusion. We are of the opinion that the appeal is filed after considerable delay which is not properly explained nor can be condoned."

Consequently, the application is dismissed and so also the appeal is dismissed.

M/s Diana Infrastructure Ltd.

Vs

State Level Environment Impact Assessment Authority (SEIAA), Maharashtra and Another

APPEAL NO. 28/2012

JUDICIAL AND EXPERT MEMBERS: Justice V. R. Kingaonkar and Dr. Devendra Kumar Agrawal

Key words: State Level Environment Impact Assessment Authority, environmental safeguards

Application disposed of on terms

Date: 29th August, 2012

Orders of the Tribunal

By consent of learned counsel for the contesting parties, this appeal is being disposed of on following terms -

1. The State Level Environment Impact Assessment Authority (Respondent No. 1) shall reconsider the issue regarding the comprehensiveness of the project after taking stock of the situation and examine the question of totality of the tenements in relation to the project.
2. The Respondent No. 1 shall also reconsider the issue regarding requirement of the environmental safeguards needed for clearance of the project and may put appropriate conditions if the project is to be granted clearance.
3. The Respondent No. 1 to take final decision at the earliest in the next meeting or at the most within a period of couple of months.
4. The Respondent No. 1 shall communicate the next date of meeting to the appellant prior to at least one week of such meeting and may consider any fresh representation that may be filed by the appellant.
5. The parties to bear their own costs. The appeal is disposed of in above terms. It is made clear that the learned judges have not considered the matter on merits and the same is remanded on aforesaid terms, after setting aside the impugned order.

Jesurethinam and Others

Vs

The Ministry of Environment and Forest and Others

APPEAL NO. 13/2011

JUDICIAL AND EXPERT MEMBERS: Justice V. R. Kingaonkar and Dr. Devendra Kumar Agrawal

Key words: M/s. MSL Nagapatnam Power and Infratech Pvt. Ltd., section 16 of National Green Tribunal Act

Application Dismissed

Date: 30th August, 2012

A preliminary objection is raised by learned counsel for M/s. MSL Nagapatnam Power and Infratech Pvt. Ltd. (Respondent No. 5) i.e. Project Proponent. The tenor of the objection is that the appeal is not maintainable in as- much- as the order impugned is dated 13th October, 2010 which was rendered prior to commencement of the National Green Tribunal Act, 2010. It is argued that the order passed before commencement of the special enactment cannot be challenged by way of an appeal in the Tribunal which did not exist as on the date of such order. The learned counsel for the Respondent No. 5 invited our attention to Judgment of this Tribunal in *Appeal No. 14/2011*. By the said Judgment, a Division Bench of this Tribunal categorically held that the appeal against order passed prior to commencement of the National Green Tribunal Act, 2010 is not maintainable. The National Green Tribunal Act, 2010 came into force on 18th July, 2010. A combined reading of relevant provisions, particularly Section 16 of the National Green Tribunal Act, 2010 will make it amply clear that the appeal cannot be filed against any order passed prior to 18th October, 2010.

In the opinion of the learned judges, the appeal is governed by specific provision (Section 16) of the special enactment. It is well -settled that there is no inherent right to prefer an appeal. It is also well-settled that an appeal is creature of statute. It follows, therefore, that unless there is specific right available under an enactment to prefer an appeal, the same cannot be filed as a matter of right.

In result, the Tribunal holds that the appeal is not maintainable for the reasons discussed and also for the reasons enumerated in the Judgment rendered by the Coordinate Bench in *Appeal No. 14/2011*. In this view of the matter, the appeal is dismissed as it is not maintainable. No costs.

Intech Pharma Pvt. Ltd.

Vs

Goa Pollution Control Board

APPEAL NO. 35/2012

JUDICIAL AND EXPERT MEMBERS: Justice M. Chockalingam and Prof. R. Nagendran

Key words: Goa State Pollution control Board, production of Fumigant, Member Secretary, show-cause notice, principles of natural justice

Application allowed

Date: 4th September, 2012

This appeal is referred from the order dated 8th June, 2012 made by the Goa State Pollution control Board.

Short facts necessary for the disposal of this appeal can be stated thus: The appellant is an industry carrying on business in production of Fumigant (a class of Insecticide) Methyl Bromide which is used for quarantine and pre-shipment fumigation. The respondent board by its order dated 7th August, 2008 granted consent to the appellant to operate under the Water (Prevention and Control of Pollution) Act 1974 and under the Air (Prevention and Control of Pollution) Act 1981. Pursuant to the said order the appellant established its unit and operate the same in accordance with the law.

While so, on 12th April, 2012 an accident had taken place and the Member Secretary of the respondent who is presently residing at house No. 70/1 Arabo Dhargal Pernem Goa which is situated near to the appellant's industry personally visited the place and challenged that he would not allow the appellant to run the industry because it would cause damage to the health of his family members.

While 15 days notice should have been given, the show-cause notice dated 21st May, 2012 was served on the appellant on 23rd May, 2012 calling upon him to appear and show cause on the hearing dated 25th May, 2012 and thus it was a case of denial of reasonable opportunity of being heard. Apart from that, after granting a month's time on 8th June, 2012 the passing of the impugned order would clearly indicate the personal grudge of the Member Secretary of the respondent and also illegal.

The points that arise for consideration in this appeal are:

1. Whether the impugned order dated 8th June, 2012 made by the respondent Board has to be set aside for not following the principles of natural justice?
2. Whether the proceedings dated 25th May, 2012 and the impugned order dated 8th June, 2012 were vitiated on the ground that they were based on the unfounded show-cause notice as alleged by the appellant.
3. To what relief the appellant is entitled?

The Tribunal paid its anxious consideration on the submission made on both sides and made a scrutiny of the document available in particular relied on by the parties.

