M/s Sree Bajranj Oil and Flour Mill
Vs
Rohit Choudhury and Others

REVIEW APPLICATION NO. 12/2012
JUDICIAL AND EXPERT MEMBERS: Justice A.S. Naidu and Dr. G.K. Pandey

Key words: Green Tribunal Act, review, Brick industry, Kaziranga National Park, No Development Zone, illegal mining and quarrying activities, MoEF, Flour Mill, Brick Kilns, Assam Pollution Control Board

Application dismissed

Date: 9th January 2013

Applicant, a brick industry, represented through its proprietor has approached this Tribunal under Section 19 of the National Green Tribunal Act, 2010 inter-alia praying to review/modify a portion of the judgment dated 7th September, 2012 delivered in *Application No. 38 of 2011* (Rohit Chaudhary Vs. Union of India and Others).

Shri Rohit Choudhary, the Applicant of the original application is a resident of village Bokakhat and being concerned about the ecology of the area and future of Indian rhinoceros, elephants and species of flora and fauna available in Kaziranga National Park, approached this Tribunal in *Application No. 30 of 2011* praying for issuance of directions to the Authorities to regulate quarrying and mining activities which were illegally existing in and around Kaziranga National Park. After going through the report and hearing Counsel for the parties, relying upon the ratio decided by number of decisions of the Supreme Court the original application was disposed of directing the Authorities to take positive steps to ensure that no polluting industry should be permitted to operate within the No Development Zone. The Judges further directed the Ministry of Environment and Forest (for short MoEF) and the State Government to prepare a comprehensive action plan and mandatory mechanism for implementation of the conditions stipulated in the 1996 Notification specifying the No Development Zone and for inspection, verification and monitoring of the prohibition imposed as well as the provisions of Rule 5 of the Environment (Protection) Act, 1986 (*Para 34 of the judgment*).

Being aggrieved by a portion of the said direction the Applicant has filed this review application, mainly on the ground that the Flour Mill of the Applicant having been established way back in the year 1989 to 1990, that is, much prior to the issuance of the Notification dated 5th July, 1996 declaring No Development Zone, in consonance with the decision of the Assam Government, may not be disturbed and the direction issued not to permit operation of the Flour Mill in *para 33 (d) of the judgment* be suitably modified. Even otherwise it is submitted that the 1996 Notification has no retrospective application and should not be made applicable to the industrial units, like that of the Applicant, which are in existence prior to the issuance of the Notification.

Notices were issued to the contesting Respondents and opportunity was granted to file replies if any. Unfortunately no reply was filed on behalf of the MoEF or any of the contesting Respondents, though, time was granted more than once.

There is no dispute that by Notification dated 5th July, 1996, the Ministry of Environment and Forest created a No Development Zone around Kanziranga National Park.

To determine which of the industries were causing pollution to the environment, this Tribunal directed the Central Pollution Control Board (for short CPCB) to conduct a survey and submit a detailed report. In

consonance with the said direction, the CPCB along with other authorities have visited the locations and submitted a detailed report. In para 3.1.5 of the report existence of the Flour Mill has been taken into consideration. Perusal of the entire report gives an impression that the Applicant's unit cannot be given the nomenclature of a non-polluting industry. That apart, perusal of 1996 notification clearly reveals that the Central Government has specifically directed that on and from the date of publication of the Notification, the expansion of the industrial area township infrastructure facilities and other activities which could lead to pollution and congestion shall not be allowed within the No Development Zone. The words "not be allowed" brings within its fold the units which were existing and also includes the units which are existing to carry on such activities which could lead to pollution and congestion. The Judges are not ready to hold that only because a polluting unit was established prior to the notification it should be permitted to continue with the activities thereby spreading pollution even after the prohibition orders were issued.

There is no second thought that the Brick Klins are one among the most polluting industry. Some of them do not have stack emission monitoring provision. Most of them also normally do not have fixed chimneys, consequently the emission cause hazards and adverse impacts on the environment, biodiversity and *flora* and *fauna*. On scrutiny, it appears that the consent order for setting up the Brick Klin is not available. Therefore, it is not possible for the Tribunal to appreciate the clauses / conditions imposed.

In view of the discussions made above, the Judges are not inclined to review their judgment or directions issued at the instance of the Applicant. The Applicant cannot be permitted to function within the No Development Zone of Kaziranga National Park in the absence of the consent. Liberty is however granted to the Applicant to approach the concerned Authorities for granting consent/permission. If such an attempt is made it should be open to the Authorities to consider the Application strictly in consonance with the Rules. On verification if the Authorities are satisfied that the Applicant's unit is situated beyond the NDZ and is a non-polluting one and does not lead to congestion, they may consider and pass necessary orders stipulating such conditions as would be deemed just and proper for conservation and protection of Kaziranga National Park, of course subject to the conditions imposed in the No Development Zone Notification.

With the aforesaid observations the Review Application is disposed of by circulation.

Dileep B. Nevatia
Vs
Union of India and Others

APPLICATION NO. 36/2011

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

Key words: Mumbai, Noise Pollution (Regulation & Control) Rules, vehicles, multi-tone horns and sirens, health hazards, Central Pollution Control Board, D.G. Sets, Ministry of environment and forest, Ministry of Road Transport and Highways, Transport Commissioner, Police Commissioner of Maharashtra

Application disposed with directions

Date: 9th January 2013

This application has been filed by a Senior Citizen of Worli Sea face, commonly known as Khan Addul Gaffar Khan Road, Mumbai under Section 18 read with Section 14 of the NGT Act, 2010, alleging, inter-alia, violation of the Noise Pollution (Regulation & Control) Rules, 2000 made under the provisions of the Environment (Protection) Act, 1986 by vehicles using multi-tone horns and sirens. It is alleged that the vehicles fitted with multi-tone horns are emitting sounds in far excess of the levels affecting the ambient noise, which goes beyond the prescribed standards as provided under the Noise Pollution (Regulation & Control) Rules, 2000. The main prayer made pertains to specifying standards for sirens and multi-tone horns fitted in the vehicles and to ban vehicles fitted with such sirens / multi-tone horns with excess of the stipulated standards to ply on the road.

The main grievance of the Applicant in this case is the unregulated use of sirens by government vehicles including that of the police department. It is alleged that about 4164 (four thousand one hundred sixty four) Police Vehicles in Greater Mumbai alone indiscriminately use sirens without any standards taking advantage of the fact that sound signals are not notified so far under the Central Motor Vehicle Rules, 1989. The said use of vehicles fitted with sirens having un-specified standards it is alleged, poses significant noise pollution problems to the residents and violates their right to life. A large number of public are also exposed to high levels of noise which has adverse impacts on their health and wellbeing and violates their right to a healthy environment, guaranteed under Article 21 of the Indian Constitution. According to the Applicant the health hazards caused by the noise pollution includes high blood pressure, hearing loss, sleep disruption, speech interference and loss of productivity. Noise Pollution it is added even disturbs cardio-vascular system, digestive system, sleep and the factors associated with insomnia and other disorders. If the noise level goes beyond 140 dB peak sound pressure, then there is every possibility of the ear drum being ruptured and also may be caused irreversible damages to the hearing system.

Under the provisions of the Noise Pollution (Regulation & Control) Rules, 2000, the ambient air quality standards in respect of noise have been prescribed as under:

Table: Ambient Air Quality Standards in respect of Noise

Area Code	Category of Area / Zone	Limits in DB(A) Leg	
		Day Time	Night Time
A.	Industrial area	75	70
B.	Commercial area	65	55
C.	Residential area	55	45
D.	Silence Zone	50	40

Note:

a. Day time shall mean from 6.00 a.m. to 10.00 p.m.
b. Night time shall mean from 10.00 p.m. to 6.00 a.m.
c. Silence zone is defined as an area comprising not less than 100 metres around hospitals, educational institutions and courts. The silence zones are zones which are declared as such by the competent authority.

The power to prescribe standards for sound signals is vested in the Government of India (Ministry of Road Transport and Highways).

The discussions made during the course of the proceeding reveals that no standards so far have been specified for use of sirens and multi-tone horns under the Motor Vehicles Act, 1989. The Government of India through the Ministry of Environment and Forests (for short MoEF) have already notified ambient noise standards under the provisions of the Noise Pollution (Regulation and Control) Rules, 2000 for different areas which include industrial areas, commercial areas, residential areas and silence zone. The ambient air quality is influenced by various sound producing sources such as loudspeakers, musical systems, sirens and horns fitted to vehicles, air compressors, high speed industrial machines, D.G. Sets, etc. In order to control ambient noise pollution, it is essential to control emanating noise at the source itself for which source specific standards are required to be formulated. Source specific standards have already been evolved by the MoEF and Central Pollution Control Board (for short CPCB) for the D.G. Sets, Industries, etc.

It is needless to say that there is urgent requirement to evolve source specific standards for sirens and multi-tone vehicles. Constant use of sirens and multi-tone horns much above noise standard under the provisions of the Noise Pollution (Regulation and Control) Rules, 2000 causes the immense hardship to common people and also poses serious affects on human health and as such there is urgent necessity to evolve source specific standards for sirens and multi-tone sirens used in different vehicles. Therefore, the Tribunal has no hesitation to pass the following directions:

(i) The Ministry of Road Transport and Highways is directed to notify the standards for sirens and multi-tone horns used by different vehicles either under Government duty or otherwise within a period of 3 months hence.

(ii) Based upon the standards to be prescribed by the Ministry of Road Transport and Highways, Government of India, the State of Maharashtra and the Transport Commissioner, Government of India, Maharashtra, Respondent Nos. 1 and 3 respectively will take adequate step to notify the standards for

sirens and multi-tone horns for different zone, within a period of one month from the date of the notification.

(iii) The Transport Commissioner, Government of India of Maharashtra, is also directed to ensure the number of vehicles installed sirens and multi-tone sirens are limited to the bare minimum so as to comply with ambient air quality standards as specified in the Noise Pollution (Regulation and Control) Rules, 2000.

(iv) The Police Commissioner of Maharashtra is also directed to ensure that no private vehicle should be allowed to use sirens or multi-tone horns in residential and silent zones and in the vicinity of educational institutions, hospitals and other sensitive areas and also during night except emergencies and under exceptional circumstances. The Police Commissioner shall further ensure and take precaution to the effect that the residents and residential areas are not affected by indiscriminate use of loud speaker during night time in other words the use of loud speaker should be strictly restricted to the prevailing Rules and Regulations.

M/s. Parvathy Dyeing Tirupur
Vs
Tamil Nadu Pollution Control Board and others

APPLICATION NO. 5/2012(SZ)

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

Key words: Tamil Nadu Pollution Control Board, dyeing unit, discharge of effluents, operations

Application allowed

Date: 11th January 2013

ORDER

This application was filed praying for the issuance of directions to the Tamil Nadu Pollution Control Board (the respondents) to consider the representation dated 21st August, 2012 of the applicant unit in the light of the zero effluents discharged by the applicant unit. The case of Parvathy Dyeing (the applicant) is that the applicant's dyeing unit was set up and began its operation on 28th November, 1985 and that pursuant to the orders of the *High Court of Madras in W.P.No.29791 of 2003*, all the dyeing units in and around Tiruppur were closed. The High Court ordered the closed units to obtain zero effluent discharge and adhere to the other norm of the Tamil Nadu Pollution Control Board and also granted liberty to the dyeing units to achieve zero discharge and move before the respondent board for the reopening orders. That pursuant to the inspection of the Board, the plant was permitted to continue its process and subsequently it was also permitted to enhance the discharge of the effluent of 250 KLD to 500 KLD per day and subsequently it was also further extended. In view of the demand there arose a necessity for the application to function on Saturdays and Sundays also. But the respondent board by its proceedings dated 21st January, 2012, authorized the applicant to operate from Monday to Friday only. Hence a representation dated 21st August, 2012 was made to the respondent board praying to permit the applicant unit to function Saturdays and Sundays. But it was kept pending. Under such circumstances, the application preferred this application before the Tribunal seeking suitable directions to the respondent board.

The Tribunal heard the counsel for the applicant, who reiterates the contents of the request. The Tribunal also heard the counsel for the respondent board. After hearing both sides, it is suffice to issue directions to the respondent board to consider the representation of the applicant dated 21st August, 2012 and pass orders within a period of two months here from. The matter is ordered and disposed of accordingly. No order as to costs.

Arukkkani (Alias) Navamani, Avarampalayam, Coimbatore

Vs

The District Collector, Coimbatore and others

APPLICATION NO. 13/2012(SZ)(THC)

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

Key words: transfer of writ petition, withdrawn

Application is dismissed as withdrawn

Date: 11th January 2013

ORDER

On transfer of the Writ Petition No.13297 of 2010 filed before the High Court of Madras in letter No. R.O.C.No.213 of 2012 (Writs) dated 6th December 2012, the same was taken in the Registry of this Tribunal and renumbered as application and when the matter was taken up for consideration, Shri M.Mathialagan, junior counsel for the Applicant made an endorsement to the effect that the application is withdrawn. The applicant is also present and the endorsement of the withdrawal is confirmed by the applicant. The application is dismissed as withdrawn in view of the endorsement. No order as to costs.

Janajagrithi Samithi (redg) and Others
Vs
Karnataka State Pollution Control Board and Another

APPEAL NO. 56/2012

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

Key words: Udupi, coal based Thermal Power Plant, Air (Prevention and Control of Pollution) Act, Water (Prevention and Control of Pollution) Act, Nandikur, Karnataka Pollution Control Board, consent order

Application allowed

Date: 11th January 2013

This appeal has arisen from an order dated 17th August, 2012 passed by the Karnataka State Appellate Authority, Bangalore (hereinafter referred to as Appellate Authority) under Water and Air (Prevention and Control of Pollution) Acts, 1974 and 1981, respectively, whereby the *Appeal Nos. 01 of 2012 and 05 of 2012* were dismissed by a common order.

The first appellant is a society registered in 1987 under the Societies Registration Act whose members are residents of Nandikur and other neighbouring villages in the district of Udupi. The society has evinced interest to protect the villages from the activities of Government and private agencies for exploitation of environment. The second to fifth appellants are residents of villages neighbouring to the Udupi Thermal Power Plant (second respondent). Despite violation and grave impacts of Udupi Thermal Power Plant which adversely affected the livelihood and human health, the Karnataka State Pollution Control Board (first respondent) granted consent order on 19th December, 2011 without considering the damages already caused and also not providing mitigating measures to control or to prevent pollution to air and water. The Udupi Thermal Power Plant began its operations in May 2010. The first respondent issued number of notices and objections to the second respondent. Following number of inspections and reports, personal hearings were held on different dates. Despite the complaints with regard to the grave damages caused by the second respondent, a combined consent was granted by the first respondent to the second respondent on 9th December 2011. This combined consent order was challenged by the appellants before the said Appellate Authority in *Appeal Nos. 1 and 5 of 2012* which was dismissed by the Appellate Authority by a common order dated 17th August, 2012 and the same is the subject matter of this appeal.

The questions that arise now for consideration are:

i) Is the appeal made in *Appeal No.'s 1 and 5 of 2012* by the appellants against the combined consent order of the Board issued by the first respondent before the Appellate Authority is maintainable?
ii) To what relief the appellants are entitled for?

Admittedly, the appellants herein challenged before the authority below a combined consent order dated 9th December, 2011 granted by the Karnataka State Pollution Control Board to the second Udupi Thermal Power Plant under Water Act 1974 and Air Act 1981 for the coal based Udupi Thermal Power Plant Unit

No. I at Yellur with ash dumping at Santhur in Udupi District, in *Appeal Nos. 1 and 5 of 2012*, whereby the Appellate Authority dismissed the appeals on the ground of maintainability. Hence the legality or otherwise of the combined consent order on merits does not arise for consideration in this appeal.

The Tribunal paid its anxious consideration on the submissions made by the counsel on either side on the maintainability of the appeals made before the Appellate Authority.

The authority has dismissed the appeal as not maintainable since the appellants were not persons aggrieved as envisaged under the above provisions. The conclusion arrived at by the Appellate Authority that the appeals can only be preferred by the persons who have sought for the consent of the respondent Board cannot stand the scrutiny of law. In a given case, when the proponent applied for grant of consent order, if denied or granted, then there is no need for the Board to prefer an appeal. The proponent who sought for the consent order for a project can maintain an appeal if there was a denial or he could challenge the conditions stipulated along with the consent order granted to him. Needless to say that if he is satisfied with the grant of the consent along with the conditions stipulated there is no need to prefer an appeal. It is pertinent to point out that the words employed in both the provisions of the Acts speaking of appeal by any person aggrieved will make it abundantly clear that not only the proponent who is aggrieved over the denial of grant or the stipulation of conditions but also any person aggrieved over the grant of such consent orders. If, really the intention of the Legislature was to give right of appeal only to the proponent or applicant, the necessary words to that effect could have been employed, but it is not done so. The contention put forth by the senior counsel for the respondent that the appeal should be preferred within 30 days from the date on which the order was communicated to him and the appellant should be given an opportunity of being heard as per section 28 (4) of the Water Act and section 31 (4) of the Air Act before disposal of the appeal cannot be countenanced for the simple reason that, when an order is made by the Board on an application made by the proponent for the grant of consent order, the order made thereon cannot but be communicated only to him and equally sub-section (4) mandates that an opportunity should be given to the appellant who prefers an appeal being aggrieved by the order of the Board. A Green Bench of the Madras High Court made it abundantly clear that “any aggrieved person” would include also the complainants or objectors, who were appellants in the instant case and no impediment is felt in applying the above decision in the present case to hold so.

Apart from the above, as could be seen from the report, some of the appellants are having their landed properties such as agricultural lands, wells, etc., near to the plant in question and had complained that there would be large scale damages to the agricultural lands, surface water, wells in particular and the environment in general and the health of people and if the allegations were true, they were directly affected by the environmental pollution from the plant. The appellants are interested persons in the environment and ecology of the area. Under these circumstances, they can be called, no doubt, as aggrieved persons since they apprehend danger to human lives and their properties. The Tribunal is of the view that the person aggrieved” in environmental matters must be given a liberal construction and it needs to be flexible. The above view is also strengthened by the provisions of the Constitution of India in Articles 48A and 51A (g). Reading of these provisions would make abundantly clear that the State should endeavor to protect and safeguard the environment and it is also the fundamental duty of the citizen to improve natural environment which would include fertile land and forests also. While the protection and improvement of environment is the fundamental duty of the citizen, any person who is really aggrieved should be allowed to agitate his grievance in order to get protection and also for the improvement of

environment. Needless to say, the statutory provisions are always subservient to the mandate of the Constitution. Thus any person aggrieved as occur under section 28 of the Water Act or Section 31 of the Air Act cannot be placed above "every citizen" as appearing in Article 51 A of the Constitution of India. In that view also, the appeals preferred by the appellants before the Appellate Authority should have been entertained. Thus, after considering the submissions and looking into the provision of law and also the decisions relied on by the Counsel of either side, the Tribunal is of the considered view that the appellants who preferred appeals before the Appellate Authority are aggrieved persons who can maintain appeal.

In view of the above, the appeal is allowed setting aside the combined order dated 17th August, 2012 in *Appeal No. 01 of 2012 and 05 of 2012* of the Karnataka State Appellate Authority, under Water and Air (Prevention and Control of Pollution) Acts, 1974 and 1981 and the matter is remanded to Appellate Authority with directions to take the appeals on file, enquire and pass suitable order on merits and in accordance with law. No order as to costs.

Mkb
Vs
Union Of India & Ors

Review Application No. 33/2012
In Application No. 38/2011

Coram: Justice A.S. Naidu, Dr. G.K. Pandey

Keywords: No Development Zone, Quarrying, Mining, Industrial Plant, Kaziranga National Park

Review Application Disposed of

Date: January 10, 2013

JUDGMENT

- Hbf (Through Sri Dipak Baruah) vs Union Of India & Ors On January 10, 2013
- Hbf (Through Bishnu Hazarika) vs Union Of India & Ors on 10 January 2013
- Saikia Associates v UOI Ors On January 10, 2013
- M/s DNB Brick Industry Moving v UOI Ors On January 10, 2013
- M/s DNB Brick Industry Ors. v UOI Ors. On January 10, 2013
- KBI v UOI On January 10, 2013
- Utpal Bricks (UBI) v UOI Ors On January 10, 2013
- M/s Assam Stone Crusher v Rohit Choudhury and Ors. On December 12, 2013

Applicant, a brick industry, represented through its proprietor, approached this Tribunal under Section 19 of the National Green Tribunal Act, 2010 inter-alia praying to review/modify a portion of the

judgment dated 07th September, 2012 delivered in Application No. 38 of 2011 (Rohit Chaudhary Vs. Union of India & Ors.). The original application prayed for issuance of directions to the Authorities to regulate quarrying and mining activities, which illegally existed in and around Kaziranga National Park. The original application was disposed of directing the Authorities to take positive steps to ensure that no polluting industry should be permitted to operate within the No Development Zone.

The present applicant, being aggrieved by a portion of the said direction filed this review application, mainly on the ground that Applicant's unit (flour mill) was established much prior to the issuance of the Notification carving out the 'No Development Zone' and it should not be disturbed, more so because the 1996 Notification had no retrospective application/effect. The applicant added that the unit was a Green Category.