A perusal of the order under challenge will make it abundantly clear that the reply put forth by the appellant was not considered by the authority while passing the order. Except making a comment that the reply placed by the appellant was not satisfactory, the authority had neither discussed nor considered the contents of the reply. While the inspection was made on 24th April, 2012 by the official of the Board, the report was submitted on 2nd May, 2012. Though the show-cause notice dated 21st May, 2012 was served

on appellant on 23rd May, 2012 and the proceedings before the Chairman were minuted on 25th May, 2012, the impugned order cancelling the consent to operate order was made only on 8th June, 2012. If really there was any immediate necessity to stop operation of the industry due to the leakage of bromide gas during inspection from the unit as found in the show-cause notice, there was no reason for the authority to wait till 21st May, 2012 to issue a show-cause notice. Having given a day's time to the appellant to submit its reply, the respondent Board has made an impugned order after an interval of 15 days. The above factual situation as could be seen from the records would indicate that there was no immediate need or imminent danger to heath or degradation of environment. It remains to be stated that pursuant to the directions by the Member Secretary, the Board officials conducted an inspection on 25th April, 2012 in order to ascertain on-site status of the plant activity. After making the inspection, the Board officials categorically observed that the unit was not in operation and only maintenance such as painting of the portion of the plant was in progress and empty barrels were seen. Nowhere in the said report was there any indication of pollution. If really there was any act of pollution like gas leakage there was no impediment for the officials who conducted inspection to state the same. Contrarily, the inspection report dated 2nd May, 2012 referred to the gas leakage reported in newspapers and on inspection the inspection officials reported "the inspection of protective clothing and safety equipment was carried out. Both the inspection report dated 2nd May, 2012 and the proceedings dated 25th April, 2012 do not indicate anything about the gas leakage or air pollution. The Tribunal is at a loss to understand the basis for the said show-cause notice stating that there was leakage of bromine gas from the unit on 12th April, 2012 due to the poor maintenance of the unit and thus the appellant has not complied with the conditions as stipulated in the consent to operate order issued by the Board. Hence the show-case notice was not only to be termed as defective but also unfounded. No doubt all the proceedings which followed the same get vitiated and have to be declared as unsustainable in law.

The order under challenge has been made not only- not adhering to, and in violation of principles of natural justice but also an outcome of non-application of mind. It is quite evident that the show-cause notice and the pursuant proceedings were prepared so hurriedly without caring about the contents of the same. The authorities not exercising the due care made an order with a drastic decision of closing the industry. In view of the above circumstances and for the reasons stated above the impugned order has to be set aside and is set aside accordingly. Appeal is allowed leaving the parties to bear the costs.

M/s Siddartha Enterprises
Vs
The State of NCT and Others

APPEAL NO. 32/2012

JUDICIAL AND EXPERT MEMBERS: Justice M. Chockalingam and Dr. Devendra Kumar Agrawal

Key words: Bangalore, Karnataka State Appellate Authority, Consent for Operation, engineering industry of lathes, Water Act 1974 and Air Act 1971

Application devoid of merits and dismissed

Date: 4th September, 2012

This appeal challenges a judgment of the Karnataka State Appellate Authority at Bangalore dated 11th June, 2012 whereby an order originally passed by the Karnataka State Pollution Control Board (Respondent No. 4) was sustained by dismissing the appeal preferred by the appellant herein.

Short facts necessary for the disposal of this appeal can be stated thus- M/s Siddhartha Enterprises (the appellant) is a proprietary concern engaged in engineering industry of lathes. The industry has been running for 3 years without any complaint what so ever. As an existing industry, Consent for Operation was required and also upon knowledge applied for the same in the month of May 2011. There was a dispute between the landlord of the appellant and his neighbour. The neighbour with a mala-fide intention gave a complaint to the authorities as if there was air and water pollution.

The case of the respondent in short is that the appeal is not maintainable due to the misjoinder of parties and apart from that there was no cause of action for the appellant.

The only point arising for consideration in the appeal is: Whether the order of the Karnataka State Appellate Authority made in *Appeal No. 60/2011* and *68/2011* requires any interference by the Tribunal for the reasons stated by the appellant herein?

The Tribunal heard the contentions put forth by the both sides and had thorough scrutiny of the available material.

The contention put forth by the respondent that the appellants industry is situated in residential area is not disputed by the appellant side. Apart from that the Chairman of the respondent Board along with the officials made an inspection and had found that the industry is situated in a residential locality. Following the inspection made, as admitted by the appellant, a notice was served upon the appellant on 23rd November, 2010 and the same was replied by the appellant. A show-cause notice dated 23rd November, 2010 was served and the same was also replied. Under such circumstances, it cannot be stated that an opportunity was not given or denied to the appellant. It is well admitted by the appellant that before the commencement of the industry, he has not obtained the Consent to Operate which was a condition precedent. The Consent to Operate from the Karnataka State Pollution Control Board is a condition under

both enactments namely Water Act 1974 and also Air Act 1971. The contention put forth by the Counsel for the appellant that the Consent to Operate was applied for upon knowledge and there was a delay on the part of the respondent Board in issuing same cannot be countenance for 2 reasons. Firstly, the law mandates that the Consent to Operate under the Water and Air Acts should have been obtained earlier and that secondly, having commenced the industry in a residential area the appellant was operating the same for years, without either the Consent to Establish or the Consent to Operate, as required by law. The further contention put forth by the learned counsel that already an application was made for allotment of land for the purpose of the industry of the appellant and the same was allotted in an industrial area but the possession has not been handed over and if handed over the appellant would shift the industry to that area can neither be accepted nor can it satisfy the legal requirement. Even assuming that there was delay on the part of the KIADB in handing over the possession of the allotted plot, it cannot be accepted by any imagination to be a legal Act of the appellant. It is well admitted by the appellant that the industry was commenced without getting the Consent as required under Section 25(1) of the Water Act, which is mandatory. As rightly pointed out by the Karnataka State Appellate Authority, the setting up of the industry by the appellant without prior consent, a mandatory one under section 25(1) of the Water Act, itself was illegal and making an application later for consent can neither cure or make it legal. Under such circumstances and for the reasons stated above, the Tribunal is unable to find any reason to interfere with the orders of the State Appellate Authority and the said orders has got to be sustained.

It is a matter of surprise to notice that the Karnataka State Pollution Control Board has not made any inspection or taken any action in a given case like this, where the industry was being run illegally for number of years. From the point of environmental degradation, this attitude and inaction on the part of the authorities of Karnataka State Pollution Control Board is viewed by the Tribunal seriously.

The appeal is devoid of merits and dismissed accordingly.

Dileep Namdeo Dherange and Others
Vs
Ministry of Environment and Forest and Others

APPEAL NO. 24/2012

JUDICIAL AND EXPERT MEMBERS: Justice V. R. Kingaonkar and Dr. Devendra Kumar Agrawal

Key words: Limitation Act, condonation of delay, Environmental Clearance Certificate, acquisition of lands

Application dismissed

Date: 5th September, 2012

Oral Orders of the Bench

By this order the learned judges propose to decide the preliminary objections raised for maintainability of the appeal as well as applicability of Section 14 of the Limitation Act for the purpose of condonation of the delay.

The appellants have filed an application for condonation of delay on the ground that the knowledge about establishment of the National Green Tribunal was gathered from news which was published on 15th March, 2012. The appellants, admittedly, had filed *WP (PIL) No. 37/2010* in the High Court of Bombay, challenging acquisition of lands and also seeking cancellation of the Environmental Clearance Certificate (for short ECC) due to violation of the provisions of the Environment (Protection) Act, 1986. The appellants submit that they received information regarding the grant of ECC on 20th May, 2010 during pendency of the *WP (PIL) 37/2010*. Thereafter, they moved the High Court of Bombay for amendment of the petition memo. The appellants further alleged that the writ petition was withdrawn with liberty to file an appeal in this Tribunal.

According to the appellants, the appeal could not be filed within prescribed period of limitation due to lack of knowledge regarding establishment of the National Green Tribunal and due to the pendency of the said writ petition filed by them before the High Court of Bombay. Consequently, they seek condonation of the delay and urge that the appeal may be heard on merits.

The learned judges have heard the learned counsel for the parties in extenso. They have also gone through the relevant orders of the High Court of Bombay. It is pertinent to note that the High Court of Bombay by order dated 7th August, 2012 clarified the fact situation under which liberty to withdraw the Writ Petition (PL) No. 37/2010 was granted. - "We want to make it clear once the writ petition (PIL) is disposed of by this Court, it is for the Green Tribunal to consider the aspect of delay etc. in accordance with law and procedure stipulated in the National Green Tribunal Act, 2010 as well as the Rules made there under…"

What emerges from the record is that the ECC was granted to the project proponent on 20th May, 2010 and that order could be challenged by the appellants by filling an appeal under the Repealed enactment, namely, the National Environmental Appellate Authority Act, 1997. The appellants did not prefer any such appeal before the National Environmental Appellate Authority. They chose to file draft amendment application to the writ petition which was already pending before the High Court of Bombay.

To clear the deck, it is worthy to note that *Writ Petition (PIL) 37/2010* was withdrawn by the appellants on 15th March, 2012. The High Court of Bombay allowed withdrawal of the said Writ Petition and

granted liberty to the appellants to approach the National Green Tribunal.

So far as the question of exclusion of period spent by the appellants before the High Court of Bombay is concerned, there are two significant aspects of the matter. First, the previous order of this Court made it explicit that the appeal is barred by limitation in view of absence of any specific direction of the High Court of Bombay to entertain the same notwithstanding legal bar of limitation. Secondly, it cannot be said that the High Court of Bombay had no jurisdiction to entertain the Writ Petition (PIL) under Article 226, of the Constitution. The exclusion of period may be required to be considered only when period is sought to be excluded because the earlier litigation was pending before the Court having no jurisdiction. Still, however, the period which was spent before the Court having jurisdiction cannot be excluded by taking aid to Section 14(2) of the Limitation Act. In the learned judges' opinion, the appellants are not entitled to seek exclusion of the period spent before the High Court of Bombay, particularly, when the writ petition filed by them could have been entertained and decided by the High Court.

Coming to the question of maintainability of the appeal, it may be gathered that the appellants having failed to file an appeal before the authority under the earlier enactment, now the present appeal is incompetent. It is well -settled that view of Coordinate Bench cannot be overruled by another Coordinate Bench. Judicial discipline requires the same to be followed unless there are substantial reasons to make a reference to the larger Bench.

For the reasons stated hereinabove, the learned judges find it difficult to entertain the appeal and hold that the appeal is barred by limitation. The application for delay condonation is therefore dismissed and the appeal is also dismissed.

Mr. Joseph Coutinho
Vs
Goa State Pollution Control Board

APPEAL NO. 22/2012

JUDICIAL AND EXPERT MEMBERS: Justice M. Chockalingam and Prof. R. Nagendran

Key words: Goa State Pollution Control Board, Goa Coastal Zone Management Authority, village Calangute, No Objection Certificate, principles of natural justice

Application allowed

Date: 6th September 2012

This appeal challenges the directions dated 12th April, 2012 issued by the Goa State Pollution Control Board (the First Respondent) herein under Section 33A of the Water (Prevention and Control of Pollution) Act, 1974 and under Section 31 of the Air (Prevention Control Pollution) Act 1981. Thereby the First Respondent has cancelled/revoked consent to operate dated 24th February, 2012 and further directed the Appellant to stop business activities forthwith and report compliance within a period of seven days.