On perusal of the entire report, the Tribunal denied reviewing the judgment as pleaded by the Applicant. It held that the Applicant could not be permitted to function within the No Development Zone of Kaziranga National Park in the absence of the consent. Liberty was however granted to the Applicant to approach the concerned Authorities for granting consent/permission. If such an attempt is made it should be open to the Authorities to consider the Application strictly in consonance with the Rules. On verification if the Authorities were satisfied that the Applicant's unit was situated beyond the NDZ and was a non- polluting one and did not lead to congestion, they may consider and pass necessary orders stipulating such conditions as would be deemed just and proper for conservation and protection of Kaziranga National Park, of course subject to the conditions imposed in the NDZ Notification. Review Application is disposed of by circulation.

M/s Ravikumar Fibres (Chitra Coir), Pollachi

Vs

Tamil Nadu Pollution Control Board and Others

APPLICATION NO. 18/2012(SZ)(THC)

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

Key words: writ petition, Tamil Nadu Pollution Control Board, electricity service, Coimbatore

Application disposed off as infructuous

Date: 21st January 2013

ORDER

A writ petition was filed praying for issuance of directions to call for the records dated 10th August, 2010 passed by the Tamil Nadu Pollution Control Board (first respondent) and quash the same, and further direct the respondents to restore the electricity service connection No. 13, Ganesh Nagar Distribution, III B, situated in the premises, Door No. 6/7, Ganesh Nagar, Udumalaipet Road, Makinampatti Post, Pollachi Taluk, Coimbatore District.

The writ petition was transferred from Madras High Court to the National Green Tribunal, taken to the Registry of the Tribunal and then renumbered as an application for further prosecution.

The counsel for M/s Ravikumar Fibres (the applicant) and the respondents are present. Shri Kulandaivelu, Junior Engineer represents the Tamil Nadu Electricity Board on behalf of the Executive Engineer, Tamil Nadu Electricity Board. The matter is taken up for enquiry and the counsel for the applicant made an endorsement as follows:

"*Since the coir industry has been shifted as per the undertaking given by the petitioner in M.P.No.1 of 2010, nothing survives in the Writ Petition/Application. It is infructuous*".

In view of the same, this application is disposed of as infructuous.

M/s Mahabir Brick Field
Vs
Rohit Choudhary and Others

Review Application No. 14/2012

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

Key words: Green Tribunal Act, review, Brick industry, Kaziranga National Park, No Development Zone, illegal mining and quarrying activities, MoEF, Flour Mill, Brick Kilns, Assam Pollution Control Board

Application dismissed

Date: 24th January 2013

Applicant, a brick industry, represented through its proprietor has approached this Tribunal under Section 19 of the National Green Tribunal Act, 2010 *inter-alia* praying to review/modify a portion of the judgment dated 7th September, 2012 delivered in *Application No. 38 of 2011 (Rohit Chaudhary Vs. Union of India & Others).*

Shri Rohit Choudhary, the Applicant of the original application is a resident of village Bokakhat and being concerned about the ecology of the area and future of Indian rhinoceros, elephants and species of flora and fauna available in Kaziranga National Park, approached this Tribunal in *Application No. 30 of 2011* praying for issuance of directions to the Authorities to regulate quarrying and mining activities which were illegally existing in and around Kaziranga National Park. After going through the report and hearing Counsel for the parties, relying upon the ratio decided by number of decisions of the Supreme Court the original application was disposed of directing the Authorities to take positive steps to ensure that no polluting industry should be permitted to operate within the No Development Zone. The Judges further directed the Ministry of Environment and Forest (for short MoEF) and the State Government to prepare a comprehensive action plan and mandatory mechanism for implementation of the conditions stipulated in the 1996 Notification specifying the No Development Zone and for inspection, verification and monitoring of the prohibition imposed as well as the provisions of Rule 5 of the Environment (Protection) Act, 1986 (*Para 34 of the judgment*).

Being aggrieved by a portion of the said direction the Applicant has filed this review application, mainly on the ground that the Flour Mill of the Applicant having been established way back in the year 1989 to 1990, that is, much prior to the issuance of the Notification dated 5th July, 1996 declaring No Development Zone, in consonance with the decision of the Assam Government, may not be disturbed and the direction issued not to permit operation of the Flour Mill in *para 33 (d) of the judgment* be suitably modified. Even otherwise it is submitted that the 1996 Notification has no retrospective application and should not be made applicable to the industrial units, like that of the Applicant, which are in existence prior to the issuance of the Notification.

Notices were issued to the contesting Respondents and opportunity was granted to file replies if any. Unfortunately no reply was filed on behalf of the MoEF or any of the contesting Respondents, though, time was granted more than once.

There is no dispute that by Notification dated 5th July, 1996, the Ministry of Environment and Forest created a No Development Zone around Kanziranga National Park.

To determine which of the industries were causing pollution to the environment, this Tribunal directed the Center Pollution Control Board (for short CPCB) to conduct a survey and submit a detailed report. In *para 3.1.5 of the report* existence of the Flour Mill has been taken into consideration. Perusal of the entire report gives an impression that the Applicant's unit cannot be given the nomenclature of a non-polluting industry. That apart, perusal of 1996 notification clearly reveals that the Central Government has specifically directed that on and from the date of publication of the Notification, the expansion of the industrial area township infrastructure facilities and other activities which could lead to pollution and congestion shall not be allowed within the No Development Zone. The words "not be allowed" brings within its fold the units which were existing and also includes the units which are existing to carry on such activities which could lead to pollution and congestion. The Judges are not ready to hold that only because a polluting unit was established prior to the notification; it should be permitted to continue with the activities thereby spreading pollution even after the prohibition orders were issued.

There is no second thought that the Brick Klins are one among the most polluting industry. Some of them do not have stack emission monitoring provision. Most of them also normally do not have fixed chimneys, consequently the emission cause hazards and adverse impacts on the environment, biodiversity and flora and fauna.

According to the Counsel for the applicant, the Brick Klin in question is situated beyond the No Development Zone and that the same has been set up after complying all the necessities and formalities.

On careful scrutiny of the documents annexed with the review application, it appears that the consent order for setting up the Brick Klin is not available. Therefore, it is not possible to appreciate the clauses / conditions imposed. That apart there is controversy with regard to exact location of the Brick Klin i.e. as to whether the same is situated within the NDZ or outside.

In view of the discussions made above, the Judges are not inclined to review their judgment or directions issued at the instance of the Applicant. The Applicant cannot be permitted to function within the No Development Zone of Kaziranga National Park in the absence of the consent. Liberty is however granted to the Applicant to approach the concerned Authorities for granting consent/permission. If such an attempt is made it should be open to the Authorities to consider the Application strictly in consonance with the Rules. On verification if the Authorities are satisfied that the Applicant's unit is a non-polluting one they may consider and pass necessary orders stipulating such conditions as would be deemed just and proper, subject to the conditions imposed in the No Development Zone Notification.

With the aforesaid observations the Review Application is disposed of by circulation.

M/s D.K. Brick Industry (Unit 1)
Vs
Rohit Choudhary and Others

Review Application No. 13/2012
JUDICIAL AND EXPERT MEMBERS: Justice A.S. Naidu and Dr. G.K. Pandey

Key words: Green Tribunal Act, review, Brick industry, Kaziranga National Park, No Development Zone, illegal mining and quarrying activities, MoEF, Flour Mill, Brick Kilns, Assam Pollution Control Board

Application is disposed of by circulation

Date: 24th January 2013

Applicant, a brick industry, represented through its proprietor has approached this Tribunal under Section 19 of the National Green Tribunal Act, 2010 *inter-alia* praying to review/modify a portion of the judgment dated 7th September, 2012 delivered in *Application No. 38 of 2011 (Rohit Chaudhary Vs. Union of India & Others).*

Shri Rohit Choudhary, the Applicant of the original application is a resident of village Bokakhat and being concerned about the ecology of the area and future of Indian rhinoceros, elephants and species of flora and fauna available in Kaziranga National Park, approached this Tribunal in *Application No. 30 of 2011* praying for issuance of directions to the Authorities to regulate quarrying and mining activities which were illegally existing in and around Kaziranga National Park. After going through the report and hearing Counsel for the parties, relying upon the ratio decided by number of decisions of the Supreme Court the original application was disposed of directing the Authorities to take positive steps to ensure that no polluting industry should be permitted to operate within the No Development Zone. The Judges further directed the Ministry of Environment and Forest (for short MoEF) and the State Government to prepare a comprehensive action plan and mandatory mechanism for implementation of the conditions stipulated in the 1996 Notification specifying the No Development Zone and for inspection, verification and monitoring of the prohibition imposed as well as the provisions of Rule 5 of the Environment (Protection) Act, 1986 (*Para 34 of the judgment*).

Being aggrieved by a portion of the said direction the Applicant has filed this review application, mainly on the ground that the Flour Mill of the Applicant having been established way back in the year 1989 to 1990, that is, much prior to the issuance of the Notification dated 5th July, 1996 declaring No Development Zone, in consonance with the decision of the Assam Government, may not be disturbed and the direction issued not to permit operation of the Flour Mill in *para 33 (d) of the judgment* be suitably modified. Even otherwise it is submitted that the 1996 Notification has no retrospective application and should not be made applicable to the industrial units, like that of the Applicant, which are in existence prior to the issuance of the Notification.

Notices were issued to the contesting Respondents and opportunity was granted to file replies if any. Unfortunately no reply was filed on behalf of the MoEF or any of the contesting Respondents, though, time was granted more than once.

There is no dispute that by Notification dated 5th July, 1996, the Ministry of Environment and Forest created a No Development Zone around Kanziranga National Park.

To determine which of the industries were causing pollution to the environment, this Tribunal directed the

Center Pollution Control Board (for short CPCB) to conduct a survey and submit a detailed report. In *para 3.1.5 of the report* existence of the Flour Mill has been taken into consideration. Perusal of the entire report gives an impression that the Applicant's unit cannot be given the nomenclature of a non-polluting industry. That apart, perusal of 1996 notification clearly reveals that the Central Government has specifically directed that on and from the date of publication of the Notification, the expansion of the industrial area township infrastructure facilities and other activities which could lead to pollution and congestion shall not be allowed within the No Development Zone. The words "not be allowed" brings within its fold the units which were existing and also includes the units which are existing to carry on such activities which could lead to pollution and congestion. The Judges are not ready to hold that only because a polluting unit was established prior to the notification; it should be permitted to continue with the activities thereby spreading pollution even after the prohibition orders were issued.

There is no second thought that the Brick Klins are one among the most polluting industry. Some of them do not have stack emission monitoring provision. Most of them also normally do not have fixed chimneys, consequently the emission cause hazards and adverse impacts on the environment, biodiversity and flora and fauna.

According to the Counsel for the applicant, the Brick Klin in question is situated beyond the No Development Zone and that the same has been set up after complying all the necessities and formalities.

On careful scrutiny of the documents annexed with the review application, it appears that the consent order for setting up the Brick Klin is not available. Therefore, it is not possible to appreciate the clauses / conditions imposed. That apart there is controversy with regard to exact location of the Brick Klin i.e. as to whether the same is situated within the NDZ or outside.

In view of the discussions made above, the Judges are not inclined to review their judgment or directions issued at the instance of the Applicant. The Applicant cannot be permitted to function within the No Development Zone of Kaziranga National Park in the absence of the consent. Liberty is however granted to the Applicant to approach the concerned Authorities for granting consent/permission. If such an attempt is made it should be open to the Authorities to consider the Application strictly in consonance with the Rules. On verification if the Authorities are satisfied that the Applicant's unit is a non-polluting one they may consider and pass necessary orders stipulating such conditions as would be deemed just and proper, subject to the conditions imposed in the No Development Zone Notification.

With the aforesaid observations the Review Application is disposed of by circulation.

M/s Maltose Agro Products
Vs
Karnataka State Pollution Control Board and Others

APPEAL NO. 45/2012

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

Key words: Karnataka State Pollution Control Board, poultry feed mixing unit, Air (Prevention, Control of Pollution) Act, Water (Prevention and Control of Pollution) Act, non- representation

Application dismissed

Date: 31st January 2013

ORDER

This appeal was filed by M/s Maltose Agro Products (the appellant) praying to call for the records concerning the application for consent and to set aside the closure direction issued in the proceedings *no. PCB/BNA/12/393* dated 2nd June, 2012 of the Karnataka State Pollution Control Board (3rd respondent), to direct the respondent authorities to inspect the poultry feed mixing unit of the appellant , collect samples, analyze the samples and to submit a report and to direct the respondent authorities to consider the consent application filed by the appellant and grant consent to the appellant as the appellant is having the benefit of deemed consent under Section 21(4) of the Air (Prevention, Control of Pollution) Act 1981 and Section 25(&) of the Water (Prevention and Control of Pollution) Act, 1974.

The appeal is posted for dismissal in view of the non- representation of the appellant or his counsel in the last two hearings. Even this day when the appeal is called, the appellant is absent and there is no representation for the appellant. Under the circumstances, the Tribunal has no other option but to dismiss the appeal for non-prosecution. No order as to costs.

R. Veeramani
Vs
The Secretary, PWD, Government of Tamil Nadu and others

M.A.NO.35 OF 2013(SZ)
IN

APPLICATION NO. 35/2013(SZ)

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

Key words: interim injunction, Multi Super Speciality Hospital, New Legislative Assembly-cum-Secretariat complex, modification of structure, Public Works Department, Omandurar Government Estate, Chennai, State Level Environment Impact Assessment Authority, Environmental Clearance, Madras High Court

Application allowed

Date: 6th February 2013

ORDER

This application is brought forth by R.Veeramani (the appellant in *Appeal No. 31 of 2012)* seeking an order of interim injunction to restrain the Secretary, Public Works Department (respondent No. 1); the Executive Engineer, Public Works Department (respondent No. 2) and the Secretary Health Family Welfare Department (respondent No. 3) from carrying out any process of alteration or modification in the structure in question situated at the Omandurar Government Estate, Anna Salai, Chennai-600 002 and from running a hospital or similar activities therein pending disposal of the appeal.

The applicant/appellant has filed an affidavit with the following allegations:

The said appeal has been preferred against the order dated 16th May, 2012 of the State Level Environment Impact Assessment Authority (SEIAA), or respondent No. 4, granting Environmental Clearance in favour of respondent No. 2 to convert the New Legislative Assembly-cum-Secretariat complex constructed on the basis of an earlier Environmental Clearance dated 20th October, 2008.

In the *W.P. No. 30326 of 2011* filed by the applicant/appellant, the High Court of Madras granted an order of interim injunction on 20th January, 2012 restraining the Government of Tamil Nadu from making any structural alteration in the building till the disposal of the main writ petition. In the meantime, the 4th respondent passed an order on 16th May, 2012 granting Environmental Clearance in favour of the 2nd respondent to convert the said complex into a Multi Super Speciality Hospital against which the present appeal was filed before the National Green Tribunal and the same is pending adjudication.

In view of the interim injunction granted the respondent had not made any structural alteration. The High Court dismissed the writ petitions on 24th January, 2013 without giving any finding on the question of Environmental Clearance. While so, taking advantage of the order of dismissal of the writ petitions, the

Government of Tamil Nadu started to carry out alteration by removing internal parts of the building which might cause grave impact on the environment and surroundings as well as damage to the structural stability of the subject building and ultimately might also affect the effective utilisation of the building. The State Government was neither entitled nor supposed to alter the nature of the building when the appeal is pending. As the competency of the 4th respondent itself is under challenge, if such hasty alterations are allowed to be carried out, the purpose of appeal would be defeated. The special leave petitions filed on the dismissal of the writ petitions were dismissed by the Apex Court on 31st January, 2013 at the admission stage itself stating that they could not interfere in the policy decisions. Both the High Court and Supreme Court did not go into the environmental issues, as the matter is *sub-judice* before this Tribunal. Under these circumstances, when the appeal is pending before the Tribunal, the respondents are bent upon in making the appeal infructuous and they are attempting to alter the structures based on the impugned Environmental Clearance dated 16th December, 2012. Hence, the Tribunal has to interfere immediately and grant Interim orders of injunction against the conversion of the structure and keep it untouched till the disposal of the appeal. The conversion has an impact on the environment and the surroundings. There is a *prima facie* case and the balance of convenience is also in favour of the appellant. Hence an order of interim injunction has to be granted to the applicant/appellant. If an order of injunction is not granted, it would render great prejudice and cause great hardship and there would be great loss to the public exchequer.

The Respondent No. 1 and 3 have filed a counter affidavit stating that as the Environmental Clearance matter is pending adjudication before the Tribunal, they have not carried out any major structural alteration to the building or commenced a full-fledged Multi Speciality Hospital. Also, the application is frivolous, vexatious, and politically motivated and the appellant is bent upon to stall the proceedings.

The only question that arises for consideration is whether the applicant/appellant is entitled for the interim injunction as asked for.

On completion of the pleadings, the following questions were formulated to be decided in the appeal-

(i) Whether this appeal is maintainable in view of the *W.P. No. 30326 of 2011* filed by the appellant herein and pending on the file of the High Court of Madras
(ii) Whether the grant of Environmental Clearance by the Tamil Nadu Environmental Impact Assessment Authority is violative of law since the assessment for making such a grant lies with the Central Government, Ministry of Environment and Forests as alleged by the Appellant
(iii) Whether the Environmental Clearance applied and granted for the second time is against law since the Environmental Clearance was already granted for a different and specific project and also when the Environmental Notification 2006 does not permit any conversion from the original scope of the project or activity as alleged by the Appellant
(iv) Whether the grant of Environmental Clearance has to be set aside since it is based on the impact assessment given by the State Environmental Impact Assessment Authority which did not consider all the necessary environmental parameters for conversion of the Secretariat into Multi Super Speciality Hospital-cum-Medical College
(v) Whether the Environmental Clearance given on 16th May, 2012 by the 4th Respondent is liable to be set aside on all or any of the grounds mentioned in the appeal.

From the reading of the above questions, it would be clear that the competence of the 4th respondent to grant the Environmental Clearance dated 16th May, 2012 await decision before the Tribunal as also the validity of the Environmental Clearance and, if valid, whether all necessary parameters are available to commence a Multi Super Speciality Hospital. After framing of the above points for decision, the appeal was posted to **13th February, 2013** for enquiry. Under the above circumstances, the instant application was brought-forth by the applicant/appellant seeking for an interim injunction against the Respondents No. 1, 2 and 3 not to make any alteration or modification in the structure and also from running any hospital or similar activities till the disposal of the appeal.

The photographs placed and also the reports in media would indicate that after the disposal of the writ petition by the High Court, the respondents have commenced activities connected to the structural alterations, which in the opinion of the Tribunal, cannot be permitted to be done and that too when all the questions above mentioned remain to be answered. In so far as the conceded by the learned Advocate General that in a small area in the very structure, 6 doctors and 14 staff members are deployed for a "referral unit''. It is also submitted that a name board Multi Super Speciality Hospital" was fixed outside the structure.

The Tribunal is at a loss to understand while appeal is pending and questions as above remain to be decided, why the concerned departments were hasty in commencing such activities, both structural and medical. The acts of the respondents in fixing a name board as above and deploying doctors and staff as stated above is indicative of the soft commencement of the Multi Super Speciality Hospital. This act of the respondents, in the considered opinion of the Tribunal would speak that the respondents have acted not only with an undue haste but also against the pending proceedings. This conduct of the respondents might even create a doubt whether it was intended to defeat the appeal proceedings. Hence from the submissions made and also looking into the materials available, the Tribunal considers that it is a fit case where a *prima facie* case is made out for granting an order of interim injunction restraining the respondents from carrying on any structural modifications, alterations or any medical activity in the complex under question till the disposal of the appeal. Accordingly an interim injunction is granted.

M/s Gujarat Eco Textile Part Ltd.

Vs

Ministry of Environment & Forest and Others

APPEAL NO. 65/2012

JUDICIAL AND EXPERT MEMBERS: Justice V.R. Kingaonkar, Shri P.S. Rao, Dr. P.C. Mishra, Ranjan Chatterjee and Shri Bikram Singh Sajwan

Key words: membership, Common Effluent Treatment Plant, treatment of effluents, environmental impact, Expert Appraisal Committee meeting

Application allowed

Date: 6th February 2013

Oral Judgement

This appeal arises out of decision rendered in the 115th meeting of the Expert Appraisal Committee (for short EAC) on 16th / 17th August, 2012 and subsequent follow up action. By the impugned decision, M/s. Gujarat Eco Textile Park Limited (the Appellant) was denied permission to accept membership of the industrial units which are operating outside the Gujarat Eco Textile Park for treatment of the effluents generated from their units.

The Appellant obtained necessary consent to establish and the required permission to operate Common Effluent Treatment Plant (for short CETP). Gujarat Pollution Control Board (GPCB for short) also granted permission to amend consent to establish on 21st April, 2009. There is no dispute about the fact that the Appellant has capacity to deal with the treatment of effluents up to 100 MLD. There is also no dispute about the fact that the capacity is not being fully utilized by the Appellant. The units which are located within the Gujarat Eco Textile Park of the Appellant are the members thereof. Considered together, even if the effluents of such members are allowed to be treated in the CETP, the capacity of the plant will be utilized only up to 35 MLD. Thus, the Appellant has additional capacity of the treatment of balance 65 MLD in the plant. The Appellant, therefore, sought to accept membership of the other units located outside the Gujarat Eco Textile Park. It appears that such other units consented to become members of the Appellant's plant for the purpose of treatment of the effluents released from such units. Those units are mostly of dyeing and printing of clothes. It appears that the Appellant, therefore, requested to allow the units located outside the park to become members of the CETP for the purpose of treatment of effluents, discharged by them for common treatment.

Perusal of the impugned decision made in the minutes of 115th meeting of the EAC would show that the EAC declined to accept the proposal only on the ground that the industrial units located outside the park are already members of the other CETP, which was under construction and therefore the amendment sought by the Appellant could not be accepted. It appears that EAC came to the conclusion that the proposed amendment would not result in any increase in discharge of quantity of effluents and therefore shall not result in additional environmental burden, rather it would result in environmental amelioration as

the amendment shall ensure discharge of only treated effluents in *Khadi* (creek/channel) and therefore it leads in improvement in quality of *Khadi* water.

The only question to be determined in this appeal is: Whether the impugned decision is legal and proper?

The respondents have not placed on record any tangible material to show that the refusal to amend the EC is justified because of any adverse environmental impact. On the contrary, the EAC itself had recommended the amendment on earlier occasion because the amendment sought by the appellant could have positive environmental impact. For that matter, the effluents of the units located outside the park, would get appropriate treatment in the park of the Appellant. There was therefore, no plausible reason for deviation after reaching such a conclusion. The subsequent decision of the EAC was totally without consideration of the Environmental benefits. The fact that the units located outside the park were attached to some other CETP could not be the consideration for denial of the amendment to the EC. The appraisal by the EAC is therefore on faulty grounds. As a matter of fact, the EAC reviewed its own previous decision vide the impugned decision. Judges are of the opinion that the impugned decision is arbitrary and without any substantial reason as such.

The net result of the foregoing conclusion is that the impugned decision is unsustainable in the eye of law and will have to be quashed. Hence the impugned decision is quashed and the respondents are directed to allow the amendment to the EC as sought by the appellant. The respondents may put required conditions while granting amended EC. The Appeal is accordingly allowed.

Panaiyoor Region Citizens Welfare Trust
Vs
Ministry of Environment and Forests, Union of India and others

M.A. NO. 38/2013 (SZ)

IN

APPLICATION NO. 5/2013(SZ)

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

Key words: clearance, felling of trees, construction of harbour, stay order, interim injunction, Tamil Nadu Pollution Control Board

Application allowed

Date: 12th February 2013

ORDER

The learned counsel for the applicant presses for an order of interim injunction adducing reasons thereof, pending disposal of the application filed before this Tribunal in *Application No.5 of 2013 (SZ)*, praying for revocation of the clearance accorded to M/s. Rajakkamangalam Thurai Fishing Harbour Private Limited (the 5th respondent) on 18th July, 2011, and to restrain the 5th respondent from continuing with any construction activity, from felling trees, and destroying sand dunes in the area pending disposal of the application.

It is the case of the applicant that serious damage has been caused to the area due to the construction of the harbour by the 5th respondent and apart from that the *condition No.6* of the general conditions contained in the clearance reserves the right to revoke the clearance already granted. Trees have been felled across hundreds of acres of land. The learned counsel urged that if these activities are not restrained, it would be allowing continuation of the damage.

After looking into the matter and the submission made by the learned counsel, the Tribunal is satisfied that there is a prima facie case for granting the interim relief of stay of the order of clearance granted on 18th July, 2011 issued to the 5th respondent. Also, an order of ad interim injunction is issued to the 5th respondent from doing any activities on the strength of the clearance order in question. Accordingly, an interim order of stay and injunction are issued until further orders of the Tribunal.

The Tamil Nadu Pollution Control Board and District Environmental Engineer (2nd and 3rd respondents) are to file the memorandum of appearance and counter on 7th March, 2013. The matter is posted to 7th March, 2013.

R. Veeramani
Vs
Secretary, PWD and Others

APPEAL NO. 31/2012

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

Key words: environmental clearance, state level impact assessment authority, Tamil Nadu New Legislative Assemble building, Multi specialty Super hospital, Omandhur Government Estate, construction or alteration, Madras High Court, consent to operate, mandatory conditions

Application not allowed

Date: 20th February 2013

This appeal has been filed by the appellant praying for setting aside the Environmental Clearance in order of the State Level Environmental Impact Assessment Authority (SEIAA) dated 16th May, 2012 to convert the newly constructed building complex namely The Tamil Nadu New Legislative Assembly Building (TNLA) into a Multi Specialty Super Hospital (MSSH) at Omandhurar Government Estate.

Upon leave granted by the Tribunal to file additional grounds, the appellant averred that the State Level Expert Appraisal Committee (5th respondent) has not done any independent study or called for any independent reports on the expert body and has not properly appraised the proposal to the 4th respondent as contemplated under the Environmental Impact Assessment Notification and hastily and mechanically forwarded to the 4th respondent on 11th May, 2012. The project proponent deliberately suppressed the factum of the tender notification for the value more than Rs.28 crore to carry out the alternation and modification in the subject building and made an application on 12th April, 2012 as if there is no construction or alteration at all. The statutory queries in Form I and the appendix enclosed along with the application and the answers to the same disclose the mechanical approach with non-application of mind without even meeting the required parameters for establishment of the Multi Super Specialty Hospital. The respondent Nos. 4 and 5 have not seen the influence of hospital characteristics on the environment and blindly gone by the figures given by the project proponent.

The appellant had filed a writ petition in *W.P.No. 30326 of 2011* and the High Court Madras passed an order of injunction restraining the respondents from making any structural alterations in the building till the disposal of the writ petition by an order dated 20th January, 2012.

The 4th respondent herein, namely the State Level Environment Impact Assessment Authority (SEIAA) submitted the counter which is also adopted by the 5th respondent namely the State Level Expert Appraisal Committee (SEAC). They submitted that the appellant has repeatedly filed proceedings challenging the well considered decision of the State to convert the building in question into a Multi Super Specialty Hospital and this is a clear reflection of complete lack of bonafide conduct of the appellant, whose ulterior motive is to somehow stall the entire political process, tainted by oblique motive and political considerations. The following projects or activities shall require prior EC as per para 2 of EIA Notification, 2006.

(a) All new projects or activities listed in the Schedule to the said Notification;
(b) Expansion and modernization of existing projects or activities listed in the Schedule to the notification with addition of capacity beyond the limits specified for the concerned sector, i.e., projects or activities which cross the threshold limits given in the schedule after expansion or modernization;
(c) Any change in the product—mix in an existing manufacturing unit included in the schedule beyond the specified range.

The application submitted by the project proponent for conversion/modification/change in the activity of the existing new TNLA into MSSH and listed under item No.8 of the schedule of the notification require prior EC as per para 2(ii) of the EIA Notification, 2006.

The Tribunal has looked into the memorandum of grounds in the appeal and the additional grounds put forth by the appellant herein and the counter submitted by the respondents 1 to 3 and all other materials placed before the Tribunal by both sides. The following points for determination have been set out for arguments on these by the counsel for the appellant and the respondents after the preliminary pleadings.

(i) Whether this appeal is maintainable in view of the *W.P. No. 30326 of 2011* filed by the appellant herein and pending on the file of the High Court of Madras;
(ii) Whether the grant of environmental clearance by the Tamil Nadu Environmental Impact Assessment Authority is violative of law since the assessment for making such a grant lies with the Central Government, Ministry of Environment and Forests as alleged by the Appellant;
(iii) Whether the environmental clearance applied and granted for the second time is against law since the Environmental Clearance was already granted for a different and specific project and also when the Environmental Notification 2006 does not permit any conversion from the original scope of the project or activity as alleged by the Appellant;
(iv) Whether the grant of Environmental Clearance has to be set aside since it is based on the Impact Assessment given by the State Environmental Impact Assessment Authority which did not consider all the necessary environmental parameters for conversion of the Secretariat into Multi Super Specialty Hospital-cum-Medical College;
(v) Whether the Environmental Clearance given on 16th May, 2012 in letter *No. SEIAA/TN/EC/8(a)/ 120/F.455/2012* by the 4th Respondent is liable to be set aside on all or any of the grounds mentioned in the appeal.

During the arguments the following additional points were raised:

(i) Whether the appellant is an aggrieved person who can maintain the appeal under the provisions of the National Green Tribunal Act, 2010.
(ii) Whether the appeal is not maintainable as it does not fall under any one of the grounds envisaged under the National Green Tribunal Act, 2010.

As could be seen above, the appellant has filed this appeal under section 18(1) read with sections 14, 15, 16 and 17 of the National Green Tribunal Act, 2010 challenging the Environmental Clearance dated 16th December, 2012.

ADDITIONAL QUESTIONS 1 AND 2:
The Senior Counsel for the appellant pointing to Section 18(2)(e) of the NGT Act, would submit that any person aggrieved including any representative body or organisation can file an appeal before the Tribunal and hence it cannot be stated that only a person representing a particular community, alone could file an appeal; that the right to have environmental protection is a right guaranteed under Article 21 of the

Constitution of India, since it touches upon the right to life and under such circumstances, even a single citizen of the country can agitate for his or her right under a prescribed due procedure of law; that the State shall also protect the environment as per the directive principles of State Policy Article 48A. Hence it would be clear that when the requirements made in the environmental laws are not complied with either by the State or by the authorities constituted for the said purpose, any aggrieved person can approach the forum available under the NGT Act; that in the instant case, the appellant from the very inception has raised his objection before the respondents, which were neither accepted nor even considered and thus, the appellant clearly falls within the meaning of the person aggrieved and can well maintain the present appeal. The Tribunal has already taken its view that the person aggrieved in environmental matters must be given a liberal interpretation and it requires flexibility and hence in the considered opinion of the Tribunal, the appellant is entitled to approach the Tribunal and the appeal is maintainable.

Pointing to Section 16 of the NGT Act, Senior Counsel for the respondents would vehemently urge that the appeal is not maintainable in view of the provisions of NGT Act. Also, sections 14 and 15 of the NGT Act will not be applicable to the present case. Section 16(h) deals with two parts (1) restricted areas and (2) shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986. After considering the rival submissions made and also looking into the relevant legal provisions, this Court is unable to agree with the contentions put forth by the respondents. As rightly pointed out by the learned Senior Counsel for the respondents, Sections 14 and 15 of NGT Act have no application to the present factual position, though the appellant has mentioned those provisions in the appeal grounds. As could be seen from the provisions of Section 16 of the NGT Act, grant of EC can be challenged only on either of the two grounds envisaged under Section 16(h) of the Act. While the challenge can be made against refusal to grant under Section 16(i) of the Act, the grant of EC under Section 16 can be agitated in an appeal firstly, if the environmental clearance is granted in the area in which industries, operations and processes are prohibited and secondly, if the industries, operations or processes, etc., shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986.

Hence the contentions put forth by the Senior Counsel for the respondents that the appeal is not maintainable since the appellant is not an aggrieved person and that the appeal does not fall under any one of the grounds envisaged under Section 16 of the Act have to be rejected as devoid of merits. Thus, the additional questions are answered accordingly.

QUESTION No.1:

This question whether the appeal is maintainable in view of *WP No.30326/2011* filed by the appellant herein and pending on the file of the High Court of Madras does not arise for consideration at this stage in view of the judgement of the Division Bench of the Madras High Court by judgment dated 24th January, 2013 upholding the decision of the State Government to convert the Legislative Assembly cum Secretariat complex as a Multi Super Specialty Hospital.

QUESTION No.2:

Insofar as this question whether the grant of Environmental Clearance by Tamil Nadu Environmental Impact Assessment Authority was violative of law, since the assessment for making such a grant lies with the Central Government, Ministry of Environment and Forests, the appellant had given up the same, since he has admitted that the respondents 4 and 5 were constituted by the Central Government of India by a notification.

QUESTION No.3:

The application made by the second respondent and also the proceedings of the fourth respondent dated 16th May, 2012 are the continuation of the earlier EC dated 20th October, 2008. The application was made by the second respondent in Form 1 and Form 1A, when no other format is available for the purpose of amendment or modification of the conditions and merely because the fourth respondent has termed it as Environmental Clearance, its proceedings dated 16th May, 2012, cannot be construed as second Environmental Clearance, but the continuation of the earlier EC dated 20th May, 2008.

QUESTION No.4:

Doubtless, Hygiene integrity, Infection control and Environmental protection warrant special consideration in such a Multi Super Specialty Hospital. Keeping these in mind, the modified Environmental Clearance dated 16.05.2012 issued by the SEIAA has imposed a number of terms and conditions to be strictly complied by the proponent during the operation of the Multi Super Specialty Hospital in question. The conditions are categorized into two parts, namely, Part A – Specific Conditions pertaining to Construction and Operation phases and Part B – Other Conditions. The Tribunal paid full attention, gave its utmost consideration and analyzed each of the conditions listed above in the context of the proposed Multi Super Specialty Hospital in question and its operation. In the opinion of the Tribunal all the conditions stipulated by the SEIAA are very much necessary for the activity envisaged in the complex in question. Therefore, The Tamil Nadu Pollution Control Board, the Authority that issues the "CONSENT TO OPERATE" is directed to include all these conditions cited (*refer to the original judgement*) as "MANDATORY CONDITIONS" to be strictly and fully complied by the proponent for getting the 'Consent to Operate' from the Authority above, for the Multi Super Specialty Hospital in question.

The proposed Multi Super Specialty Hospital appears to be a venture to provide health and Medicare facilities of International Standards with ultra modern diagnostic tools and instrumentation. It is imperative therefore, not to overlook or omit any aspect of their impact on the Environment while operating the Hospital. In fact, environmental safeguards should play a pivotal role to compliment the noble objectives of the project.

Therefore, the Authority above is further directed to include the following conditions also as "MANDATORY CONDITIONS" to be strictly and fully complied by the proponent for getting the 'Consent to Operate' from the Authority above, for the Multi Super Specialty Hospital in question:

1. Proper location of different specialty units inside the structure in question in such a way that the indoor environmental conditions do not encourage or spread infection across the Specialty medicare Units in the MSSH in question.

2. Preparation of "SPECIALTY-WISE ACTION PLAN" to Control, Minimize and Mitigate environmental impacts and provide safeguards, following the 'Guidelines issued by Directorate General of Health Services, Ministry of Health and Family Welfare, Government of India, Hand Book on Bio Medical Waste Management published by the Government of Tamil Nadu and other Information Resources on Hospital hygiene, hospital waste management and environmental protection available in other Multi Specialty Hospitals such as All India Institute of Medical Sciences, New Delhi, Apollo Group of Hospitals in Chennai etc.
3. Preparation of "SPECIALTY- WISE Human Resource Training Manual" and placement of fully trained personnel at appropriate Specialty medicare Units to follow practices and procedures that ensure strict compliance of stipulated conditions.
4. Preparedness in terms of equipment, treatment units, trained staff and other requirements to comply with the management of Hazardous wastes, if any, generated in the MSSH in question. In this context, special note should be taken by the Authority above with regard to Mercury management).
5. Compliance to all the requirements of The Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2010, if applicable to any one or more Specialty Medicare Unit(s) of the MSSH in question.
6. Strict and full compliance of all the requirements of Rules and Directives of the Atomic Energy Regulatory Board, in respect of providing 'Radiation related medicare services' and "Management of radiation related Wastes" generated during the operation of the MSSH in question.
7. Strict and full compliance of the E-Waste (Management and Handling) Rules, 2011.
8. All the vehicles operated by the Proponent inside the campus of the MSSH in question (for example, to shift staff from one unit to other and so on) should be "Battery operated" and not fuelled by petrol/diesel/gas.
9. In addition to the above conditions, if the Authority above, based on its experience in monitoring similar healthcare facilities in the State desires to impose more conditions, it may do so, as per law.

In order to create and promote awareness on "Environmental Protection measures in Healthcare Facilities" the Tamil Nadu Pollution Control Board is directed to erect and maintain informative KIOSKS at strategic points in the MSSH Complex in question.

The Judges make it abundantly clear that there is nothing to compromise in the matters relating to Ecology and Environment and therefore caution the Authority above to issue the "CONSENT TO OPERATE" only after carrying out a detailed inspection of the MSSH after it is established and fully satisfying itself of the complete compliance of all the terms and conditions as stipulated above.

QUESTION No.5:

For the foregoing reasons, the appellant is not entitled to the relief sought for and the appeal petition is disposed of accordingly. There shall be no order as to costs. Consequently, connected MA is closed.

Riva Beach Resort Pvt. Ltd.

Vs

Goa Coastal Zone Management Authority

APPEAL NO. 40/2012

JUDICIAL AND EXPERT MEMBERS: Justice V.R. Kingaonkar, Shri P.S. Rao, Dr. P.C. Mishra, Ranjan Chatterjee and Shri Bikram Singh Sajwan

Key words: demolition order, land survey, village Mandrem of Pernem Taluka, Goa Coastal Zone Management Authority, hotel industry, agricultural land

Application not allowed

Date: 21st February 2013

Challenge in this Appeal is to the order dated 22nd June, 2012 passed by Goa Coastal Zone Management Authority (the Respondent). By that order, the Respondent directed M/s Riva Beach Resort Pvt. Limited (the Appellant) to demolish seven (7) structures along with ground plus one structure standing on site situated on land survey no. 273/3 of village Mandrem of Pernem Taluka (Goa), under Section 5 of the Environment (Protection) Act, 1986 read with sub-rule 3(a) of Rule 4 of the Environment (Protection) Rules, 1986. The demolition order is issued on the ground that the structures in question are within "No Development Zone" area of Junaswada, Mandrem-Pernem and carried out in violation of the Coastal Regulation Zone (CRZ) Notification, 1991.

There is no dispute about the fact that the Appellant is a company incorporated under the provisions of Companies Act, 1956. The Appellant deals in Hotel Industry. It runs a beach Resort called "RIVA BEACH RESORT" in village Mandrem-Pernem, Goa. The Appellant purchased certain parcels of agricultural land bearing survey no. 277/2 and survey no. 273/3 under three (3) Sale Deeds dated 20th September, 2004, 19th October, 2006 and 12th April, 2012.

The Appellant further claims to have entered into oral agreement with some of the occupants of the said structures which are now acquired for the use of beach resort. The Appellant was served with second show cause notice dated 11th August, 2009 by the Deputy Collector, Pernem-Goa, calling upon him to explain its stand as regards seven (7) different structures which were allegedly illegally raised. A summary inquiry was conducted by the Deputy Collector, Pernem (Goa) in this behalf. The Appellant contended that the structures were legal and existed since 1982 onwards. The Appellant further contended that those structures were not affected by the CRZ Notification which came into force on 19th February, 1991.

According to the Appellant, the impugned order issued by the Respondent is illegal and improper. The structures are not affected by the CRZ Notification in as much as they were standing on the land survey no. 273/3 since 1982 or even prior thereto. The Respondent did not conduct fair enquiry prior to passing the impugned order.

The Respondent denied truth into material averments made by the Appellant.The Judges have heard learned counsel for the parties. They have carefully scrutinized the available record and the documents. In their opinion, the following points arise for decision in this Appeal:

i. Whether it is proved that the seven (7) structures as indicated in the show cause notices, served on the

Appellant, and shown in the survey map, are the constructions raised after the CRZ Regulations of 1991?

ii. Whether it is proved that the said structures were in existence prior to the CRZ Notification of 1991 and were in possession of certain Mundkars as alleged by the Appellant?

iii. Whether the impugned order is legal, proper and correct?

The Appellant has adopted vague stand. The very fact that the Appellant alleges "Oral Agreements" (*indicated in paragraph – 5 (iv) of the Appeal Memo*) without giving details of the persons is indicative of the sleeper stance adopted in this context. It is further worthy to be noted that there is absolutely no material to infer that such oral agreements were reached between certain Mundkars and the Appellant. The Appellant failed to produce any revenue record in support of the allegation that the particular structures standing on survey no. 273/3 had been in possession of Mundkars nor their names are shown in the Appeal Memo.

At this juncture, it may be noted that the Goa, Daman and Diu, Mundkars (Protection from Eviction) Act, 1975 (for short, 'Mundkars Protection Act, 1975) categorically provides for maintenance of a register of Mundkars. Now, it is pertinent to note that the Appellant failed to produce any extract of the register of Mundkars in order to establish the fact that certain Mundkars were in possession of residential houses as alleged by him, before commencement of the CRZ Notification of 1991. What appears from the record is that only three (3) structures existed when the survey map was drawn by the DLSR in 1972. The Appellant failed to show as to when the other seven (7) structures were constructed. The Respondent has placed on record the communication dated 18th February, 2010 issued by the Deputy Collector and SDO, Pernem- Sub-Division and Additional Collector, North Goa District. It appears that the Deputy Collector conducted enquiry and also obtained report of Mamlatdar. The report of Mamlatdar clearly showed that the constructions were new and carried out recently. The Deputy Collector came to the conclusion that the seven (7) structures were illegally raised without obtaining prior permission from the CRZ Authority. An independent enquiry conducted by the Mamlatdar and Deputy Collector also corroborates the contention of the Respondent. Not only that there are no entries in the concerned Mundkars' Register but there is absolutely no record to show that construction permissions were obtained by either of them while making constructions in question.

In view of the forgoing discussion, the Judges are of the opinion that the Appellant had made construction of seven (7) structures for commercial use of the beach Resort. The vague contention of the Appellant is uncorroborated by any tangible material and therefore will have to be and must be rejected. In this view of the matter, the Judges are of the opinion that the appeal is destitute of merits.