Necessary facts for the disposal of this appeal can be stated thus. Mr. Joseph Coutinho (the Appellant) purchased a plot measuring 510 sq. m in survey No. 202/1A of village Calangute along with an existing house therein and converted the said old house into a small guest house consisting 20 rooms. After obtaining "No Objection Certificate" from the Village Panchayat, the Appellant commenced a Guest House business under the name and style of Sea Shore Hotels. There was a strange incident of discharge of sewage from the septic tank of the Appellant. On the complaint of D'Souza, a neighbour who was running another Guest House, the Health Officer issued a Show Cause Notice dated 9th July, 2011 and the first respondent issued a notice on 12th August, 2011. Both notices were replied. After carrying out the necessary repairs and rectifying the overflow, the appellant informed the authorities on 25th July, 2011 and 18th August, 2011 and there was no discharge of sewage thereafter. Both the Health Officer and the officials of the first respondent made a site inspection in the presence of D'Souza and recorded that there was no overflow of sewage from the septic tank of appellant. Pursuant to the communication from the First Respondent, the Appellant applied for consent to operate on 21st September, 2011 by paying necessary fees. Despite the application, the first respondent issued directions to the Appellant under Section 33A of the Water Act dated 20th January, 2012. The Appellant informed to the First Respondent that steps were taken for getting consent to operate and hence the directions could be withdrawn. Following the necessary inspection and also examining the application made by the appellant as well as the detailed plans submitted by the appellant and being satisfied, the first Respondent issued the consent to operate dated 24th February, 2012 under Water Act and also Air Act and the said consent to operate dated 24th February, 2012 was granted for a period up to 20th October, 2014 and the same was in force.

While the matter stood as above, to the shock of the Appellant, impugned directions dated 12th April, 2012 were served on 13th April, 2012 cancelling/revoking the consent to operate and further directing the

Appellant to stop the business activities forthwith. The directions referred to a communication dated 12th March, 2012 made by the Second Respondent to the First Respondent calling upon the First Respondent to keep the consent to operate issued to the Appellant in abeyance.

The following questions arise for consideration in this appeal:

1. Whether the impugned directions are liable to be set aside since they have been issued in gross violation of the principle of natural justice?
2. Whether the impugned directions are to be quashed as they are arbitrary and legally not sustainable?

In the instant case the First Respondent has not acted independently or has exercised powers vested upon it by following the procedure envisaged in Law. On the contrary, it has acted on the dictation and direction of the Goa Coastal Zone Management Authority (second respondent) which was not expected of. The Second Respondent was neither the Appellate nor the Superior authority of the First Respondent.

It is made explicit that the first respondent, who on being satisfied issued consent to operate order dated 24th February, 2012 had no reason to cancel the same but has acted pursuant to the directions of the second respondent. The first respondent thus has not only violated the principles of natural justice in passing the order but was also arbitrary. It is pertinent to point out that the first respondent was not the authority to decide the legality or otherwise of the structure of the appellant.

The fact that the Second Respondent had received a complaint against the Appellant cannot by itself vest an authority or power on the second Respondent to issue such a direction as found in its letter dated 14th March, 2012 to the First Respondent. The First Respondent at no stretch of imagination can issue such directions revoking or cancelling the Consent to Operate. The Second Respondent had already issued directions disconnecting electricity and water supply in the year 2004. Though the said Notice was set aside by the Hon'ble High Court of Bombay in the year 2005 itself the second respondent had not pursued the same. Even the Show Cause Notice referred to in the directions to the First Respondent was dated 13th September, 2011. After a period of nearly six months, the Second Respondent has addressed a letter to the First Respondent in the month of March 2012. If really, there was any violation of the CRZ Notification there was no impediment for the second respondent to proceed against the Appellant. But the Second Respondent has not done so. Instead it has directed the First Respondent to keep the Consent to Operate the Order in abeyance which was highly illegal.

This will be quite suggestive that the second Respondent who could not proceed on the Show Cause Notice dated 13th September, 2011 to the Appellant for lack of grounds has attempted to achieve its end of cancellation indirectly through the First Respondent. All the above would adumbrate that both the Authorities have acted arbitrarily. The impugned order was an outcome of the non-application of mind and the mechanical approach of the First Respondent. The Second Respondent as a statutory authority, despite service of Notice a number of times has not cared to appear. The Second Respondent cannot have any reason for non-appearance. It is a statutory Body which is expected to strictly apply and follow law. Having issued directions to the First Respondent arbitrarily to cause consent to operate order in abeyance, that too after number of months of show cause notice, the nonappearance of the second Respondent before the Tribunal would show its reluctance, carelessness and the recalcitrant attitude of the officials of the Second Respondent which has got to be viewed seriously.

For all the reasons stated above the impugned directions of the First Respondent are to be set aside as legally unsustainable and accordingly they are set aside.

In the result, appeal is allowed along the direction to Respondents to pay a cost of Rs. 10,000/- each to the Appellant towards the costs of this Appeal.

Rohit Choudhary
Vs
Union of India and Others

APPLICATION NO. 38/2011

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

Key words: Kaziranga National Park, Eco-Sensitive Zone, village Bokakhat, Ministry of environment and forest, Environment (Protection) Rules, 1986, unregulated quarrying and mining activities

Application allowed

Date: 7th September, 2012

The Applicant is a resident of village Bokakhat. According to the Applicant, unregulated quarrying and mining activities permitted in and around the area of "Kaziranga National Park", not only threatens the Eco-Sensitive Zone, but also the survival and existence of Rhinos, Elephants and other wildlife species. It is submitted that Kaziranga National Park harbours the largest population of the Indian One Horned Rhinoceros and that its survival is critically dependent on the protection of the boundaries of the Kaziranga National Park as well as the adjoining areas including the Karbi-Anglong hills, from pollution.