Nisarga
Vs
Satyawan B. Prabhudessai

APPLICATION NO. 29/2012

JUDICIAL AND EXPERT MEMBERS: Justice V.R. Kingaonkar, Shri P.S. Rao, Dr. P.C. Mishra, Ranjan Chatterjee and Shri Bikram Singh Sajwan

Key words: deforestation, withdrawal of permission, land, agricultural purpose, Additional Collector-II, South Goa Distt., Margao, petrol pump, private forest, limitation.

Application dismissed with directions

Date: 21st February 2013

By this Application, Applicant seeks withdrawal of permission granted on 2nd April, 2008 by Additional Collector-II, South Goa Distt., Margao to convert a part of land in survey no. 25/2 from agricultural to non-agricultural purpose. In addition, the Applicant further seeks restitution of the balance area out of 74,875 sq. meters in Survey No. 25/2, which has been deforested by felling of trees by Respondent No. 1, along with payment of costs as well as initiation of criminal action against him for committing forest offence.

Nisarga Nature Club, the Applicant in this case, is a Registered Society having its office at Aquem, Margao, Goa. There is no dispute about the fact that Satyawan B. Prabhudessai (Respondent No. 1) owns land in Survey No. 25/2 situated at Village Sangod in Sanguem Taluka, (Goa).

The Applicant alleges that the Respondent No. 1 has cleared vegetative cover from 18000 sq. meters area in Survey No. 25/2 which has been bulldozed and a Petrol Pump was installed on an area of 4000 sq. meters The Applicant further alleges that forty one (41) trees were cut illegally from Survey No. 25/2. The Applicant has come out with a case that the Respondent no. 1 has planted cashew trees in the entire area of 74,875 sq. meters after illegally cutting the trees standing thereon. Thus, the Respondent No. 1 degraded the forest area and committed forest offence. The Applicant alleges that natural forest standing on 18000 sq. meters of the land (Survey No. 25/2) has been cut by the Respondent No. 1. Consequently, the Applicant has sought revocation of the permission granted by the Additional Collector to the Respondent No. 1 for conversion of the part of Survey No. 25/2, to the extent of 2500 sq. meters, from agricultural to non-agricultural use. So also, the Applicant seeks restitution of the balance area out of 74,875 sq. meters of Survey No. 25/2 which has been degraded by the Respondent No. 1. The Applicant also seeks direction to the Respondent No. 2 for taking photographs of the area prior to issuance of No Objection Certificate (NOC) for conversion of the land or for felling of trees under the Goa, Daman and Diu, Preservation of Trees Act, 1984.

All the Respondents resisted the application mostly on identical grounds. They denied that permission was illegally granted for conversion of a part of Survey No. 25/2 for non-agricultural purpose to the extent of 2500 sq. meters. Apart from that, the land is not a private forest and therefore provisions of the Forest (Conservation) Act, 1980 are not applicable to the said land. The Respondents further denied that there is degradation of entire area of 74,875 sq. meters within Survey No. 25/2. They also disputed correctness of google map sought to be relied upon by the Applicant. They would submit that the aerial view of the location provided by the google map is incapable to distinguish between green shrubs and tree cover. The Respondent No. 1 further submits that the application is barred by limitation. It is also alleged

that the Applicant has no locus standi to file such application.

Considering the rival submissions, the following issues are required to be addressed and answered. They are:-

(i) Whether the application is barred by limitation and liable to be rejected on this account?
(ii) Whether the area of 2500 sq. m, which has been converted for non-agricultural use, under Sanad granted by the Additional Collector, Margao, is part of private forest land or that part itself is a private forest?
(iii) Whether the remaining area of Survey No. 25/2, excluding 2500 sq. meters out of 74,875 sq. meters land of Survey No. 25/2 is a "private forest"?
(iv) Whether it is proved that the Respondent No. 1, by act of cutting the trees from the Survey No. 25/2 has caused damage to the environment? If so, as to what extent and how restitution of the environment for such area is required to be made?

The Judges do agree that if the application is covered only under Section 14 of the National Green Tribunal Act, 2010 and cannot be considered under Section 15 thereof then the same will have to be held as time barred. There cannot be duality of opinion that the Tribunal cannot grant extension of time beyond the statutory period expressly provided under the special enactment like the National Green Tribunal Act, 2010. The Judges are of the opinion that the second relief sought by the Applicant is within prescribed period of limitation.

Perusal of the record shows that the Government of Goa has laid down certain criteria for identification of "Private Forest". Copy of the said order is placed on record. That order dated 4th September, 2000 reveals that a committee was constituted as State Level Expert Committee comprising of seven members under chairmanship of Dr. Hemant Karapurkar. The criteria/guidelines for identification of the properties as forest were set out as follows:-

(i) 75% of the composition should be of forestry species.
(ii) The area should be contiguous to the government forest and if in isolation should be more than 5 ha.
(iii) Tree cover canopy density should not be less than 0.4.

The Judges may take note of the manner in which the impugned order has been rendered by the Additional Collector whereby permission was granted for conversion of a part of Survey No. 25/2 to non-agricultural use. On careful scrutiny of the record it transpires that the Respondent No 1 submitted application for conversion of 2500 sq. meter area out of Survey No. 25/2 for non-agricultural purpose. Copy of the said application (A-4 P14) clearly shows that only 2500 sq. meters area was sought to be converted for non-agricultural purpose, namely, establishment of Petrol filling Station. The application was submitted on 11th July, 2006 to the Collector of South Goa. It was duly processed. The report of Deputy Conservator of Forests was called upon in order to verify whether the land in question is a Government forest or not. The permission granted to the Respondent No. 1 is rather classic example of

non-application of mind by the concerned authority, namely, Additional Collector, South Goa. A bare perusal of the relevant permission for conversion of Survey No. 25/2 to the extent 2500 sq. meters area goes to show that it was categorically granted for conversion of the land for "construction of residential house property". The conversion of land was not specifically permitted for any commercial purpose as such though the permission was sought for installation of petrol filling station yet it was erroneously considered as permission for conversion of said land to residential use. The permission letter (Sanad) dated 2nd April, 2008 reads, *"From a Survey No. 25/2 admeasuring 2500 sq. meters be the same a little more or less for the purpose of residential use only."* The Judges cannot assume, therefore, on their own, that there could be error committed by the competent authority and actually permission (Sanad) is granted for conversion of the land for commercial use of the Respondent No. 1. Faced with this difficulty, the Judges are of the opinion that the impugned order (Sanad) is absurd and *non-est* in the eye of law.

Although Respondent No. 1 was allowed to convert area of 2500 sq. meters of the agricultural land in Survey No. 25/2 for residential purpose, he did not use the land for construction of any house property as such. Secondly, instead of clearing 2500 sq. meters area, he bulldozed the earth from 18000 sq. meters area. Instead of 2500 sq. meters area, he utilized 4000 sq. meters area for installation of the Petrol Pump. Needless to say, under pretext of the said conversion permission (Sanad) the Respondent No. 1 got cleared vegetative cover from much excessive area. It is necessary to ensure protection of environment in the area by applying "precautionary principle". It is more probable that vehicular traffic will increase in the area due to existence of the Petrol Pump. The heavy vehicles and vehicles like tractors, diesel cars, etc., may cause air pollution. The Collector may consider the relevant aspects before exercising discretion to grant the necessary permission to the Respondent No. 1. The Judges do not, however, find it necessary to give any opinion on merits of the matter in the context of probability of air pollution and the extent thereof. The Collector also may take notice of excessive clearance of the 15500 sq. meters area though the permission sought was only for 2500 sq. meters area.

For the reasons stated above, the Tribunal dismisses the application with no order as to costs. Respondent No. 1 is directed to maintain status quo and not to operate the Petrol filling station until appropriate permission is granted by the competent authority, which may impose conditions such as plantation of the bulldozed area at the cost of the Respondent No. 1, under supervision of the Forest Department, or alike, or may refuse the permission as may be deemed proper. The application is accordingly disposed of.

M/s Rajasthan trading Corporation

vs.

The Appellate Authority, TNPCB and others

M.A. No. 6 of 2012 (SZ)

in Appeal No. 06 of 2012 (SZ)

Coram: Justice Shri M. Chockalingam, Prof. Dr. R. Nagendran

Keywords: Limitation Act, Condonation, stone crushing unit

Application Allowed.

Date: February 28, 2013

JUDGMENT

· M/s Rajasthan trading Corporation vs The Appellate Authority, TNPCB and others on February 28, 2013

· M/s Kankaria trading Company v The appellate Authority, TNPCB and others on February 28, 2013

In the present appeal, the appellant seek condonation of delay of 84 days in preferring the appeal No. 6 of 2012 (SZ) whereby the applicant had sought for quashing of the order of the 1st respondent made on 30th July 2012 confirming an order of the 3rd respondent passed in Appeal No. 95 of 2012 dated 16.07.2012.

The applicant owned a stone crushing unit and the 3rd respondent made an order dated 16.07.2010 for the closure of the unit. The applicant challenged the same before the Appellate Authority; Tamil Nadu Pollution Control under the provisions of the Water Act and the said appeal was rejected on 30.07.2012. Aggrieved over the same, the applicant filed a writ petition before the High Court of Madras and the same was returned on different dates and finally on 04.10.2012, the appellant preferred the present appeal wherein a delay of 84 days had occasioned. The appellant asserts that diligence and care was exercised on his part while preferring the writ petition for quashing the order under challenge and thus he could avail the benefit of Section 14 of the Limitation Act since he had initiated proceedings before another forum on the bona fide belief. The respondent submitted that the application had to be dismissed since the delay is not only on the higher side but also inordinate.

The Tribunal observed that, the High Court of Madras made the last return of writ petition on 04.10.2012. It was evident that the applicant instead of preferring an appeal before the Tribunal had chosen another forum and filed a writ petition and thus it was a case where the applicant could have the benefit of Section

14 of the Limitation Act. The Court added that it could be seen that the said period which was taken by the party in preferring the proceedings in another forum but with bona fide belief was not extended by the court, but it had only excluded the period of limitation and thus in view of the above and that too in a matter connected to and concerned with environment, the opportunity of being heard was given to the applicant and the said delay had to be condoned with costs.

M/s. Brindha Dyeing work, Chennimalai, Erode Dist.

V

Chairman, TNCB, Chennai and others

APPLICATION No. 11 OF 2012 (SZ)

Coram: Justice Shri M. Chockalingam, Prof. Dr. R. Nagendran

Keywords: mandamus, dyeing unit

Application Disposed of as Withdrawn.

Date: February 28, 2013

JUDGMENT

The Applicant filed the present Writ Petition before the High Court of Madras praying for issue of writ of certiorarified mandamus calling for the records and to quash the order dated 11.1.2011 in proceedings No. T2/TNPCB/F.31518/2011-1. Here, Respondent had issued closure order for the Applicant's unit and for further directions to the Respondents to issue consent order to operate the dyeing works unit of the Applicant.

The Writ Petition was transferred to the Registry of the National Green Tribunal pursuant to the orders dated 6.12.2012 in ROC No. 213/2012 (Writs) of the High Court of Madras. Upon admission of the Writ Petition as an Application in the Registry of National Green Tribunal, Southern Zone, Chennai and when taken up today, the learned counsel for the Applicant made an endorsement for withdrawal of the application. Hence the application is disposed of as withdrawn. All other connected matters filed in Writ Petition are treated as closed. No order as to costs.

Shri P. S. Vajiravel

Vs

The Chairman, Tamil Nadu Pollution Control Board and others

APPEAL NO. 9/2012(SZ)

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

Key words: closure of dyeing unit, renewal of lease period, Tamil Nadu Pollution Control Board, Effluent Treatment Plant, Zero Liquid Discharge, District Munsiff Court, Erode, natural justice

Application allowed

Date: 28th February, 2013

This appeal challenges an order of the Respondent No. 1, namely the Tamil Nadu Pollution Control Board (for short TNPCB) dated 28th October, 2012, whereby the Respondent No. 1 issued order for the closure of the appellant's dyeing unit. Necessary facts for the disposal of the case can be stated thus:

The appellant is the proprietor of M/S. Shiva Shakthi Dyeings and commenced the business in the year 1995. The unit comprises of a factory and an Effluent Treatment Plant (for short ETP). The land on which the factory is situated is owned by one E.P. Thyagarajan. Due to constraints of space, the unit had to look for further space to construct ETP as directed by the Tamil Nadu Pollution Control Board (for short the TNPCB). One Mr. Shanmugam offered his land to put up the ETP and reverse osmosis plant (for short RO plant) and he leased out an area of 7500 square feet of vacant land to the dyeing unit to enable to construct the ETP and the lease deed was executed in 1999. The appellant had incurred additional expenses to diligently comply with the norms for the treatment of effluent discharge as prescribed by the TNPCB and obtained a letter of consent from the first respondent to operate the dying unit. Subsequently, in the year 2007, the lessor of the applicant namely Mr. Shanmugam, clandestinely effected a sale of the land to one Mr. Prabhu, the son of one Mrs. Mallika Paramasivam, a politician and the present Mayor of Erode, who used his mother's clout over the officers of the first respondent and had attempted to cancel the license issued to the dyeing unit and the second respondent issued show cause notice dated 30th March, 2012 and the said letter was issued mechanically without even carrying out an inspection as mandated under the statutes. The above said notice is the subject matter of the *W.P.No.12726 of 2012*, which is *sub judice* before the High Court of Madras.

On account of the dispute between the appellant and his landlord, the application for renewal of consent could not be considered and the same was intimated to the appellant on 5th July, 2012. In the proceedings dated 28th October, 2012, an order of closure and disconnection of power supply was issued on the premises that the unit has been operating without valid consent and the validity of the lease period where ETP and ZLD (Zero Liquid Discharge) had been constructed had expired. As per the directions issued in the order dated 4th July, 2007 passed in *W.P. Nos. 5494 of 1998 and 30153 of 2003*, the unit had to provide ETP and ZLD and the same was installed in the leased land and hence the Board has requested the appellant to furnish the valid lease agreement to the respondents. The unit had not furnished the same. The non-renewal of lease period was also cited as one of the grounds for issuing the order of closure. By the proceedings dated 28th October, 2012, the electricity supply was disconnected. With regard to the civil dispute between the appellant and his landlord, it is an admitted fact that the same has been filed by the appellant wherein an injunction has been obtained which was made absolute. In the event of the suit filed

by the appellant getting dismissed, it would be difficult for the respondents to revoke the order of consent on that score.

The Assistant Engineer, Rural/Veerappan Chathiram Tamil Nadu Generation and Distribution Corporation Ltd. (Respondent No. 5) has filed a counter stating that the Superintending Engineer, Taml Nadu Pollution Control Board (4th respondent) had received a letter dated 28th October, 2012 from the first respondent to disconnect the service connection for the appellant unit. In the said letter the TNPCB had stated that the dyeing unit was causing pollution and as per the request of the Board, the service connection was disconnected with prior notice in accordance with law.

The only question that arises for consideration in the appeal is whether the order of closure made by the first respondent dated 28th October, 2012 *vides* proceedings *No. T2/TNPCB/F.13756/12-1* is liable to be set aside for all or any of the reasons stated in the appeal grounds.

After careful consideration of the available materials, the Tribunal is of the considered opinion that the directions of the first respondent ordering closure of the applicant unit and also issuing directions to stop the electricity cannot be sustained for the more reasons than one. The appellant, who is the proprietor of a small dyeing unit called Shivashakthi Dyeing, took 7500 sq.ft of vacant land on lease in the year 1999 to put up the ETP and constructed the same. It is not in controversy that the respondent Board being satisfied with the norms for the treatment of effluent discharge and other parameters issued a letter of consent to operate the said unit. The appellant has also made application for renewal of the consent and he had not only paid the consent fee for the earlier periods, but also for the period 2012-13 on 12th April, 2012 as could be seen from the documents relied on by the appellant. It is pertinent to point out at this juncture that though the respondent Board has received the necessary fee for the period 2012-13 and issued receipt therefore, has not given the letter for renewal. On the contrary, it has issued the order under challenge and no explanation is forthcoming from the Respondent No. 1 Board in this regard.

A perusal of the order of closure issued by the first respondent Board dated 28th December, 2012 indicates that an inspection of the unit was made on 19th September, 2012, that during that time the unit was under operation, that a show cause notice was issued, that the unit has furnished a reply denying the right of the land owner as a civil dispute was pending in the District Munsiff Court, Erode in *O.S.No. 424 of 2007*, since the validity of the lease agreement has been lapsed, the unit's request could not be considered and thus the reply was not satisfactory, that since the Unit was operating without a valid consent and the validity of the lease of land where ETP and ZLD were constructed has already expired and the unit not submitted the renewal of lease deed, the second respondent, District Environmental Engineer, Erode, has recommended for closure under Section 33-A of the Water Act, 1974. Hence a direction was issued to disconnect the electricity and a direction issued to close the Unit.

Pointing to a certified copy of an order of the said court in an Interim Injunction petition, the learned counsel for the appellant would submit that the appellant was enjoying an interim order which was made absolute. Since the petition was allowed, the contention put forth by the appellant as to the pendency of the suit and the original order of injunction is in force is not disputed by the respondent Board. It is also contended by the appellant, that on coming to know the sale of the piece of land to one Mr. Prabhu, he

was also added as a party in the said proceedings and the injunction was binding on him also. The order of the respondent refers to an inspection of the appellant unit on 19th April, 2012 and at that time, the unit was under operation. The report of the second respondent, District Environmental Engineer, TNPC Board, Erode found in Page No.11 of Paper Book Volume-II of the appellant makes it clear that at the time of inspection, that the readings on the ETP and ZLD systems indicated that the ZLD was operated at 90.78% efficiency and the performance of the ETP and RO were adequate. On receipt of the show cause notice dated 30.03.2012, which was issued on the strength of the letter received from Mr. Prabhu, the

present owner of the land, the appellant has sent a detailed reply on 4th April, 2012, in which he has narrated all the details and in particular the pendency of the civil suit in *O.s.No.424 of 2007*, which was initially filed against the original owner and subsequently impleading the present owner Mr. Prabhu apart from the fact that the interim injunction was in force at that time. Under such circumstances, the recommendation made by the second respondent for cancellation of the consent to operate and pursuant order of the first respondent cancelling the consent to operate, are arbitrary, invalid and also against the proceedings pending in the civil court. The authorities have acted merely on the strength of the letter of the present owner of the land, who asserted in his letter the period of lease was over, but has not cared to consider the original owner of the land who entered into a lease agreement with the appellant and also the present owner who was also a party to the proceedings in court actually suffers from an order of injunction in the said suit. The order under challenge suffers by a grave violation of the principles of natural justice. The authorities have not even given an opportunity to the appellant of being heard to put forth his case. It is pertinent to point out that the only material available in the hands of the authorities is the letter of the present owner of the land and a suitable and acceptable reply of the appellant. Having accepted the renewal license fee for the year 2012-13, the Board, instead of renewing the letter of consent to operate, has taken a drastic action of closure of the unit with immediate effect. The recommendation made by the District Environmental Engineer, TNPC Board, Erode, the second respondent herein who recommended for cancellation without required materials to do so, is a glaring example of non-application of mind, utter carelessness to the court proceedings and also flagrant violation of the principles of natural justice.

Hence, without any hesitation, the order of the first respondent dated 28th October, 2012 issued for the closure of the appellant unit has to be set aside as illegal and invalid in law and consequently the order issued by the Respondent No. 5 for disconnecting the electricity is also set aside. As it is not the case of the respondents that the appellant Unit is lacking in any of the environmental parameters required to operate the Unit, the Respondent No. 1 is directed to issue renewal letter of consent to operate and the Respondent No. 5 is directed to give electricity connections within one week herefrom to the appellant's unit.

The appeal is allowed. There will be no order as to the costs.

Hindalco Industries Ltd.

Vs

State of Maharashtra and Others

APPEAL NO. 64/2012

JUDICIAL AND EXPERT MEMBERS: Justice V.R. Kingaonkar, Shri P.S. Rao, Dr. P.C. Mishra, Ranjan Chatterjee and Shri Bikram Singh Sajwan

Key words: grant of permission, bauxite mine, Chandgad, Kolhapur district, license,

Application dismissed

Date: 28th February 2013

Being aggrieved by communication dated 9th October, 2012 issued by Respondent No. 1, refusing grant of permission for three (3) month's time beyond 2nd October, 2011 for lifting and transportation of approximately 1.6 lakh tonnes of mined-out bauxite mineral, deposited near Kasarsada Bauxite Mine situated at Chandgad in Kolhapur district, this Appeal is filed. The Appellant challenges the said communication on various grounds.

The prayer made in the Appeal may be set- out for better understanding of the reliefs sought by the Appellant-

1) To quash the impugned order dated 9th October, 2012 passed by the Respondent No.1.
2) To direct the Respondents 1 to 3 to forward the proposal of the Appellant to the Central Government for grant of approval.

Some of the undisputed facts may be stated at the outset. M/s Hindalco Industries Ltd. (the Appellant) is a Public Limited Company incorporated under the Company's Act, 1956. The Appellant runs an alumina refinery plant at Belgaum (Karnataka) at a distance of about 50/60 Km. from Village Kasarsada, District Kolhapur (MS). The Appellant took necessary mining license from the Competent Authority for mining of bauxite mineral from the site of the mining.

The State Government executed the mining lease in favour of Hindalco for a period of ten years with effect from 25th September, 2008. The Central Government granted permission for diversion of 106.76 ha of forest land for a period of 10 (ten) years subject to evaluation of the compliance of conditions at the end of five years. The approval for Forest Clearance (FC) was to expire on 2nd October, 2011. The Appellant submitted a proposal to the Deputy Conservator of Forest, Kolhapur for renewal of Forest Clearance only for 34.43 ha vide letter dated 30th March, 2010 .On 2nd June, 2011 the Appellant submitted another proposal addressed to the Deputy Conservator of Forest, Kolhapur to grant permission to lift and transport the finished and semi-finished mined out bauxite minerals within a period of three months from 2nd October, 2011,i.e. date of expiry of forest clearance (FC) as it was difficult to lift and transport the mined-out minerals during monsoon period.

The Judges have heard the counsel for the parties. They have also carefully perused the relevant documents placed on record. The points which arise for consideration in this Appeal may be set out as follows:-

(1) Whether the impugned communication is legal and proper or that it is arbitrary?
(2) Whether this Tribunal can direct the respondents to forward the proposal to the MoEF with necessary recommendation granting permission to lift and transport the mined-out bauxite minerals lying dumped at the mining site?

Before considering the merits of the rival submissions, it would be useful to note the fact that the Appellant did not make any specific request for permission to lift and transport the mined-out finished and semi-finished bauxite minerals from the mining site. As pointed out earlier, the prayer clause in the Appeal memo categorically shows that the Appellant sought relief of quashing the impugned communication dated 9th October, 2012 issued by the Respondent No. 1 along with further relief that the proposal be directed to be forwarded to the Central Government for grant of approval for extension of three month's time beyond 2nd October, 2011 for lifting and transportation of mined-out bauxite mineral.

A careful scrutiny of the relevant documents would make it amply clear that the Appellant moved proposal vide letter dated 30th March, 2010, addressed to the Deputy Conservator of Forest, Kolhapur, for renewal of FC in respect of 34.43 ha. The Appellant stated in the said communication that the previous FC granted for 106.76 ha would come to an end on 2nd October, 2011. It was for such a reason that application for diversion of 34.43 ha forest land and renewal of the bauxite mining F.C. including construction of feeder road, was submitted. While the proposal was still pending with the State Government, the Appellant in the letter dated 2nd June, 2011 requested the Deputy Conservator of Forest, Kolhapur to permit extension of time of three months, beyond 2nd October, 2011, for lifting and transportation of the mined-out bauxite minerals. The proposal was forwarded to the Conservator of Forests, (Territorial), Kolhapur by the Deputy Conservator of Forests with a favourable recommendation on dated 30th August, 2011. The Deputy Conservator of Forests found that 78486.64 Cubic Meters of finished stock of bauxite was available at the site of the mine. The Conservator of Forests (T),Kolhapur vide communication dated 24th October, 2011 forwarded the proposal along with recommendation of the Deputy Conservator of Forests, Kolhapur to the Principal Chief Conservator of Forests (HoFF)and Nodal Officer, Nagpur. The PCCF in his letter dated 7.4.2012 informed the Principal Secretary(Forests) in Forest Department, Mantralaya, Mumbai that the proposal of the Appellant be not accepted. He gave certain reasons in support of the Report. The reasons may be briefly enumerated as follows:-

(I) The area in question falls under the Western Ghats Region which is highly sensitive from ecological and biodiversity point of view.
(II) The Appellant was granted similar permission in 1998 while granting renewal of the FC. The Appellant was directed to carry out plantation over part of the mining area. Though it has come up well in the initial stages there is no assurance of its likely to be growing well in future with experience of adjoining areas. By allowing the lifting and transportation of the dumps (bauxite stock) , it will lead to soil erosion and will also have adverse impact due to various operations involved, viz. removal of dumps by using heavy machinery, movement of heavy vehicles for transportation of material etc. To transport this balance material approximately 8000 trips of heavy trucks will be needed, which is going to adversely affect the environment.
(III)The mining activity being discouraged by the Forest Department, the proposal for mining is not being recommended.
(IV) The MoEF vide letter dated 30th March, 2012 had constituted Committees to identify the pristine forest areas, where any mining activity was likely to cause irreversible damage to the forests which require conservation.

It is necessary to examine whether the impugned communication is covered under Section 2 of the Forest (Conservation) Act, 1980.

In the instant case, the proposal was submitted by the Appellant on 2nd June, 2011 requesting grant of permission to lift and transport the mined-out mineral. The time limit of 225 days for receipt of proposal with the recommendation of the State Government by the Central Government expired on 13th January, 2012. A perusal of the record reveals that the PCCF submitted his report on 7th April, 2012, i.e., after almost 84 days of expiry of the total time limit prescribed in the Rule.

Thus the proposal can be deemed as rejected on account of lapse of the stipulated time period. Taking a stock of forgoing discussion, the Judges find that Respondent No. 1(State) was not bound to assign reasons in support of the impugned decision. There is no Rule which makes it obligatory for the Respondent No. 1 to record reasons in such a matter. No penal action was contemplated against the Appellant and, therefore, principles of natural justice will have no Application in the present case because the power available to the Respondent No. 1 is purely discretionary.

The Judges are of the opinion that the Appeal is without merit. Further, Respondent No. 1 cannot be directed to forward the proposal of the Appellant to the Central Government for grant of approval as the discretion of the Respondent No. 1 cannot be substituted by passing such order. Consequently the Appeal stands dismissed with no order as to costs. They, however, deem it proper to give following directions to the Respondent No.1. -

1. The Respondent No.1 (State) should issue necessary guidelines to streamline the procedure for timely scrutiny and processing of such proposals, at each level in accordance with the time limit as prescribed in Rule 6 of the Forest (Conservation) Rules, 2003.
2. The Respondent No. 1(State) shall give specific directions to regulate internal procedure for the purpose of avoiding delay in scrutiny and processing of such proposal.
3. The Respondent No. 1 should also evolve the procedure for fixing liability for the delay committed during the processing of the proposal, in order to avoid delay in making the final decision in such matters.

Nikunj Developers and Others
Vs
State of Maharashtra and Another

M.A. NO. 247 OF 2012

ARISING OUT OF

APPLICATION NO. 76/2012

JUDICIAL AND EXPERT MEMBERS: Justice Swatanter Kumar, Justice P. Jyothimani, Dr. D.K. Agrawal, Dr. G.K. Pandey, Prof. A.R. Yousuf, Dr. R.C. Trivedi

Keywords:

Application dismissed

Date: 14th March, 2013

The Secretary Environment Department, State of Maharashtra, on 24th April, 2012 vide its order issued final directions under Section 5 of the Environment Protection Act, 1986 (for short 'the Act') read with Environment Impact Assessment Notification dated 14th September, 2006 (for short 'the notification') directing the Member Secretary, Maharashtra Pollution Control Board to file complaint in the Court of law under Section 19(a) of the Act for the offences committed by M/s. Veena Developers under Section 15 of the Act read with the said notification and to initiate further line of action in Court of law. Aggrieved from the said order, M/s. Veena Developers (appellant no. 2) as well as M/s. Nikunj Developers (appellant no. 1) have filed the present appeal (*Appeal No. 76 of 2012*). This appeal was instituted in the Registry of the Tribunal on 20th September, 2012. The limitation provided under Section 16 of the National Green Tribunal Act, 2010 (for short 'the NGT Act') is 30 days. Admittedly, the appeal was filed much beyond the prescribed period of 30 days. Therefore, the appeal is accompanied by an application for condonation of delay, being *M.A. No. 247 of 2012.*

The applicant has prayed for condonation of the said delay as in its submission it has been contended that there is sufficient cause for condoning the delay in filing the present appeal.

According to the appellants they both collectively are involved in the construction and development of building of 5-6 Stilt plus nine floors in Greater Bombay. M/s. Nikunj Developers had got the sanction plan approved for the said construction. The High Court of judicature at Bombay vide its order dated 17th September, 2010 had directed the complaints filed against these buildings to be considered by the authorities within a period of six weeks. In furtherance to this order of the High Court, the appellant and others were heard by the authorities concerned and after giving personal hearing, the Secretary, Environment Department of the State of Maharashtra passed an order on 22nd April, 2010. According to this order, it was concluded that Bldg. No.1 and 2 have not been developed by Nikunj Developers and have been constructed before the provisions of the EC came into existence; and Bldg. No. 5 & 6 will require EC if their built up area is above 20,000 sq. mtrs. Any prior construction, if the total built up area is over 20,000 sq. mtrs. has to be only after obtaining EC or else will have to take legal action under the provisions of the Environment (Protection) Act, 1986. As of now, the total area is below 20,000 sq. mtrs.

Thereafter, the authorities passed the order dated 24th April, 2012 which is impugned in the present appeal. According to the appellant no. 1, they have not received the copy of the impugned order till date as it was not even addressed to them, thus their appeal is not barred by time at all. However, the appellant

no. 2, had received the impugned order on 2nd June, 2012 and the present appeal was filed on 20th September, 2012. The ground stated for condonation of delay in the application is that the real brother of Sh. Haresh N. Sanghavi (appellant no. 3), who is partner of other two appellants, was seriously ill and unfortunately expired on 13th June, 2012. Furthermore, the appellants vide their letter dated 6th August, 2012 had sought review of the order by making an application to the State of Maharashtra. The said application is pending and has not been disposed of till date. The reason for delay in filing the present appeal is stated to be beyond their control, and thus bonafide.

The stand taken by the non-applicant is that there is no cause much less a 'sufficient cause' shown by the applicant, for condonation of delay. The submission is that even if it is assumed that there is sufficient cause shown by the applicant for condonation of delay, still this Tribunal shall have no jurisdiction to condone the delay because the appeal has been filed beyond the prescribed period of 90 days, which includes even the extended period of 60 days. Thus, in their submission, the appeal filed by the appellant is liable to be dismissed, being barred by limitation.

Now, firstly, the Tribunal has to examine the interpretation of the expression 'sufficient cause', as it emerges from the various judgments of the courts, particularly the Supreme Court of India. The use of expression 'sufficient cause' in Section 16 of the NGT Act is not a legislative innovation but is a derivative reference from other enactments. Section 5 of the Limitation Act, 1963, also uses the same expression 'sufficient cause'. An applicant praying for condonation of delay in instituting the appeal under Section 16 of the NGT Act is required to show a sufficient cause, if the appeal is filed beyond a period beyond 30 days from the date of communication of the Environmental Clearance order as prescribed.

The expression 'sufficient cause' is not to be construed in isolation. The attendant circumstances and various other factors have to be taken into consideration by the Courts/Tribunals while dealing with the question of condonation of delay. Thus, it is important at this stage to deal with the meaning and connotation that this expression has received in various judicial pronouncements, in some elucidation (*refer to the original judgement for such judicial pronouncements*).

The term 'sufficient cause' has to be considered keeping in view the facts and circumstances of each case. The expression 'sufficient cause' implied by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner, which serves the ends of justice - that being the life-purpose for the existence of the institution of Courts. The term 'sufficient cause' must receive a liberal meaning and has to be incorporated so as to introduce the concept of reasonableness, as it is understood in its general connotation. Certainly, the Limitation Act is a substantive law and its provisions have to be adhered to in a manner that once, a valuable right accrues in favor of one party, as a result of unexplained sufficient or reasonable cause and directly as a result of negligence, default or inaction of the other party, such a right cannot be taken away lightly and in a routine manner. The Courts have also taken the view that the expression 'sufficient cause' be considered with pragmatism in a justice oriented approach rather than the technical detection of sufficient cause for every day's delay.

'Sufficient Cause' must necessarily be tested on the touchstone of doctrine of reasonableness. It may not be a very appropriate approach to apply principles of limitation with absolute rigidity resulting in irreparable injustice to the parties; a balanced approach may better serve the ends of justice. The equitable principles have also been applied to the law of limitation but with great circumspection. The clear language of law will always prevail over the equitable principles as equity cannot defeat the law.

It becomes evident that the Courts have not stated any hard and fast rule which shall be universally applicable for determining such controversy. It will always depend upon the facts of given case. If the

Tribunal has jurisdiction to condone the delay and there is 'sufficient cause' shown and the same is backed by bonafide and proper conduct of the parties, the Tribunal would be inclined to condone the delay rather than dismissing the same for such reasons.

In the present case, the copy of the order dated 24th April, 2012, was received by the appellant on 2nd June, 2012, while the appeal has been filed on 20th September, 2012. From the averments made, it is clear that not just appellant no. 2, but all the appellants had received the order on that date. Appellant No. 3 is admittedly the partner of the other appellants.

The service and knowledge of the partner will be deemed to be service upon the partnership concern. Therefore, an order communicated to a partner would be deemed to be communication to the partnership concern. The fact that the partner received the order and the partnership concern was communicated the order, remains undisputed. Furthermore, the appellants have not stated any reason, whatsoever, in the application under consideration as to what steps were taken by them and what was the reason that the appeal was not filed between the period of 2nd June, 2012 to 20th September, 2012. The reason of sickness and death would provide an explanation at best only for a period of seven days and nothing more. What steps were taken immediately prior and after the above seven days has been left to imagination. Even if a liberal approach is taken, of the facts and circumstances of the case, the Judges are unable to persuade themselves to hold that the plea of 'sufficient cause' raised by the applicant has any merit.

Also, from language of Section 16 of the Act, it is clear that the Tribunal loses jurisdiction to condone the delay if the delay is of more than 90 days. Every appeal has to be filed within 30 days from the date of communication of the order. That is, what an applicant is required to ensure before the appeal is heard on merits. However, the Tribunal has been vested with the jurisdiction to entertain the appeal which is filed after 30 days from the date of communication of an order. This power to condone the delay has a clear inbuilt limitation as it ceases to exist if the appeal is filed in excess of 60 days, beyond the prescribed period of limitation of 30 days from the date of communication of such order. To put it simply, once the period of 90 days lapses from the date of communication of the order, the Tribunal has no jurisdiction to condone the delay. The language of the provision is clear and explicit. It admits of no ambiguity and the legislative intent that Tribunal should not and cannot condone the delay in excess of 90 days in all, is clear from the plain language of the provision.

The period of limitation statutorily prescribed, has to be strictly adhered to and cannot be relaxed and or departed from, on equitable consideration. Further, in construing a statutory provision, the first and the foremost rule of construction is that of literary construction. The Judges do not see any reason to expand the scope of the provision and interpret the proviso to Section 16 in the manner that Tribunal can be vested with the power of condoning the delay beyond 90 days. Such interpretation would be contrary to the specific language of the Section and would defeat the very legislative intent and object behind this provision.

The use of negative words has an inbuilt element of 'mandatory'. The intent of legislation would be to necessarily implement those provisions as stated. Introduction or alteration of words which would convert the mandatory into directory may not be permissible. Affirmative words stand at a weaker footing than negative words for reading the provisions as 'mandatory'. It is possible that in some provision, the use of affirmative words may also be so limiting as to imply a negative. Once negative expression is evident upon specific or necessary implication, such provisions must be construed as mandatory. The legislative command must take precedence over equitable principle. The language of Section 16 of the NGT Act does not admit of any ambiguity, rather it is explicitly clear that the framers of law did not desire to vest the Tribunal with powers- specific or discretionary, of condoning the delay in excess of total period of 90 days.

Thus, the Judges have no hesitation in coming to the conclusion that they have no jurisdiction to condone the delay when the same is in excess of 90 days from the date of communication of the order to any person aggrieved.

Thus, the application must fail on this ground alone. The Judges are of the considered view that the Tribunal has no jurisdiction to condone the delay of 19 days in filing the present appeal, the same being in excess of 90 days computed from the admitted date of communication of order, that is 2nd June, 2012.

Ergo the Judges dismiss the application for condonation of delay.

Since the application for condonation of delay has been dismissed, the appeal does not survive for consideration. Resultantly, both the application and the appeal are dismissed.

Devendra Kumar
Vs
Union of India and Others

APPLICATION NO. 91/2012

JUDICIAL AND EXPERT MEMBERS: Justice Swatanter Kumar, Justice P. Jyothimani, Dr. D.K. Agrawal, Dr. G.K. Pandey, Prof. A.R. Yousuf

Keywords: Aravalli Hill range, non-forest area, industrial and mining operations, cutting of trees, infrastructural activities and laying of transmission lines, forest department, Haryana State Pollution Control Board, Polluter Pays principle

Application allowed

Date: 14th March, 2013

The applicant in *application no. 91 of 2012*, who claims to have great concern for the ecology of the Aravalli Hill Range, has moved the present application alleging that there is gross violation of the provisions of Environment [Protection] Act, 1986 (for short 'the Act') and the Forest Conservation Act, 1980 (for short 'the Forest Act'). Rule 5 of the Environment [Protection] Rules, 1986 (for short 'the Rules') provides for restrictions and conditions that may be imposed. The Ministry of Environment and Forests (for short the 'MoEF') had issued a Notification dated 7th May, 1992 (for short 'the Notification') which imposed prohibition on carrying out certain activities in the Aravalli Hills in District Gurgaon, which were causing environmental degradation. According to the applicant, large numbers of persons are carrying on commercial and other activities in violation of the said Notification. By indulging in such activities they are not only violating the law but are also causing serious damage to the environment.

Under the said Notification parts of district Gurgaon in Haryana and parts of district Alwar in Rajasthan are stated to be covered. The Notification prohibits carrying on of industrial and mining operations, cutting of trees, infrastructural activities and laying of transmission lines in the areas covered under the Notification and no such activity could be carried out without the prior approval of the Central Government. The said Notification was issued with a specific purpose to protect and conserve the ecologically sensitive areas of this range. The applicant specifically mentions that illegal activities were being carried on in Khasra No. 420/8 of Village Sikandarpur Ghosi, part of Aravalli Hill Range on a large extent. This was reflected as *Gair Mumkin Pahar*. However, in terms of the order of the Supreme Court passed in *M.C. Mehta vs. Union of India (2004) 12 SCC 118* this area has been declared as 'forest' and any use of the same for non-forest activity would require the prior permission of the Central Government under Section 2 of the Forest Act. This area is stated to have been encroached upon by marble traders and some other individuals who are carrying on certain activities in violation of the said Notification. The allegation is also that these encroachers are felling trees and are even affecting the environment adversely by their activities. On this premise, the applicant has prayed that the respondents, including the State, be directed to stop the illegal activities in this area and has also prayed for restoration of the area to its natural state.

Vide order dated 20th December, 2012 the Tribunal had issued notice. When the matter came up for hearing on 23rd January, 2013, the Tribunal passed an injunction order, thereby restraining any commercial activity by construction of sheds or even industrial activity, including gas godowns and sale and purchase of marble and liquor in the Village Sikandrapur Ghosi till the next date of hearing. It was also directed in the said order that the forest area in all the three Villages (which were subject matter of *Application No. 91 of 2012* and *Application No. 4 of 2013*), be protected and no non-forest activity be

permitted to be carried on in those villages. This resulted in filing of applications, i.e. *M.A. Nos. 26/2013, 27/2013, 38/2013, 39/2013, 35/2013 and 36/2013* for intervention as well as for vacating/modifying the aforesaid order.

In view of the fact that the approach that the Judges propose to adopt is primarily based upon the consent of the learned counsel appearing for the respective parties, it is not necessary for them to examine various issues arising in the present case for determination.

It is evident from the bare reading of the Notification (*refer to the original judgement*) that construction of sheds, farm houses and other structures and activities stated therein cannot be carried on except with the prior permission of the authorities stated in the Notification.

In furtherance to this Tribunal's order dated 28th February, 2013, a meeting was held at the Haryana Bhawan which brought some appreciable results. The counsel for the parties filed Minutes of the meeting held on 1st March, 2013 at Haryana Bhawan, New Delhi and in these minutes, interests of different applicants were examined. The Minutes are marked Ex.-C1 and 11 shall form part of this order. According to these Minutes, the intervening parties have stood by their statements and they would carry on no activities which would violate the Notification dated 7th May, 1992. They have also agreed not to carry on any activity which would be injurious to the environment or cause its degradation.

Certain practical difficulties have been put forward by the learned counsel appearing for the interveners. According to them, even if they just keep the marble slabs at the site in question and public amenities are not provided, it would cause serious prejudice to their rights as well as the environment. Similarly, they have also stated that some of them may be given time to close their respective activities as they have been carrying on their business for years now. For instance, the lease of the applicant carrying on the business of gas godown had expired on 31st March, 2010 and he would need six months' time to stop the activity and vacate the premises.

All the respondents, especially the Forest Department of the State of Haryana, the Municipal Corporation of Gurgaon and the Haryana State Pollution Control Board have erred in proper implementation of the provisions of the Notification. It is expected from these government functionaries that they are vigilant and take appropriate steps for execution of the Notifications issued by the Government of India. The Judges are of the opinion that without their knowledge, it was practically impossible for such large number of marble traders to not only establish their shops/godowns but also enjoy the power back-up facilities and be able to use their machineries. In addition to such vendors, one gas godown and one liquor vendor establishment has also been set up in the area in question. In view of the honest submissions made before this Tribunal, at this stage, they are not inclined to pass any coercive directions against them. However, in future if such incidents of not having requisite permission of the Ministry are brought forward, then these governmental agencies would be liable as well as responsible for such violations.