The Ministry of Environment and Forests (MoEF), it is alleged, showed an apathy to the irregularities, overt acts and several omissions and commissions committed by the Authorities and acted as a mute spectator, to the rampant violation of the provisions of the Environment (Protection) Act, 1986 as well as Rules framed thereunder, in as much as the prohibition and restriction on the location of industries and carrying on processes and operations in different areas prescribed under the Environment (Protection) Rules, 1986 has been given a complete go by. The restrictions imposed under Rule-5 of the Environment (Protection) Rules, 1986 is also followed more on its breach than its compliance.

The grievance of the Applicant before this Tribunal is that, in flagrant violation to the Notification dated 5th July, 1996 issued by the MoEF, mushrooming of stone quarries were installed indiscriminately within the "No Development Zone" (in short NDZ) thereby causing immense adverse impact on the environment, wildlife and ecology.

On the basis of the pleadings and arguments only three issues arise for the Tribunal's consideration.

(i) Whether the Kaziranga National Park and / or its vicinity have been declared as No Development Zone in consonance with Rule-5 of the Environment (Protection) Rules, 1986?

So far as issue no. 1 (one) is concerned, there is no dispute that the Ministry of Environment and Forests (MoEF) by Gazette Notification dated 5th July, 1996 has declared an area of 15 km around the Numaligarh Refinery, adjoining the Kaziranga National Park, more specifically described in the Index appended to the Notification as a NO DEVELOPMENT ZONE. The Notification declaring NDZ within the radius of 15 km around the Numaligarh Refinery so as to protect Kaziranga National Park was issued in the year 1996. The said Notification was issued in exercise of the powers conferred under Section 5 of

the Environment (Protection) Rules, 1986, and is still in vogue and is not only binding but also enforceable. Issue no. 1 (one) accordingly stands answered.

(ii) Whether industries and other processing units which would lead to pollution and congestion thereby affecting ecology exist in the NDZ?

After meticulous perusal of documents filed and the submissions made by Learned Counsel for parties, the learned judges come to a conclusion that a number of industrial units, some of which are hazardous and creating pollution, exist in or about "No Development Zone". Protection of environment, ecology, biodiversity and adverse impacts on *flora* and *fauna* vis-a-vis conservation of forest and other natural resources including enforcement of legal rights relating to environment, being the paramount objective of the National Green Tribunal, to maintain healthy environment and eradicate the pollution, and to protect ecology in Kaziranga National Park and in its vicinity, which is highly eco-sensitive and the learned judges feel certain directions are necessary to be issued for protection and preservation of environment.

(iii) What steps should be taken to eradicate the hazards created by expansion of industrial areas and / or installation of industrial units in the NDZ?

The Tribunal directs the Authorities to take following actions:

(a) The 11 (eleven) **stone crushers** which according to the CPCB report, are located within the NDZ are non-functional at present. The State Government is directed to take immediate steps to remove all those illegal stone crushers except 1 (one) M/s Assam Stone Crusher from the NDZ area forthwith. It appears **M/s. Assam Stone Crusher** was installed before 1996 i.e. prior to the notification. The State of Assam is, therefore, directed to take steps to relocate the said unit outside the NDZ.

(b) The Government shall take appropriate steps not to allow operation of the 23 (twenty three) **stone crusher** units existing in the vicinity of NDZ (outside the NDZ) till necessary pollution control equipments and other measures are installed to eradicate the pollution, to the satisfaction of Assam Pollution Control Board and Central Pollution Control Board (in short CPCB).

(c) According to the CPCB report 34 (thirty four) **Brick Kilns** are operating within NDZ out of which only 1 (one) unit was set up before 1996. Brick Kilns being the main pollution causing units are hazardous to environment. The said 33 (thirty three) **Brick Kilns** should be closed down immediately. So far as 1 (one) Brick Kiln which was established before 1996, is concerned steps should be taken to either relocate it outside the demarcated zone or steps should also be taken to insist stricter air pollution control devices. The unit should be inspected by the SPCB, Assam regularly and CPCB occasionally.

(d) The CPCB report further reveals that 11 (eleven) **miscellaneous industries** are existing within NDZ. Out of the aforesaid 11 (eleven) industries, except 4 (four) petrol pumps and the restaurant all other units generate lots of pollution, therefore, they should not be allowed to operate in their present locations and action should be taken to shift them immediately out of NDZ.

(e) The CPCB report further reveals that there are 25 (twenty five) **Tea Factories** out of which 22 (twenty two) are located within the NDZ and 3 (three) are within 500 m of outer periphery of NDZ. The report reveals that only 1(one) unit has made arrangements to treat its effluent. The SPCB and other Authorities are directed to ensure that no tea processing units having boiler using fossil fuel operates within the NDZ and take immediate steps to stop their operation. The 3 (three) tea leaf

processing units located within 500 m of the outer periphery of NDZ should be allowed to operate only if necessary pollution control measures as may be stipulated by State Pollution Control Board (in short SPCB), Assam are adhered to by those units. Further, all the tea processing units must provide acoustical enclosures in their electrical generators for providing alternative electricity.

These are only some remedial measures, it is open to MoEF, CPCB and SPCB to adopt any other appropriate measure and take any other steps permissible under law to remove all the industrial units from NDZ and prescribe stringent standards to eradicate pollution so far as industrial units situated outside NDZ but in its close proximity, say within 500 meters.