These are not the cases, which need to be determined on principles of equity or sustainable development. The activities and actions of interveners-applicants are opposed to law, inasmuch as they are undisputedly in violation of the Notification in question. Once they are opposed to the Notification that has been issued in exercise of the powers conferred under Sections 3(1) and 3(2) (v) of the Act and Rule 5(3) (d) of the Rules, then the question of balancing the carrying on of such activities with ecology of the area would be beyond the ambit of law. The Central Government, after inviting objections, had issued the Notification prohibiting carrying on of certain operations and processes, in the absence of prior approval of the Competent Authority. Thus, there is clear violation of the Notification which relates to protection of the environment and this would compel the Tribunal to pass appropriate orders. It is a fit case where the intervener-applicant should be directed to take certain steps to correct and make good, the damage that has been caused to the environment of the area in question on the basis of the 'Polluter Pays' principle.

Having heard the learned counsel appearing for the parties and perusing the Minutes and with the consent of the learned counsel for the parties, the Judges pass the following directions:

1. The Minutes of the meeting dated 1st March, 2013 shall be treated and be deemed to be part of this order as Ex.-C1.
2. The paragraphs recorded in Ex.-C1 shall be *mutatis mutandi* to the directions contained in this order and in the event of any conflict or violation, the order of the Tribunal shall prevail over the terms of Ex.-C1. In furtherance to Ex.-C1, the Committee shall ensure removal of all structures and machineries, including DG Sets, from the area in question.
3. None of the interveners or any other person would be permitted to construct any roads in the area covered under the Notification.
4. Nobody shall cut any tree or bush from the area in question. On the contrary, each of the non-applicants shall plant at least 50 trees in that area. Upon planting such trees, they shall ensure that the trees are looked after till they attain the sustained age and shall also inform the State of Haryana, the Chief Conservator of Forests and the Pollution Control Board, who shall, then conduct a joint survey of the area and report to the Tribunal if the terms of the present order have been complied with or not. Also, the concerned parties are directed to make every possible effort to restore the area to its original natural condition. The Judges constitute a Committee consisting of the Environmental Engineer from the Haryana Pollution Control Board, the SDM of the concerned sub-division in district Gurgaon and a Senior Forest Officer of the district Gurgaon, who shall monitor the execution of this order.
5. All sheds of temporary or permanent nature, made of concrete or otherwise, shall be demolished by all the persons, including the interveners, within a period of two weeks from the date of pronouncement of this order. They shall not thereupon construct any temporary or permanent shed in the area in question.
6. No person, including the interveners, shall throw any debris or such other materials, in the area in question. As demonstrated from the photographs placed on record, debris has been thrown in the nearby forest area. The concerned interveners shall be responsible for the removal of the said debris from the entire area within two weeks from today.
7. The Judges also hereby issue directions to the Chief Conservator of Forests and the State of Haryana to ensure that no structures or any other activity in violation to the Notification dated 7th May, 1992 is permitted in the area in question, except in accordance with law. The Forest Department is also directed to ensure that no damage is caused, directly or indirectly, to the Forest Area in the Aravalli Hill Range.
8. If the shed structures are not removed/demolished and the debris accruing therefrom is not removed within the prescribed period, then in the said event, the Municipal Corporation of Gurgaon shall be entitled to and, in fact without fail, demolish such structures as well as remove the debris and recover the entire cost of this operation in equal shares from the interveners and the other defaulting persons located in that area.
9. In order to provide public amenities to the persons who are permitted to carry on their activities in the restricted manner as afore-indicated, all the interveners/applicants together shall be entitled to make and raise three pre-fabricated toilets in the area in question, which shall not exceed the size of 6 x 6 feet each. These toilets shall not be made of concrete or any other material, which is damaging to the environment, but will be made of fibre or any other eco-friendly material. They shall also ensure that they do not generate any dust particles by carrying on their activities and shall also be subject to other limitations as imposed in this regard. The proper disposal of the discharge from these three toilets shall, in consultation with the concerned Corporation, be the exclusive responsibility of the interveners/applicants.
10. The applicant carrying on the business of gas cylinders is hereby, granted three months' time to stop his activity and to clear the area in question. The existence of these gas cylinders cannot be termed as

'safe' due to their potential of causing fire and explosion hazards.

11. The applicant/intervener carrying on the liquor activity should wind up everything within four weeks from today, i.e. from the date of pronouncement. His licence is expiring on 31st March, 2013 and they have also voluntarily agreed to stop their activities in entirety as well as to remove those structures by that date.
12. The Committee constituted shall oversee that the order of the Tribunal is carried out in its true spirit and substance.

Application No. 26/2013, 35/2013 and 38/2013 are for implement of the applicants. Since the Judges have already heard the applicants consequently, all these applications are allowed.

As a result of this Application Nos. 91/2012 and M.A Nos. 26/2013, 27/2013, 38/2013, 39/2013, 35/2013 and 36/2013 stand disposed of as ordered.

However, the proceedings against M/s. Pullman Hotel, arising out of Application No. 91/2012, in *suo moto* application no. 4/2013 and R.A. No. 1/2013 would continue separately.

Save Mon Region Federation and Another
Vs
Union of India and Others

APPLICATION NO. 104/2012

JUDICIAL AND EXPERT MEMBERS: Justice Swatanter Kumar, Justice P. Jyothimani, Dr. D.K. Agrawal, Dr. G.K. Pandey, Prof. A.R. Yousuf

Keywords: Condonation of delay, environmental clearance, hydroelectric project, Mon-Tawang region, ecologically and geologically fragile, seismically active, culturally sensitive region, Section 16 of NGT Act, communication, public domain, EIA Notification, MoEF website

***Application* allowed**

Date: 14th March, 2013

The Ministry of Environment and Forests (for short 'MoEF') accorded clearance for construction of 780 Mega Watts Naymjang Chhu Hydroelectric Project in Tawang district of Arunachal Pradesh. The applicant is an organization based in Tawang, consisting of citizens of Monpa indigenous community who advocate environmentally and culturally sensitive development in the ecologically and geologically fragile, seismically active and culturally sensitive Mon-Tawang region of the State. The applicant being aggrieved from the order dated 19th April, 2012 has preferred an appeal questioning the legality and correctness of the said order.

The appeal apparently and admittedly has been filed beyond 30 days from the date of communication of the order to the appellant. The appeal, being barred by time, is accompanied by an application (*MA No. 104 of 2012*) praying for condonation of delay in filing the appeal. Thus, in view of the limited controversy, the Judges shall refer only to the necessary facts relating to the application for condonation of delay.

The MoEF granted Environmental Clearance to the project vide its order dated 19th April, 2012. According to the applicant he received no information of passing of the order till 17th May, 2012, when the applicant visited Delhi and came to know that a news item had appeared, mentioning about the environmental clearance. On 15th May, 2012, one Himanshu Thakker informed the MoEF that its website had no information of the said Environmental Clearance. He also mentioned of the non-availability of the compliance reports on the website. Even the Central Information Commissioner had passed an order on 18th January, 2012 stating that the Environmental Clearance should be uploaded on the website at the earliest and should be available to the public. Immediate non-placing of the order dated 19th April, 2012 on the website, thus, was in violation of the order of the Central Information Commissioner dated 18th January, 2012. The MoEF uploaded the order on its website on 22nd May, 2012. However, still as per the email of the Director of MoEF dated 5th June, 2012, the Environmental Clearance could not be made available as on that date. In this email to Himanshu Thakker the Director (MoEF) stated that she had tried her level best to upload the Environmental Clearance but there were glitches in the synchronization of their new website with the old one. The said order could only be downloaded by the applicant from the website of MoEF on 8th June, 2012, the date on which applicant claims the completion of communication of the order. The applicant could download the copy of the Scoping (ToR) Clearance granted to the Project Proponent only on 24th June, 2012. The applicant came to Delhi on 4th July, 2012 for obtaining Form-I, which was received by him on 12th July, 2012. He filed the appeal on 17th/18th July, 2012, i.e. on the 90th day from the date of clearance, i.e. 19th April, 2012. Therefore, according to the applicant, the appeal has been filed within the extended period of 60 days but beyond the prescribed limitation of 30

days and there being sufficient cause for non-filing of the appeal within 30 days, the delay in filing the appeal may be condoned and the appeal be heard on merits.

The draft reports were submitted to the Ministry and the same were displayed on the website on 15th December, 2010. It was mentioned in the order of the Environmental Clearance that the Project Proponent should, within seven days, advertise the same in at least two local newspapers circulated in the region around the project and the same should be available on the website as well.

The legislature, in its wisdom, has used the expression 'communicated to him' under Section 16 of the National Green Tribunal Act, 2010 (for short "NGT Act") in contradistinction to 'serving', 'receiving', 'delivery' or 'passing' of the order. Normally, these are the expressions which are used in the provisions relating to limitation.

Generally, limitation is to be reckoned from the date which is relatable to these expressions. For instance, the period of limitation may commence from the date the order is received by or served upon an individual, as presented in the relevant provisions. The expression 'communication' is neither synonymous nor even equivalent in law to the above mentioned expressions. The above-mentioned expressions require merely a unilateral act, that is, dispatch of the order, receipt of the order or service of the order upon an individual. But the act of communication cannot be completed unilaterally. It does require the element of participation by two persons, one who initiates communication and the other to whom the communication is addressed and who receives the same, i.e. the intended receiver.

Upon further analysis, it is clear that 'communication' is made by one and received by another. It requires sufficient knowledge of the basic facts constituting the communication. The action of communicating is precisely sharing of knowledge by one with another of the thing communicated. Communication, particularly to the public, has to be by methods of mass communication, like satellite, website, newspapers etc. 'Communicated' is a strong word. It requires that sufficient knowledge of basic facts constituting the grounds of the order should be imparted fully and effectively to the person. The expression 'is communicated to him', thus, would invite strict construction. It is expected that the order which a person intends to challenge is communicated to him, if not in personam than in rem by placing it in the public domain. 'Communication' would, thus, contemplate complete knowledge of the ingredients and grounds required under law for enabling that person to challenge the order. 'Intimation' must not be understood to be communication. 'Communication' is an expression of definite connotation and meaning and it requires the authority passing the order to put the same in the public domain by using proper means of communication. Such Communication will be complete when the order is received by him in one form or the other to enable him to appropriately challenge the correctness of the order passed.

Law gives a right to 'any person' who is 'aggrieved' by an order to prefer an appeal. The term 'any person' has to be widely construed. It is to include all legal entities so as to enable them to prefer an appeal, even if such an entity does not have any direct or indirect interest in a given project. The

expression ‘aggrieved’, again, has to be construed liberally. The framers of law intended to give the right to any person aggrieved, to prefer an appeal without any limitation as regards his locus or interest. The grievance of a person against the Environmental Clearance may be general and not necessarily person specific. This provision of Section 16 of the NGT Act requires communication of the order to such person(s). The expression ‘him’ takes within its ambit ‘any person’ who is aggrieved by an order. Therefore, the expression ‘communication’ accordingly has to receive a more generic and at the same time, definite meaning.

The limitation as prescribed under Section 16 of the NGT Act, shall commence from the date the order is communicated. The limitation may also trigger from the date when the Project Proponent uploads the Environmental Clearance order with its environmental conditions and safeguards upon its website as well as publishes the same in the newspapers as prescribed under Regulation 10 of the Environmental Clearance Regulations, 2006. It is made clear that such obligation of uploading the order on the website by the Project Proponent shall be complete only when it can simultaneously be downloaded without delay and impediments. The limitation could also commence when the Environmental Clearance order is displayed by the local bodies, Panchayats and Municipal Bodies along with the concerned departments of the State Government displaying the same in the manner afore-indicated. Out of the three points, from which the limitation could commence and be computed, the earliest in point of time shall be the relevant date and it will have to be determined with reference to the facts of each case.

It cannot be disputed that the law of limitation is founded on public policy and is enshrined in the maxim "interest reipublicae ut sit finis litium" which means that it is for the general welfare that a period be part to litigation. The very scheme of proper administration of justice pre-supposes expediency in the disposal of cases and avoidance of frivolous litigation.

Requirement, Mode and obligation of communication:

The requirement to make communication of Environmental Clearance order is not an administrative one but a legal requirement. Once it is a legal right, it has to be stated as to whose legal obligation it is to communicate the order and the manner in which such communication should be effected. This legal obligation emerges from two different aspects. Firstly, imposition of certain safeguards and conditions in exercise of the powers vested in MoEF under the Environment (Protection) Act, 1986. Secondly, the limitations and modus that may be directed in regard to the Environmental Clearance, in terms of the rules and regulations framed under Environmental Regulations read in conjunction with the Environmental (Protection) Rules, 1986.

Since the present case relates to a Category ‘A’ project, the Judges are primarily concerned with Regulation 10 (i)(a) of the Environment Clearance Regulations, 2006. The most noticeable expression used in this regulation is that it ‘shall be mandatory’ for the Project Proponent to make public the Environmental Clearance granted for their project along with the environmental conditions and safeguards at their cost by prominently advertising it in at least two local newspapers of the district or State where the project is located, and in addition, this shall also be displayed on the Project Proponent’s website permanently.

Discussion of merits of the case:

In regard to the availability of the said order on the website of the MoEF, a serious controversy was raised. In fact, such grievance has been raised before the Tribunal even in other cases. As far as the present case is concerned, in view of the order of the CIC as well as the letter of the Director of the MoEF itself, it can safely be concluded that all is not well with the website/portal of the MoEF.

From the above discussion, it is clear that the applicant has been able to show sufficient cause for condonation of 8 days delay or even 26 days delay in filing the appeal.

It would hardly lie in the mouth of the Project Proponent and the MoEF to raise an objection of limitation as it has been established on record that both of them have failed to comply with their statutory obligations. They cannot be permitted to take advantage of their own wrong, particularly, the Project Proponent, who has committed defaults under Regulation 10(i)(a) as well as Regulation 10(i)(d) of the Environment Clearance Regulations, 2006.

Ergo for the reasons afore-recorded, the Judges have no hesitation in condoning the delay of 8/26 days in filing the present appeal and direct the appeal to be heard on merits.

To serve the ends of justice better and in the larger public interest, the Judges hereby issue the following directions:

1. The MoEF shall, within seven days from the date of passing of the order of Environment Clearance, upload it on its website. It shall be the duty of the MoEF to ensure that immediately upon its uploading the same should be made accessible and can be downloaded without any delay or impediment. It would remain so uploaded on the website for a period of at least 90 days.
2. The Ministry shall also maintain a public notice board in its premises including its regional offices, where the public is permitted without hindrance and display the order of environmental clearance on that notice board for a period of 30 days.
3. Orders communicated and displayed shall be complete, particularly in relation to the environmental conditions and safeguards, and proper records of the order being uploaded on the website and its placement on the public notice board of the MoEF shall be maintained by MoEF in normal course of its business.
4. The Project Proponent in terms of Regulation 10(i)(a) shall publish the factum of environmental clearance granted to the project along with environmental conditions and safeguards, at its own costs. Such publication shall be effected in two local newspapers of the district or State where the project is located.
5. In addition thereto, the Project Proponent shall display on its website permanently, the factum, environmental conditions and safeguards of environmental clearance. This shall be done in the name of the company, unit or industry which is the Project Proponent and not in the name of its parent or subsidiary company or sister concern.
6. The Project Proponent shall also submit the copies of the Environmental Clearance to the Heads of the local bodies, panchayats and municipal bodies of that district.
7. The Project Proponent shall also submit to the concerned department of the Government of that State, copy of the Environmental Clearance which in turn shall be displayed by the concerned department of that government for a period of 30 days on its website as well as on its public notice board.
8. Besides the above, a Project Proponent, under the conditions of the consent order, if so provided therein, shall publish the factum of grant of Environmental Clearance in two newspapers, one being in

vernacular language, having circulation in the area where the industry is located. It shall give such necessary information, which may not contain the conditions and safeguards for grant of Environmental Clearance.

9. In view of the order of the Central Information Commissioner and the record, the Judges direct the MoEF to ensure that its website is always in working order and shall be positively accessible to the public at large to enable any person to download the requisite information instantaneously. Such steps should be taken forthwith.

10. The date on which the order of Environmental Clearance is communicated to the public at large, shall be the date from which the period of limitation shall reckon as contemplated under Section 16 of the Act. Communicating the order, in other words, shall mean putting the order in the public domain in its complete form and as per the mode required under the provision of the NGT Act of the Regulation 2006. The limitation shall start running and shall be computed as referred to in Para 19 of the judgment. Where different acts by different stakeholders are complied with at different dates, the earliest date on which complete communication is carried out, shall be the date for reckoning of limitation.

DVC Emta Coal Mines Vs
Pollution Control Appellate Authority, W.B. and Others

APPEAL NO. 43/2012

JUDICIAL AND EXPERT MEMBERS: Justice Swatanter Kumar, Justice P. Jyothimani, Dr. D.K. Agrawal, Dr. G.K. Pandey, Prof. A.R. Yousuf

Keywords: pollution cost, mining activity, dumping, Hingla river, temporary barrier, consent to operate, Senior Environmental Engineer & In-charge, Water (Prevention and Control of Pollution) Act

Application partly allowed

Date: 15th March, 2013

By means of this Appeal under Section 16(1) (h) of the National Green Tribunal Act, 2010 the Appellant has challenged order dated 24th July, 2012 rendered by Pollution Control Appellate Authority (for short PCAA) of West Bengal (W.B.), upholding order dated 27th March, 2012 passed by Sr. Environmental Engineer & In-charge (Operation & Execution Cell) of West Bengal Pollution Control Board (in short, WBPCB). The WBPCB by order dated 27th March, 2012 gave certain directions to M/s DVC Emta Coal Mines Ltd. (the Appellant). The Appellant is aggrieved by the direction to deposit of Rs. 10 lakh towards pollution cost for non-compliance of the environmental norms on account of dumping overburden generated from mining activity, in the nearby area, that is to construct a temporary barrier in the Hingla River, a tributary of river Ajoy. Challenge to other directions is waived by the Appellant during course of the hearing.

The Appellant was issued Consent to Establish (NOC),vide order dated 9th September, 2011 for an open-cast coal mine at Khagra-Joydev Block in District Birbhum by WBPCB on certain conditions. The project has not yet been granted the "Consent to Operate". Therefore, the mining operation has not yet been started. Ajoy River passes from nearby place of the open-cast coal mine site. There is a Tributary of said river known as "Hingla" River.

In the course of State Legislative Assembly Session, MLA of the Constituency raised a question pertaining to blockage of the natural flow of river Ajoy by dumping of overburden by the private sector collieries on the river bed. The WBPCB conducted enquiry in this context. The WB PCB found that the natural flow of river Ajoy was obstructed and diverted due to dumping of over-burden over a part of "Hingla" River i.e. the tributary thereof. The local irrigation department intervened in the matter and got partially removed the barriers. The Senior Environmental Engineer & In-charge (Operation & Execution Cell) of the WB PCB thereafter gave direction to the Appellant vide communication dated 27th March, 2012, holding the Appellant responsible for pollution due to dumping of over-burden and obstructing the natural flow of water in the river and hence directed him to deposit cost of Rs. 10 lakh as pollution cost on account of non-compliance of the environmental norms.

A decree is an outcome of formal expression of adjudication of lis between the parties. The directions issued by the WB Pollution Control Board cannot be treated as 'Decree'. For, the WB Pollution Control Board gave the directions on the basis of inspection report and on the basis of finding that the Appellant did not abide itself by certain conditions laid down in the NOC issued on 9th September 2011.There was no trial as such. The delegated authority of WB Pollution Control Board did not raise specific issues and gave specific findings on such issues, by recording of evidence, or holding trial. In other words, the delegated authority of the WB Pollution Control Board did not have "trappings of a court".

Apart from the nature of order passed by the delegated authority of the WB Pollution Control Board, it is pertinent to note that the National Green Tribunal Act, 2010 specifically provides for an Appeal under Section 16(a) against an order or decision of the Appellate Authority under Section 28, so also, Section 33 A of the Water (Prevention and Control of Pollution) Act, 1974 (for short, Water Pollution Act) to the National Green Tribunal. Thus, the National Green Tribunal has appellate powers against such orders passed by the State Pollution Control Board or Appellate Authority.

What appears from the record is that the villagers urged the Appellant to construct a temporary dam in the midst of the river "Hingla" so that in the dry season water can be made available for agriculture and other purposes. It appears that the Appellant raised barrier of 2 feet height in the river as per the request of the villagers of Joplai and Palashdanga under Loba Gram Panchayat. There is no serious dispute about the fact that inspection was carried out by the competent authority. The relevant inspection report is placed on record. It was found that the natural flow of the river "Hingla" diminished due to construction of a temporary dam by dumping over-burden on the main course of the flow. An enquiry conducted by the local authority showed that the over-burden was obtained from the mining activities of the Appellant. The Appellant did not file any report with the Police regarding illegal removal of the soil/over-burden from the site of open-cast coal mine. The Appellant did not give any information to the police as to who had taken away the soil for construction of the temporary dam. The representatives of the Appellant were present when minutes of the hearing, held on 17th February, 2012, were drawn. Perusal of the said minutes reveal that the representatives of the Appellant failed to give any tangible evidence in support of their claim that the soil extracted from the open-cast coal mine site was forcibly taken away by the local villagers. As stated before, representation made by the local villagers to the Gram Pradhan of Loba Gram Panchayat also reveals that the barrier was constructed by the Appellant. The minutes of the meeting dated 17th February, 2012 further show that it was decided to impose penalty on the Appellant for recovery of pollution cost for its "indifferent attitude" in the matter. It was decided that the amount of pollution costs may be determined by the competent authority. It is in accordance with such decision taken in the meeting dated 17th February, 2012 that the Sr. Environmental Engineer & In-charge (Operation & Execution Cell) who appears to be a delegated authority of WB Pollution Control Board, issued the directions dated 27th March, 2012.