The MoEF and the State Government are directed to prepare a Comprehensive Action Plan and Monitoring Mechanism for implementation of the conditions stipulated in the 1996 Notification specifying "No Development Zone" and for inspection, verification and monitoring of the prohibitions imposed in the notification referred to above, as well as the provisions of Rule-5 of the Environment (Protection) Act, 1986.

The learned judges are satisfied that this is a clear case of infringement of law. They, therefore, have no hesitation to direct the MoEF and the Government of Assam to deposit Rs. 1,00,000/- (Rupees one lakh only) each, with the Director, Kaziranga National Park for conservation and restoration of *flora* and *fauna* as well as biodiversity, eco-sensitive zone, ecology and environment of the vicinity of Kaziranga National Park in general and within the No Development Zone in particular. The said amount shall be utilised exclusively by the Director, Kaziranga National Park for conservation, protection and restoration as well as for afforestation of suitable trees of the local species in and around the No Development Zone.

With the aforesaid observations/direction, the Application is allowed.

Golden Seam Textiles Pvt. Ltd.

Vs

Karnataka Pollution Control Board

APPEAL NO. 17/2012

JUDICIAL AND EXPERT MEMBERS: Justice V. R. Kingaonkar and Dr. Devendra Kumar Agrawal

Key words: Karnataka State Appellate Authority, T.G. Halli Reservoir Catchment area, Limitation Act, 1963, doctrine of alternative remedy

Application dismissed

Date: 18th September, 2012

Orders of the Bench

According to the appellant the time spent in litigating before the Karnataka State Appellate Authority in *Appeal Nos. 22/2010 and Appeal No. 23/2010* is required to be excluded. It is further stated that there is marginal delay of 2 days in filling of the appeal which needs to be condoned. The second application is for exclusion of time under Section 16 of the National Green Tribunal Act, 2010 whereas the first application is for exclusion of time under Section 14(2) of the Limitation Act, 1963.

It may be noted that Karnataka State Pollution Control Board passed an order dated 1st August, 2010 whereby several industries including appellant's industry was directed to be relocated. The Pollution Board came to the conclusion that the industry is situated within T.G. Halli Reservoir Catchment area (for short 'TGR') which is the industrial zone wherein activities are restricted. The appellant challenged that order of the State Pollution Board by filling two appeals (*Appeal No. 22/2010 and Appeal No. 23/2010*, separately). Both the appeals were decided by common order dated 26th April, 2011. They were dismissed by the Karnataka State Appellate Authority.

The appellant filed present appeals on 9th April, 2012. The appellant seeks exclusion of 308 days under Section 14(2) of the Limitation Act, 1963 and also seeks condonation of two days delay which appears to have been committed in filling of the appeals.

So far as exclusion of the time under Section 14(2) of the Limitation Act, 1963, is concerned, even though it is accepted that such exclusion is permissible under the law, then also it is difficult to countenance the argument of Learned Counsel for the appellant. The background facts of the present appeals will show that the appellant sought review of the order passed by the State Appellate Authority though there was no provision under the enactment to prefer filling any review application. It is difficult to say that there was no concession given to the appellant. It is well settled that the fact finding of the Court or Tribunal, as reflected from the Judgment or order (*refer to original order*), will have to be given due sanctity.

Another limb of the contention of the appellant is that the litigation was being fought before wrong forum and therefore that time spent has to be excluded. The doctrine of alternative remedy is a self-imposed

restriction while exercising power under Article 226 of the Constitution. So, unless the High Court had expressed any opinion that because of alternative remedy available to the appellant, the Writ Petitions were likely to be dismissed, withdrawal of the writ petitions will be no avail to the appellant to seek exclusion of the time spent before the High Court. Therefore, the time spent by the appellant in pursuing the remedy for review of the order of the State Appellate Authority and also the time spent before the Karnataka High Court cannot be excluded under Section 14(2) of the Limitation Act, 1963. Considering the fact that pursuing litigations before the State Appellate Authority as well as the Karnataka High Court were not before the wrong forum, the learned judges find no substantial reason to allow exclusion of the period spent in the said litigations.

"*For the reasons discussed herein above, the applications and the appeals are dismissed*."

Golden Seam Textiles Pvt. Ltd.

Vs

Karnataka Pollution Control Board

APPEAL NO. 18/2012

JUDICIAL AND EXPERT MEMBERS: Justice V. R. Kingaonkar and Dr. Devendra Kumar Agrawal

Key words: Karnataka State Appellate Authority, T.G. Halli Reservoir Catchment area, Limitation Act, 1963, doctrine of alternative remedy

Application dismissed

Date: 18th September, 2012

Orders of the Bench

According to the appellant the time spent in litigating before the Karnataka State Appellate Authority in *Appeal Nos. 22/2010 and Appeal No. 23/2010* is required to be excluded. It is further stated that there is marginal delay of 2 days in filling of the appeal which needs to be condoned. The second application is for exclusion of time under Section 16 of the National Green Tribunal Act, 2010 whereas the first application is for exclusion of time under Section 14(2) of the Limitation Act, 1963.

It may be noted that Karnataka State Pollution Control Board passed an order dated 1st August, 2010 whereby several industries including appellant's industry was directed to be relocated. The Pollution Board came to the conclusion that the industry is situated within T.G. Halli Reservoir Catchment area (for short 'TGR') which is the industrial zone wherein activities are restricted. The appellant challenged that order of the State Pollution Board by filling two appeals (*Appeal No. 22/2010 and Appeal No. 23/2010,* separately). Both the appeals were decided by common order dated 26th April, 2011. They were dismissed by the Karnataka State Appellate Authority.

The appellant filed present appeals on 9th April, 2012. The appellant seeks exclusion of 308 days under Section 14(2) of the Limitation Act, 1963 and also seeks condonation of two days delay which appears to have been committed in filling of the appeals.

So far as exclusion of the time under Section 14(2) of the Limitation Act, 1963, is concerned, even though it is accepted that such exclusion is permissible under the law, then also it is difficult to countenance the argument of Learned Counsel for the appellant. The background facts of the present appeals will show that the appellant sought review of the order passed by the State Appellate Authority though there was no provision under the enactment to prefer filling any review application. It is difficult to say that there was no concession given to the appellant. It is well settled that the fact finding of the Court or Tribunal, as reflected from the Judgment or order (*refer to original order*), will have to be given due sanctity.

Another limb of the contention of the appellant is that the litigation was being fought before wrong forum and therefore that time spent has to be excluded. The doctrine of alternative remedy is a self-imposed restriction while exercising power under Article 226 of the Constitution. So, unless the High Court had expressed any opinion that because of alternative remedy available to the appellant, the Writ Petitions were likely to be dismissed, withdrawal of the writ petitions will be no avail to the appellant to seek

exclusion of the time spent before the High Court. Therefore, the time spent by the appellant in pursuing the remedy for review of the order of the State Appellate Authority and also the time spent before the Karnataka High Court cannot be excluded under Section 14(2) of the Limitation Act, 1963. Considering the fact that pursuing litigations before the State Appellate Authority as well as the Karnataka High Court were not before the wrong forum, the learned judges find no substantial reason to allow exclusion of the period spent in the said litigations.

"*For the reasons discussed herein above, the applications and the appeals are dismissed*."

Union of India
Vs
Goa Foundation and Others

REVIEW APPLICATION NO. 8/2012

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

Key words: Review Petition, Ministry of environment and forest, WGEEP Report, Goa Foundation

Application is disposed off with modifications

Date: 20th September, 2012

Orders of the Bench

Invoking jurisdiction under Section 19 of the National Green Tribunal Act, 2010, this Petition has been filed by the Ministry of Environment and Forest (for short MoEF) with a prayer to review the order dated 25th July, 2012 (*refer to original order*).

On perusal of the Review Petition, the learned judges find some force in the submissions made by Mr. Panjwani, learned counsel appearing for The Goa Foundation (the Respondent). The only ground upon which the order is sought to be reviewed is that there was lack of communication and Ms. Rathore, learned counsel for the MoEF (the Applicant), was not conscious about the observations made in the order and she could know about the order only after downloading the same from the web-site. In course of hearing, Ms. Rathore expressed that the averments were made in the Review Petitions due to certain inadvertent reasons and lack of communication and such the same may be ignored.

After hearing learned counsel for parties the learned judges find that the Review Petition does not satisfy any of the mandatory requirements and that the reasons assigned for reviewing the order are unacceptable.

However, after going through the order the learned judges feel that it is fit case where the order needs to be clarified/ modified to certain extent. Therefore, they modify the Green Tribunal's order dated 25th July, 2012 and direct that while taking decisions, the Ministry shall adhere to the WGEEP Report, if the same has not been varied till date. With the aforesaid modifications/clarification, the Review Application is disposed of.

Girdhars International Private Limited
Vs
Delhi Pollution Control Committee Department of Environment

APPEAL NO. 44/2012

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

Key words: M/s. Girdhars International Private Limited, Delhi Pollution Control Committee, consent to operate, small scale industry

Application is disposed of at admission stage

Date: 20th September, 2012

By consent of parties this Appeal is disposed of at admission stage.

M/s. Girdhars International Private Limited, has filed this Appeal assailing the directions issued by Delhi Pollution Control Committee (for short DPCC), vide letter dated 21st August, 2012, in exercise of powers conferred under Section 33(A) of the Water (Prevention & Control of Pollution) Act, 1974 and Section 31(A) of the Air (Prevention & Control of Pollution) Act, 1981 directing closure of the unit of Appellant as well as disconnection of electricity and water supply.

The Appellant is manufacturing candles at its unit located at F-16, Udyog Nagar, Peera Garhi, New Delhi since 2005. The unit is a small scale industry and is 100% export oriented. It had obtained necessary consent from the Delhi Pollution Control Committee and the said consent was valid up to 6th June, 2009. The Appellant applied to DPCC for renewal of the consent on 4th September, 2009 in the prescribed Form. According to the Appellant, the Respondent DPCC did not issue any Show Cause Notice before issuing the order refusing to extend permission, and as such great prejudice was caused to the Appellant.

The learned judges heard both the learned counsel and considered the materials placed before them, including the direction issued by DPCC on 26th March, 2012 temporarily revoking the order directing closure of the unit and permitting the unit to function for a period of 45 (forty five) days. By the said order DPCC had directed the Appellant to apply afresh for consent to operate the unit. In view of the direction of DPCC issued on 26th March, 2012, the learned judges feel ends of justice would be better served, if the Appellant is permitted to apply afresh and seek permission to operate, within a period of two weeks hence. If the Appellant files an application within two weeks in proper format, enclosing all documents and fulfilling all requirements prescribed under law, the DPCC shall consider the same and take a decision within three weeks from the date of receipt thereof. Till a final decision is taken by the DPCC on the said application, no coercive action would be taken against the unit.

The Appeal is disposed of with no costs.

Husain Saleh Mahmad Usman Bhai Kara
Vs
Gujarat SEIAA and Others

APPLICATION NO. 102/2012

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

Key words: Gujarat State Environment Impact Assessment Authority, Thermal Power Plant, Bhadreshwar, Taluka Mundra, Dist. Bhuj Kutch, Gujarat, Environmental Clearance, condonation of delay

Application is

allowed Date: 26th

September, 2012

Order dated 15th May, 2012 issued by the Gujarat State Environment Impact Assessment Authority (for short SEIAA) modifying / amending previous Environmental Clearance (for short EC) dated 11th June, 2010 granted to M/s. OPG Power Gujarat Limited for establishing 300 MW Thermal Power Plant at Bhadreshwar, Taluka Mundra, Dist. Bhuj Kutch, Gujarat and thereby allowing change of technology from water cooled to air cooled system is assailed in *Appeal No. 38/2012* on various grounds.