Now, the most important legal issue involved in the appeal is: (i) Whether the WB Pollution Control Board is competent to give direction for recovery of such pollution cost in exercise of the powers available in Section 33 and Section 33(A) of the Water Pollution Act ?

It may be pointed out here that no such question was raised by the advocate for the Appellant. The counsel for the respondent did not pinpoint as to how the WB Pollution Control Board was or is competent to direct the Appellant to deposit pollution cost of Rs. 10 lakh.

Perusal of Section 33 and Section 33(A) of the Water Pollution Act clearly shows that the Board is required to file an application to the concerned Magistrate for injunction or for removal of any matter from stream or well and in case it is not removed by the person concerned, then to take action under sub-section 4 of Section 33. The Judges did not find any kind of power available to the Pollution Control Board to give direction for recovery of the pollution cost.

Let it be noted that Section 25 of the Water Pollution Act empowers the Board to impose conditions on the industrial units which may apply for consent to operate. There are penal provisions which make a person liable for punishment when it is found that conditions set-out under Section 25 or Section 26 of the Water Pollution Act are not complied with. The powers available under Section 33(A) of the Water Pollution Act are circumscribed by the other provisions of Water Pollution Act. Moreover, the competent authority is required to follow the procedure enumerated in the Water (Prevention and Control of

Pollution) Rules, 1975. Rule 34 envisages the manner in which such directions are required to be issued by the competent authority. Significantly, Rule 34(3) categorically provides that a copy of the proposed direction shall be given to the person against whom the same are required to be issued.

There is nothing on record to show that proposed directions were communicated to the Appellant as required in the manner stated above. Needless to say there is non-compliance of Rule 34(3) of the Water (Prevention and Control of Pollution) Rules, 1975. For this reason, the impugned direction issued by the WB Pollution Control Board is bad in law since it has been issued without having any legal authority. The Judges are of the opinion that the Pollution Control Appellate Authority (P.C.A.A.) (WB) failed to take into account this important legal flaw while passing the impugned order dated 24th July, 2012.

Considering the reasons discussed above, the Judges have no hesitation in holding that the WB Pollution Control Board committed patent error while directing the Appellant to pay pollution cost of Rs. 10 lakh and the Appellate Authority also erred in confirming such order. Hence the Appeal will have to be allowed.

It is made clear that if the other conditions shown at *serial nos.1 to 4* of the impugned order dated 27th March, 2012 of WB PCB are not complied with by the Appellant, the Pollution Control Board is at liberty to take further action in accordance with law, including refusal to grant consent to operate.

The Appeal is accordingly partly allowed and disposed of with no order as to costs.

Rana Sen Gupta
Vs
Union of India and Others

APPEAL NO. 54/2012

JUDICIAL AND EXPERT MEMBERS: Justice V.R. Kingaonkar, Justice U.D. Salvi, Shri P.S. Rao, Shri Ranjan Chatterjee, Shri Bikram Singh Sajwan

Keywords: Environmental clearance, Steel Plant, expansion, Ductile Iron Pipe Plant , West Bengal Pollution Control Board, State Level Expert Appraisal Committee, Environmental impact assessment, Environment management plant, locus standi, sustainable development

Application dismissed

Date: 22nd March 2013

This Appeal is filed by one Rana Sen Gupta, who claims to be a public spirited citizen- working for welfare of people, particularly for those whose concerns might otherwise remain un-represented. He challenges the order of Environmental Clearance (for short EC) granted by the Ministry of Environment and Forest (Respondent No. 1) vide communication dated 1st June, 2012 in favour of M/s. Rashmi Metaliks Ltd. (Respondent No. 3). The EC is granted for expansion of existing Steel Plant by adding 1.5 million TPA Beneficiation cum Pellet Plant to produce 1.2 MTPA pellets with Producer Gas Plant by the Respondent No. 3, referred to hereinafter as "Project Proponent".

Undisputedly, the Project Proponent again desired to manufacture Ductile Iron Pipes to the extent of 2 lakh T.P.A. The Project Proponent accordingly applied for necessary permission. The West Bengal Pollution Control Board (Respondent No. 4) granted necessary permission to install Ductile Iron Pipe production unit vide permission letter dated 9th October, 2009.

The Project Proponent desired to expand the industrial activity by adding 15,00,000 T.P.A. Beneficiation cum Pellet Plant with producer Gas Plant. The expansion could not be done without further EC of the Respondent No. 1. Therefore, the Project Proponent submitted a fresh proposal to the Respondent No. 1 for grant of EC to the proposed expansion. The proposal was considered by the Respondent No. 1. ToR was issued by the Respondent No. 1 on the basis of Environmental Impact Appraisal/Assessment (EIA). It was followed by public hearing held under Chairmanship of Additional District Magistrate, Paschim Medinipur (W.B.) on 11th November, 2011. A representative of the Project Proponent narrated the draft proposal and described the project details. The Respondent No. 1 considered the viability of the project after the public hearing, appraisal was done and thereafter the EC was granted to the Project Proponent vide the impugned communication dated 1st June, 2012 for expansion of capacity to an additional 1.5 Million T.P.A. Beneficiation cum Pellet Plant. Feeling aggrieved, the Appellant has preferred the Appeal.

Having heard Learned Counsel for the parties, in the Judges' opinion, the following points arise for the purpose of deciding the appeal. They are:-

(i) hether the Appellant is "aggrieved person" and has *locus-standi* to prefer the appeal?

(ii) Whether the Project Proponent concealed any material information or furnished false or misleading information deliberately, during the course of screening, scoping or appraisal of the expansion project which ought to have been considered as a reason for rejection of the application for EC to expand the project or cancellation of prior EC already granted for installation of Ductile Iron Pipe Plant?

(iii) Whether the impugned grant of EC for expansion of the steel plant by adding 1.5 million TPA

Beneficiation cum Pellet Plant and the Gas Plant is otherwise illegal as it would add more pollution burden and tantamounts to unsustainable development?

Re: Point No. (i)

Section 16 of the NGT Act, 2010 provides appellate jurisdiction to the Tribunal. The opening words of Section 16 go to show that "any person aggrieved" by order made granting EC can prefer appeal under Section 16(h) of the NGT Act, 2010. The expression "person aggrieved by" implies some or other reason which might have aggravated the person to undertake the legal remedy.

The Judges do not find any tangible material which would plausibly show that the Appellant has credentials as expert in the field of steel and iron industries and the Judges profess to be at a loss to know in what manner he is working for the welfare of unrepresented members of the public. It is not his case that he represents any NGO. His self-proclaimed status as "public spirited citizen" is of no much avail. There is absolutely no record to show that he participated in the public consultation process and raised any issue regarding the environment or socio-economic adverse impact on account of establishment of the proposed project. The only reason that he has unsuccessfully preferred Appeal No. 32/2011 against granting of earlier EC for production of Ductile Iron Pipe Plant is of no much significance and is irrelevant. Moreover, that appeal came to be dismissed and there is no finding of this Tribunal that the Appellant is to be treated as "an aggrieved person". Considering forgoing discussion, the Judges have come to the conclusion that the Appellant has no locus-standi to prefer the present appeal. He cannot be treated as an aggrieved person and the appeal filed by him cannot be entertained. This answers the point no. 1.

Re: Point No. (ii)

Now, it is to be borne in mind that the Project Proponent (Respondent No. 3) was, admittedly, granted Environmental Clearance vide communication dated 12th June, 2008 for installation and of operation of the steel plant for 5 lakh million TPA, MBF-SMS. The proposal for setting up of such steel plant was approved by the MoEF. The total land to be utilized for setting up of the steel plant is 188 acres. What appears from the record is that the Project Proponent did not fully utilize the production capacity of 5 lakh TPA when the plant was made operational at the initial stage. The Project Proponent expanded the industrial activity after submitting application dated 17th June, 2009 to the Department of Environment, Government of W.B., Kolkata. The appraisal was done by the State Level Expert Appraisal Committee (for short SEAC). Thereafter, recommendation was made to the State Environmental Impact Assessment Authority (for short SEIAA). The SEIAA accorded Environmental Clearance to the expansion of the project in accordance with the MoEF Notification dated 14th September, 2006. Copy of the communication dated 9th October, 2009 (Annex-R-1) filed with affidavit of the Respondent No. 2 reveals that the Project Proponent categorically stated that the Environmental Clearance was needed for installation of Ductile Iron Pipe Plant for manufacturing of Ductile Iron Pipes to the extent of 2 lakh TPA

at the existing unit (Kharagpur). Obviously, the expansion was within limit of the production capacity (5 lakh TPA) for which Environmental Clearance was accorded by the MoEF in 2008.

The contention of the Appellant that such expansion of the project activity ought to have been brought to the notice of the MoEF when further expansion was sought vides communication dated 19th November 2011 and dated 12th March, 2012 is untenable. Such omission cannot be treated as deliberate concealment of any material information which would necessarily entail cancellation of the prior Environmental Clearance granted to the Project Proponent or rejection of the subsequent application for expansion of the project in question. The Appellant seeks to rely on Regulation 8 (vi) of the Environmental Clearance Regulations, 2006.

Another limb of the argument advanced by the Learned Counsel for the Appellant is that the production of the Ductile Iron Pipes vides the second expansion approved by the SEIAA on 9th October, 2009 cannot be legal and proper. The Judges do not agree. On consideration of schedule appended to the Environmental Clearance Regulation 2006, it is amply clear that the said project falls in category B of item 3(a). It is difficult to say that it falls in the category of any other item shown under the Schedule appended to the Environmental Clearance Regulation, 2006. Needless to say that the Project Proponent did not conceal any material information nor gave any false information while seeking the Environmental Clearance for expansion of the project in question vide the application dated 19th November, 2011 and communication dated 12th March, 2012 submitted to the MoEF. This answers point no. (ii).

Re: Point No. (iii)

Coming to the third point involved in this Appeal, it is worthy to note that main argument of the counsel for the Appellant, Mr. M.P. Jha, is that the Environmental Clearance granted on 1st June, 2012 is bad in law in as much as it was granted without application of mind. It cannot be assumed that the MoEF did not consider comprehensive environmental impact of the expansion project. The purpose of expansion of the project is amply clear from the application of the Appellant as well as the discussion which took place in the EAC meeting.

It cannot be assumed that the MoEF did not consider comprehensive environmental impact of the expansion project. The purpose of expansion of the project is amply clear from the application of the Appellant as well as the discussion which took place in the EAC meeting.

The Judges have gone through the reply filed by the Respondent No. 1 (MoEF). The Respondent No. 1 supports the impugned order. According to the MoEF, the Terms of Reference (TOR) includes the cumulative impact on the environment which may occur within the radius of 10k.m. as well as the additional impact due to operation of the proposed expansion project. It is stated further that the EIA report and the Environment Management Plan (EMP) had been duly considered. It is further stated that the EIA report considers the installation of Ductile Iron Pipe production Plant. It need not be reiterated that the Ductile Iron Pipe production Plant was within the limit of 5 lakh TPA capacity for which the first Environmental Clearance was granted in 2008.

There cannot be two opinions about proposition that Section 20 of the National Green Tribunal Act, 2010 mandates the Tribunal, while passing any order or decision, to apply the principles of sustainable development, the precautionary principle and the polluters pay principle. In the context of the project in

question, there is hardly any material to show that it would cause excessive emission from the plant which may cause pollution beyond tolerable degree.

It is necessary to strike a balance between development and environment protection to facilitate economic growth as well to secure adequate adherence to the cause of environment. There cannot be any lop sided approach in environment related matters.

The Judges have perused copy of the minutes of proceedings of Public Hearing dated 11th November, 2011. On perusal of the minutes of the proceedings, it is amply clear that members of the village locality had participated in the course of Public Hearing. It further appears that video recording of the Public Hearing was conducted and the text of the proceeding was made available in public domain.

Considering totality of the foregoing discussion, the Judges have no hesitation in holding that the Appellant failed to prove that the proposed expansion of the project is detrimental to the cause of environment. The Judges hold that expansion of the industrial activity as approved by the MoEF is within the permissible limits of sustainable development. This answers the point no. (iii).

The net result of the findings recorded on the *points no. (i) to (iii)* is that the Appeal is destitute of merits. Therefore, it fails. The Judges have noticed that the Appellant indulged in the litigation without proper cause, though he is not an aggrieved party as such. It is high time to discourage such practice of fuelling the litigation without any substantial reason. Hence the Appeal is dismissed with direction that the Appellant shall deposit a cost of Rs. 15,000/- into the Legal Aid Fund of National Green Tribunal Bar Association. The Appeal is accordingly disposed of as dismissed. In case the cost is not deposited by the Appellant within a period of four (4) weeks, the Registrar to take proper action for recovery of the said amount as provided under *Order XXI R 30* of the Civil Procedure Code or any other provision envisaged under Order XXI or the provisions of the National Green Tribunal Act, 2010.

M/s Sardessai Engineering Works and Another
Vs
Goa Coastal Zone Management Authority

APPLICATION NO. 62/2012

JUDICIAL AND EXPERT MEMBERS: Justice V.R. Kingaonkar, Justice U.D. Salvi, P.S. Rao, Shri Ranjan and Shri Bikram Singh Sajwan

Keywords: challenge to legality, MoEF notification, River Zuari, dumping clay, Environment (Protection) Act, quorum, Goa Coastal Zone Management Authority

Application partly allowed

Date: 4th April, 2013

This Applicant filed *Writ Petition No. 653/2011* in the High Court of Bombay Bench a t Panaji (Goa) challenging order dated 18th July, 2011 purportedly passed by Goa Coastal Zone Management Authority (the Respondent) directing him to restore 10 mts. land allegedly reclaimed by dumping clay in River Zuari. The Writ Petition was transferred to this Tribunal by order dated 20th September, 2012 passed by the High Court. The Writ Petition was thereafter converted into the form of an Application.

The main relief sought by the Applicant, after deleting the prayer pertaining to challenge to the legality and validity of the MoEF Notification dated 9th April, 2010, boils down to challenge to the order dated 18th July, 2011 passed by the Respondent.

To maintain the homogeneity of this Judgment, it suffices to advert briefly to the facts which give rise to the present application. The Respondent issued a show cause notice under Section 5 of the Environment (Protection) Act, 1986 to M/s. Sardessai Engineering Works, a registered Partnership firm through its Managing Partner Shri Prakash Balkrishna Sardessai (the Applicant) calling upon him to show cause as to why the encroached river bed of river Zuari to the extent of 10 mts., reclaimed by him as a result of dumping of clay in that part, be not cleared and restored. The show cause notice was issued on the basis of a complaint filed by one Shri Surendra Sardessai on 3rd May, 2007 to the Respondent. The Applicant filed reply dated 26th May, 2007 in pursuance to the show cause notice. The Applicant denied truth into the allegation that land to the extent of 10 mts. was reclaimed. The Applicant alleged that the land is part and parcel of Survey No. 30/1. The Applicant further alleged that the land is owned by M/s Sardessai Engineering Works and was granted for the purpose of building a Shipyard. The Shipyard was built somewhere in or about 1971. The land was granted by the Captain of Ports vide license issued in 1971. The Applicant is running the Shipyard over an area about 9000 sq. mtrs. since 1971 on the river front. The Applicant is running business of manufacturing and repair of barges in the dockyard. The Applicant further alleged mala-fides to complainant Shri. S. Sardessai.

The Respondent refuted material contentions of the Applicant and came to the conclusion that the Applicant has grabbed a part of river Zuari by reclaiming area to the extent of 10 mts. The Respondent directed the Applicant to remove reclaimed area and restore river bed to its original condition. The Applicant challenges the said order dated 18th July, 2011 on various grounds.

The Applicant raised a preliminary issue regarding legality of the impugned order. The Counsel for the parties agreed that the legality of the order in question may be considered on the basis of preliminary objection. The preliminary question of law raised by the Applicant is that the constitution of the sub-committee of the Respondent and the decision rendered by only five (5) Members who attended the meeting dated 25th May, 2011 is illegal and as such the impugned order is liable to be set-aside.

The Judges have heard Counsel for the parties in extenso. The short question which arises for determination is as stated below:

"Whether the formation of sub-committee by the Respondent is legal and proper and whether the impugned decision is rendered illegal and inoperative for want of required quorum?"

It is worthwhile to locate the source of quasi-judicial power available to the Respondent under the CRZ Notification. By order dated 19th April, 2010, the MoEF constituted the Goa Coastal Zone Management Authority (for short GCZMA) in exercise of powers conferred by sub-sections (1) and (3) of Section 3 of the Environment (Protection) Act, 1986. Perusal of the Government gazette dated 19th April, 2010 reveals that the GCZMA as constituted by the MoEF comprised of twelve (12) Members. It is pertinent to note that it was for the Respondent to deal with inquiries into cases of alleged violation of the provisions of the CRZ and Coastal Zone Management Plan (for short CZMP). The said Authority was also empowered to take action on basis of the complaints and to issue directions under Section 5 of the Environment (Protection) Act, 1986. Rule XI of the MoEF order dated 9th April, 2010 reads as follows:-

"*xi. The Authority shall ensure that at least 2/3 Members of the Authority are present during the meetings*." (Emphasis supplied)

The use of words "at least" in the above Rule reflects intention of the Legislative authority. It shows that the quorum is mandated for decision making process of the Respondent.

Since there were twelve (12) Members of the Respondents' Authority, it was essential to ensure presence of at least eight (8) Members during meetings for decision making purpose.

What appears from the MoEF order dated 9th April, 2010 is that the Respondent was not delegated with power to constitute any sub-committee. In other words, the Respondent on its own could not have constituted a sub-committee. It may be noted here that the Respondent's Authority itself was delegated with the powers under the CRZ and CZMP and to take action under Section 5 of the Environment (Protection) Act, 1986. What appears from the record is that probably due to excessive work load, the Respondent decided to delegate the powers to a sub-committee consisting of seven (7) Members.

Perusal of the order dated 19th April, 2010 passed by the Respondent shows that the Respondent did not refer to any legal provision which empowered itself to form such a sub-committee and delegate its powers to the sub-committee. It is further note worthy that paragraph-2 of the said order clearly shows that in any meeting of said sub-committee, presence of at least five (5) Members was necessary. So also, any decision taken by the said sub-committee of five (5) Members ought to be put up in the subsequent meeting of the main Committee for approval/consideration. Needless to say, the decision taken by the five (5) Members was required to be ratified and approved by the Authority consisting of the twelve (12) Members. So, unless such decision of five (5) Members was vetted by at least 2/3rd Members of the Authority i.e. eight (8) Members, the decision cannot be termed as legal and proper. Considering the

nature of the constitution of the sub-committee, the Judges are of the opinion that the Respondent exceeded the delegated powers.

There cannot be two opinions about the legal position that purpose of providing a particular quorum for meeting of quasi-judicial Authority is to ensure contributory decision making process which should be end product of appropriate deliberations and discussion. The dictionary meaning of the word "quorum" as shown in the Chambers 21st Century Dictionary is as follows:

"quorum: the fixed minimum number of members of an organization or society, etc. who must be present at a meeting for its business to be valid."

It is amply clear, therefore, that minimum number of Members of an organization, fixed under any rule or bylaw, which must be present at a meeting for its business to be valid is a required quorum. In absence of such quorum of the meeting, the decision would be illegal.

Considering the foregoing discussion, it is manifest that the impugned decision is invalid for want of required quorum as well as for the reason that constitution of the sub-committee was illegal. The judges make it clear that they have not touched upon the issue regarding illegal reclamation of the part Zuari River by the Applicant. Under the circumstance, the impugned decision will have to be quashed and the matter deserves to be remitted to the Respondent for taking appropriate decision in accordance with law.

In the net result, the Application is partly allowed. The impugned order is quashed. The matter is remitted to the Respondent for the purpose of reconsideration of the material and to take decision afresh by following the Notification of the MoEF after securing the presence of required number of Members for the purpose of contributory decision making process.

The Application is accordingly disposed of with no order as to costs.

Perfect Knit Process
Vs
Chairman, Appellate Authority and Others

APPEAL NO. 57/2012

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

Keywords: shifting of unit, dyeing unit, Noyyal River, Kancheepuram, Nallur village, Kasipayalaym post, Tiruppur Taluk and District, Zero Liquid Discharge, Eastern Common Effluent Treatment Plant Limited, rental premises, Air (Prevention and Control of Pollution) Act, Water (Prevention and Control of Pollution) Act, Tamil Nadu Pollution Control Board

Application allowed subject to conditions

Date: 9th April, 2013

This appeal has been filed by the appellant herein praying for setting aside the order passed by Appellate Authority, Tamil Nadu Pollution Control (the first respondent) dated 30th August, 2012 in the *Appeal Nos. 110 and 111/2010.*

The gist of the case put forth by the appellant herein is as follows:

(1) M/s. Perfect Knit Process, represented by its Proprietor Shri P. Nallasivam (the appellant) has been running a dyeing unit at S. F. No. 150, Kancheepuram, Nallur village, Kasipayalaym post, Tiruppur Taluk and District since 1987 in synchronizing with the directions issued from time to time by the Tamil Nadu Pollution Control Board, arrayed as the second respondent herein. As per the directions of the Madras High Court, in *W.P.No.21791 of 2003* filed by an agriculturist, to all the dyeing and bleaching units to achieve Zero Liquid Discharge (for short ZLD) by installing Reverse Osmosis Plant and Multiple Evaporator System, the appellant became a member of the Eastern Common Effluent Treatment Plant Limited (for short ECETP) by making necessary contributions and the said ECETP had achieved ZLD and it is in operation now. Hence, as on today the unit of the appellant is a ZLD unit.