In the case in hand, the impugned order amending the EC was passed on 15th May, 2012. The Appeal assailing the said order was presented on 16th July, 2012, thus, the same was filed after laps of 30 days, but then within 90 days. Husain Saleh Mahmad Usman Bhai Kara (the Appellant/Applicant) being conscious of the said facts filed a petition for condonation of delay explaining the reasons which prevented him from filing the Appeal within 30 (thirty) days.

The factual background reveals that number of cases were filed assailing the Environment Clearance, Forest Clearance and CRZ Clearance granted to the Project Proponent with regard to the aforesaid project. Out of the said cases, some have been disposed of and others are still sub-judiced. The present Appellant/Applicant is a party to most of the litigations. He claims to be the Deputy Sarpanch of Bhadreshwar Panchayat.

Admittedly, the appeal has not been filed within 30 (thirty) days of the impugned order, but then it has been filed within 90 (ninety) days, thus, in consonance with the provisions of Section 16 of the National Green Tribunal Act, 2010 (for short "NGT Act"), this Tribunal, if it is satisfied that the Appellant/Applicant was prevented by sufficient cause from filing the Appeal within 30 (thirty) days can entertain the same.

For explaining the delay, the appellant/applicant has categorically averred that due to pendency of several litigations he was not sure as to whether the impugned order should be assailed by filing a separate appeal and he had to wait till the end of summer vacation to obtain legal advice as the counsel who was handling the matter was out of the city. The appellant/applicant has also clearly stated that the complexities involving in the case, particularly with regard to the scientific / technical aspects, vis-à-vis the technical change made by the amendment of EC and the affect thereof on the environment as well as ecology, is a

matter which needed deliberation and re-examination with technical persons and villagers who are likely to be affected.

The history of the case and the submissions advanced *inter-se* by the parties, leads to a conclusion that in a case like the present one, where the environmental impact of the project on local population in terms of environmental implications, has to be assessed, the approach of this Tribunal, especially set up for the said purpose, should be literal and not "hyper-technical".

The nature of the disputes, as would be evident, from the aims and objectives of the NGT Act, this Tribunal is expected to adjudicate upon, is not really a *lis* between the litigant parties and or adversary litigations. The jurisdiction of this Tribunal is necessarily a wider one whereby the impact of the decision granting EC vis-à-vis the effect thereof on the local community or environment in general and ecology in particular has to be considered. The Tribunal is expected to adopt a broad and liberal approach rather than narrow and cribbed one.

That apart, as stated earlier some litigations relating to clearances granted to the aforesaid project are still sub-judice before this Tribunal, thus, the learned judges find no reason to prevent the appellant/applicant to put forth his grievance so as to facilitate affective and efficacious adjudication of the environmental problems for all times to come.

In view of the discussions made above, and on being satisfied that there was sufficient reasons for not approaching this Tribunal within 30 (thirty) days and further as the delay being less than 90 (ninety) days

i.e. 31 (thirty one) days, after appreciating the pleadings and documents referred, the learned judges hold that deliberate latches cannot be attributed to the appellant/applicant and that the reasons assigned are sufficient to condone the delay. This petition for condonation of delay is accordingly allowed.

Real Gem Buildtech Pvt. Ltd.

Vs

State of Maharastra

APPEAL NO. 37/2012

JUDICIAL AND EXPERT MEMBERS: Justice V. R. Kingaonkar and Dr. Devendra Kumar Agrawal

Key words: Environmental Clearance, Housing Project, Environmental Appraisal Committee, State Authority, basements

Application suffers from

deficiency Date: 3rd October,

2012

Oral Orders of the Bench

"We are inclined to dispose of the appeal finally in view of the fact that the question involved is rather short and can be addressed without any discussion of environmental issuesReal Gem Buildtech Pvt. Ltd. (the appellant) sought the Environmental Clearance (for short EC) for a Housing Project. The Environmental Appraisal Committee (for short EAC) considered the proposal on 26th May, 2010 for the first time. The appellant had sought construction of 3,67,044 sq.mtrs area including that of three basements. The appellant was granted permission to construct 3 basements by the Competent Authority under DCR Rule 33(24). It appears that previously the State Authority declined to grant Environmental Clearance. The appellant had therefore preferred an appeal to this Tribunal. This Tribunal in that appeal (Appeal No.1/2012) observed that the order of the State Authority was rendered beyond its jurisdiction. Yet the appellant was granted liberty to make a representation for consideration of the request seeking the EC for the project. The appellant made a representation and sought the EC. The EC has now been granted vide impugned order dated 24th February, 2012. The appellant is aggrieved only in respect of the part of the order whereby the request of grant of EC for three basements is rejected and the EC is granted only in respect of two basements as per the earlier Minutes of Meeting.

Upon hearing learned Counsel for the parties, it is amply clear that the impugned order does not reflect as to whether rejection of the EC for three basements was done on ground of any adverse environmental impact. In fact, the Tribunal finds that no environmental issue is involved in the matter. The material on record does not show that the third basement is likely to cause any serious impact on the environment. Thus, the impugned order suffers from deficiency because the relevant adverse impact on environment is not the reason for rejection of the request.

In view of the discussion made herein above, the learned judges are inclined to set aside the impugned part of the order and remit the matter to the State Authority for reconsideration of the issue. The State Authority to decide the matter afresh, to the extent of EC for the third basement, within a period of two months hereafter, as far as possible. The appeal is accordingly disposed of.