(2) The appellant was running the dyeing unit in a rental premises and as the landlord insisted the appellant to vacate the premises for the former's personal use, the appellant had purchased a piece of land measuring an extent of 1.49 acre by a sale deed dated 12th June, 2008 from which land it could be feasible to lay down pipe lines to carry the treated and untreated water to and from the proposed site to the ECETP. Since the landlord exerted much pressure on the appellant to vacate the rental premises, the appellant made an application on 22nd June, 2010 to the 3rd respondent herein for shifting the unit from S. F. No. 150, Kancheepuram, Nallur village, Kasipalayam, Vijayapuram Post, Tiruppur Taluk and District to S. F. No. 12/2I, 2J, 2K, and 2L in Nallur village, Kasipalayam, Vijayapuram Post, Tiruppur Taluk and District. The application was rejected by the District Environment Engineer, Tamil Nadu Pollution Control Board (the 3rd respondent) on 9th July, 2010 on the sole ground that the proposed shifting is located within one kilometer from the Noyyal river and thus attracted by the *G.O.Ms.No.213*, Environment and Forest Department dated 30th March, 1989.

Challenging the same the appellant herein had preferred two appeals before the first respondent: (i) *Appeal No. 110/2010* as per section 31 of the Air (Prevention and Control of Pollution) Act 1981 and (ii) *Appeal No. 111/2010* as per section 28 of the Water (Prevention and Control of Pollution) Act 1974. Both the appeals were dismissed by the first respondent by a common order dated 30th August, 2012.

(3) In the grounds for this appeal, the appellant contends that the unit of the appellant is an existing operating unit situated within 200 meters from the river and the shifting of the unit from the rental premises to the new place as aforesaid is situated within 372.5 meters from the river. The first and third respondents have not looked into the principle of sustainable development while considering the claim of the appellant for shifting and that having implemented the order in similar set of facts, the second and third respondents are estopped from rejecting the claim of the appellant.

Per contra, in the reply filed by the second and third respondents, the facts of the case with regard to the establishment and operation of the appellant's dyeing unit with the Consent Order dated 7th October, 1998 up to 31st October, 1998 in a leasehold land, setting up of individual ETP and subsequent membership of the appellant unit in ECETP are not disputed. Thereafter, when the application was made on 22nd June, 2010 by appellant to shift the unit to its own premises, the same was rejected by the order dated 9th July, 2010 of the respondent/Board on the grounds of the Government order dated 30th March, 1989 as no new industry can be established within the prohibited distance of water bodies/sources. Aggrieved by the same, the appellant preferred Appeals before the first respondent/Appellate Authority in *Appeal Nos. 110 and 111/2010.*

On the above pleadings, the following points were formulated for decision in the appeal:

(1) Whether the order of the first respondent/Appellate Authority, Tamil Nadu Pollution Control in the *Appeal Nos. 110 and 111/2010* dated 30th August, 2012 and the order of the third respondent in Letter dated 9th July, 2010 are liable to be set aside as alleged by the appellant and consequently permission can be granted to the appellant to shift the unit as required by him.

After paying an anxious consideration and also making scrutiny of all the materials available, the Tribunal is of the considered opinion that the order of the first respondent/Appellate Authority under challenge confirming the order of the third respondent cannot be sustained for more reasons than one. The third respondent has categorically admitted that a Consent under the under Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 was issued to the appellant's dyeing unit by its proceedings dated 7th October, 1998. The appellant, who originally set up individual Effluent Treatment Plant and thereafter became a member of the Eastern CETP and thus as a unit of the same, the appellant unit can be termed as ZLD unit. The appellant, who has been carrying on the dyeing unit in a rental premises was compelled to shift to S.F. No. 12/21, 2J, 2K, 2L in Nallur Village, Kasipalayam, Vijyapuram Post, Tiruppur Taluk and District, purchased and owned by it. Necessary application made by the appellant therefore was rejected by the third respondent.

Perusal of the order of the third respondent would indicate that on the grounds for rejection that the setting up of the appellant's unit in a different place cannot be construed as a shifting of the existing unit, but it would amount to setting up of a new unit at a different place and apart from that it would attract the prohibition in G.O. Ms. No. 213, Environment and Forest Department, dated 30th March, 1989 and accepting the said contentions of the respondent/Board, the Appellate Authority also dismissed the appeal. In the Judges' opinion, the order of the third respondent and subsequent confirmation by the Appellate Authority cannot be sustained in law.

Shifting of an existing unit by the appellant to a new location cannot be construed as a new industry since

the appellant is shifting the unit to the new location. In the instant case, it is noticed that the appellant unit is a member of the Eastern CETP who has achieved ZLD. The case of the appellant is that it is feasible to lay down pipelines to carry the treated and untreated water to and from the Eastern CETP through the proposed site is not denied by the respondent/Board. Under such circumstances, it would be highly unreasonable refusal of Consent to the appellant on an unsustainable grounds that shifting of an existing industry, which has been originally functioning with the Consent from the Board all along and also achieved ZLD, to a new location as a new industry.

The Tribunal is unable to notice any reason or circumstance to make a deviation from the earlier view recorded by the Appellate Authority in those judgments'. Under the circumstances, the Tribunal has no option than to set aside the order of the third respondent refusing to grant Consent and the subsequent confirmation of the said order made by the first respondent/Appellate Authority. Accordingly, both the appeals are allowed setting aside the order of the third respondent in Letter 9th July, 2010 and also the judgments of the first respondent/Appellate Authority dated 13th August, 2012 in *Appeal Nos. 110 and 111/2010*.

The third respondent/Board is directed to issue Consent for shifting the dyeing unit of the appellant from S.F.No.150, Kancheepuram, Nallur Village, Kasipalayam, Vijayapuram Post, Tiruppur Taluk and District to S.F. No. 12/21, 2J, 2K, 2L in Nallur Village, Kasipalayam, Vijyapuram Post, Tiruppur Taluk and District subject to the following conditions:

1. The shifting is to be done under the supervision of the respondent/Board.
2. The appellant, after shifting to the new location, shall not increase the discharge of the trade effluent over and above the quantity for which Consent was given by the 3rd respondent/Board.
3. The appellant shall not change the nature of the industry or vary or alter the operation and process.
4. The appellant, after shifting the unit to the new location in S.F. No. 12/21, 2J, 2K, 2L in Nallur Village, Kasipalayam, Vijyapuram Post, Tiruppur Taluk and District, shall not use the premises in S.F.No.150, Kancheepuram, Nallur Village, Kasipalayam, Vijayapuram Post, Tiruppur Taluk and District for running a dyeing unit or any other industry or process.

M/s Sesa Goa Ltd. and Another
Vs
State of Goa and Others

APPLICATION NO. 49/2012

JUDICIAL AND EXPERT MEMBERS: Justice Swatanter Kumar, Justice P. Jyothimani, Dr. G.K. Pandey, Prof. A.R. Yousuf and Dr. R.C. Trivedi

Keywords: iron ore, illegal jetties, show cause notice, Goa Coastal Management Authority, principles of natural justice, audi alteram partem, Costal Regulation Zone Notification

Application allowed

Date: 11th April, 2013

Challenge

The Goa Coastal Zone Management Authority (for short 'Authority') vide its order dated, 4th March, 2011, took the decision and issued the following directions:

"*GCZMA Members after perusing all documents provided, ..concluded that;*

i. The activity of loading iron ore is going on prior to 1991
ii. The jetties in question, exist prior to 1991;
iii. The jetties in question, have been expanded unauthorisedly over double the area of operation over the area beyond 65 sq. mts is illegal and needs to be stopped. Further the unauthorized portion needs to be surveyed and removed forthwith."

Therefore, in exercise of the powers conferred under section 5 of the Environment (Protection) Act, 1986; the GCZMA directed:-

i. M/s Sesa Goa to forthwith stop the activity over the illegal portion of the jetties in question and take action to remove the extended unauthorised portion within 15 (fifteen) days from the date of receipt of these Order failing which the Addl. Collector (North) shall take action to remove the same without any further reference to M/s Sesa Goa and the cost of removal shall be recovered from M/s Sesa Goa.
ii. The Additional Collector (North) to undertake the survey of the jetties in question, mark the area over and above 65 sq. mts and take action to stop the activity over the extended unauthorised portion of the jetties in question."

The legality and correctness of the above decision and directions are questioned by the applicants, M/s Sesa Goa & Others inter-alia but primarily on the following grounds:

1. The impugned order is violative of principles of natural justice.
2. The impugned order has been passed upon allegations and considerations which did not form part of the show cause notice issued to the applicants.

3. The Authority in its order has relied upon certain reports and documents which were never furnished to the applicants. Consideration of such reports and documents has caused serious prejudice to the rights of the applicants.
4. Undisputedly and in fact admittedly, the jetties were in existence prior to 1991 and therefore, the conclusions arrived at by the Authority are contrary to record.
5. The Costal Regulation Zone Notification (for short the 'Notification') itself was issued in the year 1991 and cannot, both in fact and in law, have any application to the existing jetties.
6. In fact, the Notification itself does not contemplate such retrospective application.

Facts

M/s. Sesa Goa Limited (applicant No. 1) is a company registered under the provisions of the Companies Act, 1956 and is engaged in the business of extraction, sale and export of mineral ore. For the purpose of this business, the applicants used barges for carrying mineral ore from the loading point to the port. These loading points were in the nature of jetties which the applicants use for loading iron ore to the barges. According to the applicants they had constructed 'jetties' in the year 1969 and the plans for the same were approved by the Captain of Ports in the year 1969. Some modifications/repairs were carried out to the jetties and they were extended in the year 1987.

According to the applicants, Mr. Khemlo Sawant (Respondent No. 3) is an ex-employee of the company, whose services were terminated on the grounds of misconduct that he committed from time to time during his tenure with the company. Respondent No. 3 is nothing but a disgruntled person who had filed a complaint to the Authority with a malafide intention to settle his personal score. On the basis of this complaint the Authority served a show cause notice dated 16th November, 2009, upon the applicants.

Legal Analysis

From the grounds of challenge as well as the contentions raised, it clearly emerges that the main plank of submission on behalf of the applicants revolves around the non-compliance of the principles of natural justice.

It must be noticed that the aim of rules of natural justice is to secure justice, or to put it negatively, to prevent miscarriage of justice. Despite the fact that such rules do not have any statutory character, their adherence is even more important for the compliance of the statutory rules. A Court or a Tribunal has to examine whether the principles of natural justice have been violated or not as a primary consideration, whenever and wherever such an argument is raised. Test of prejudice is an additional aspect. The above findings of the Court puts one matter beyond ambiguity, i.e., the affected party is entitled to a full and fair opportunity, and such an opportunity, shall, both in fact and in substance, be granted to ensure that justice is not only done but also seems to have been done.

In the present case the Judges are concerned with the application and the various facets of the maxim *audi alteram partem*. The Courts have consistently emphasized that this is a highly effective rule devised by the Courts to ensure that a statutory authority arrives at a just decision and it is calculated to act as a healthy check on the abuse or misuse of power. The doctrine of *audi alteram partem* has three basic essentials. Firstly, a person against whom an order is required to be passed or whose rights are likely to be affected adversely must be granted an opportunity of being heard. Secondly, the authority concerned

should provide a fair and transparent procedure and lastly, the authority concerned must apply its mind and dispose of the matter by a reasoned or speaking order.

The consistent view of the courts has been that recording of reasons is an essential feature of the principles of natural justice. Natural justice cannot be understood in isolation. It must be examined while keeping in mind the facts and circumstances of a given case.

The authority concerned is expected to apply its mind to all aspects of a case but most importantly to the contentions raised by the affected party in relation to the grounds or supporting arguments without which no adverse order could be passed against such party. If such grounds are not dealt with in the order passed by the authority, neither the party nor the appellate authority would be able to comprehend as to why their contentions have been rejected, as the reasons are harbinger between the mind of the maker of the order, to the controversy in question and the decision or conclusion arrived at. This is the acid test for examining fair opportunity and proper application of mind by the authority concerned.

Now, the Judges may examine whether there has been a violation of principles of natural justice, its extent and consequences. The first and the foremost contention in this regard raised on behalf of the applicants is that the report of the Deputy Collector which was part of the record and which has also been referred to in the impugned order was never furnished to the applicants, though, the applicants had submitted the documents when the enquiry was conducted by the Deputy Collector. According to the applicants, it has caused serious prejudice to them. In the impugned order, it has been, noticed "further, the enquiries by the Deputy Collector and SDO (Bicholim) has no finding in its report and the same cannot be relied upon."

The authorities exercising its power of passing orders of civil consequences against parties are expected to apply their minds to all facets. All such factors must be put to the applicant and the applicant has a right to put forward his case on each of such issues. In the show cause notice it has been stated that there was illegal construction/operation of jetties, loading/unloading without approval and the absence of such other statutory approvals. The show cause notice talked of the purpose of reconstruction, construction, development, repair, renovation between 200 meters to 500 meters of the high tide line. These allegations have not been discussed in the impugned order. In fact, the notice clearly stated that the alleged illegal construction was highly detrimental to the coastal ecosystem, riverine ecosystem due to destruction of sand dunes, coastal vegetation etc.

Still another contention raised before the Tribunal is that there was no illegal construction/loading/unloading activities at the jetties. The applicants, vide their letter dated 10th February, 2010, without prejudice to their rights, had requested the office of the Authority to regularize the improvised loading facility in the form of conveyer belting system in Survey No. 32 of village Amona. This application has not been reacted to by the Authority finally, may be in view of the proceedings pending before it in furtherance to the show cause notice. Reliance has been placed upon the provisions of the Notification of 2011 in this regard. The activities which are directly related to the water front or directly need offshore facilities have been made an exception to the prohibited activities within the CRZ.

The said Notification while dealing specifically with the CRZ of Goa declares construction of jetties as permissible by the Gram Panchayats. In other words, the claim of regularization needs examination by the

competent authority. It is for the concerned authorities to examine the said request of the applicants, in accordance with law and with strict adherence to the prescribed procedure.

To put it simply, the impugned order on the one hand dealt with the issues which were not the allegations made in the show cause notice while on the other it does not discuss or appreciate any evidence in regard to the allegations that were made in the show cause notice. This leads clearly to one conclusion, that the Authority has failed to apply its mind to the facts of the case and has not even considered various legal and other submissions that had been raised by the applicants.

Another relevant factor is with regard to the inspection of jetties by the competent authority. As is evident from the above factual matrix, the dispute relates to illegal construction/renovation of the jetties and its extent. The extent could have been best determined by conducting an inspection. The Deputy Collector had conducted an instant enquiry, the report of which has been mentioned in the impugned order, but at the same time it is stated that it returns no findings. The SDO and some officials had visited the site but no report thereof has been referred to in the proceedings and particularly in the impugned order. The Authority, thus, has ignored certain important aspects on the one hand and on the other, has decided the matter with reference to the events which were not part of the show cause notice.

Abuse of power and arbitrariness are two sides of the same coin. One triggers the other. The non-supplying of report, certain documents, non-application of mind, the content of the impugned order being beyond the scope of the show cause notice and non-communication of material relied upon, seen in the light of the background that no inspection was conducted by the Authority concerned, leads the Judges to come to the insuppressible conclusion that there has been denial of fair opportunity to the applicants. The principles of natural justice have been violated. Non-recording of reasons in regard to the grounds and material submissions regarding the same by the Authority further substantiates the view that the impugned order is unsustainable in law. The Judges have no hesitation in coming to the conclusion that after the service of show cause notices, the proceedings and the impugned order are vitiated for the reasons afore-recorded.

Now, the Judges must deal with the contention advanced on behalf of Respondent No.3 that the Notification of 2011 and for that matter even of 1991 did not provide for any specific procedure to be adopted by the authority while initiating such proceedings under the scheme of the Notification. Thus, the procedure adopted by the Respondent No.3 while passing the impugned order dated 4th March, 2011 does not call for any interference. The submission is that the Authority was competent to adopt a procedure that it may have deemed fit and proper.

The proposition of law advanced on behalf of the Respondent No.3 to a limited extent, may not be questionable. It is a settled canon of law that wherever the rules do not provide any specific procedure to be followed by the authority concerned while dealing with disputes and passing orders having civil consequences, it can adopt its own procedure. But equally true is that such procedure has to be in consonance with the principles of natural justice and the basic rule of law. Putting the allegations to the applicants by means of a notice, granting an opportunity to the affected party of being heard and recording of reasons while passing the orders, are the fundamental essentials of the doctrine of *audi alteram partem*. So the authority must follow the procedure which would satisfy these basic ingredients before it can pass an order having civil consequences. Thus, the Judges direct the authority to follow the following procedure while exercising its power in terms of the Notifications of 1991 and/or 2011:

(1) It must serve a notice to show cause, containing comprehensively all the acts/omissions/commissions which the affected party has committed, rendering it liable for any action in terms of the Notification.
(2) The affected party should submit its reply with complete documents to support the contents thereof, within the time prescribed in the show cause notice.
(3) The authority must furnish to the applicants, complaints, documents and/or any other material that it proposes to rely upon for the purposes of determining the controversy in issue.
(4) Wherever the records are voluminous and it may not be practical to furnish the copies of all such records, in that event the authority must provide an inspection of documents to the applicants and supply copies of such documents as the applicants may ask for, at his cost. Wherever the facts of the case require and the authority is of the view that the controversy can better be resolved by physical inspection of the site, then it must by itself or through such other appropriate high officer get the site in question inspected and furnish the inspection report to the affected party.
(5) The affected party should be provided a fair opportunity to put forward its case before the authority.
(6) After hearing the parties, the authority should pass a reasoned order. The order should deal, preferably with the grounds which have been raised by the affected party, as precisely as possible.

The above directions should be followed by the authority in all cases and with immediate effect.

Reverting to the case at hand, while the Judges set aside the order dated 4th March, 2011, they grant liberty to the Authority to commence its proceedings from the stage of show cause notice/notices and proceed in accordance with the directions afore-contained from that stage. It is a settled principle of law that wherever the Courts or Tribunals set aside an order, it could always grant liberty and normally should grant liberty to the authority to commence its proceedings from the stage the defect had occurred in the proceedings.

Jeet Singh Kanwar and Another
Vs
MoEF and Others

APPEAL NO. 10/2011

JUDICIAL AND EXPERT MEMBERS: Shri Justice V.R. Kingaonkar, Dr. P.C. Mishra, Shri P.S. Rao and Shri Ranjan Chatterjee

Keywords: Environment clearance, coal based thermal power plant, Korba town, Chhattisgarh, State environment conservation board, Company Act, environment impact assessment report, public consultation, precautionary principle, sustainable development, Environmental Clearance Regulations

Application allowed

Date: 16th April, 2013

This is an Appeal filed by two villagers, Jeet Singh Kanwar and Vinod Kumar Pandey, who are inhabitants of Village Dhanras and Chhuri, respectively, situated on the outskirts of Korba Town in the State of Chhattisgarh. They challenged the order dated 18th January, 2010 whereby Ministry of Environment and Forest (Respondent No. 1) granted Environmental Clearance (for short EC) to the proposal for installation and operation of a Power Plant proposed by M/s. Dheeru Powergen Private Limited. The proposal was for installation and operation of 3 x 350 MW coal-based Thermal Power Plant within the boundary limits of Village Dhanras. The Respondent No. 2 is the State Environment Conservation Board (for short CECB) of Chhattisgarh State.

M/s. Dheeru Powergen Private Limited is a Company incorporated under the Company Act, having its main office at Sri Thyagaraya Road, T. Nagar, Chennai (Tamil Nadu). It will be referred to hereinafter as "Project Proponent". The Project Proponent submitted proposal for setting up a coal-based Thermal Power Plant of 3 x 350 MW capacity at Village Dhanras.

According to the Appellants, the mandate of various guidelines in Public Consultation Process set out, vide EIA Notification dated 14th September, 2006 issued by the Ministry of Environment and Forest (MoEF), have not been complied with and even flouted while granting the EC. The Executive Summary of EIA Report in vernacular language as well as the full environment impact assessment (for short EIA) Report were not made available thirty (30) days prior to the scheduled date of public hearing. Only the Executive Summary in English language was made available just one week prior to the date of public hearing. The public hearing was not held at the site of the proposed project nor in the proximity thereof, but was held at a distance of about 8 K.M. from the project site, in the office of Tehsildar-cum-SDM, Katghora. The Appellants also alleged that the Expert Appraisal Committee (for short EAC) did not apply its mind to the concerns/objections ventilated during the course of the public hearing as well as to other relevant issues.

According to Learned Counsel for the Appellants, the impugned order of EC is bad in law if "Precautionary principle" and principle of "Sustainable development" are applied.

Following points, as culled out from the pleadings and contentions of the parties, are required to be answered:

(i) Whether the public hearing held on 19th August, 2009 at Tehsil Office premises, Katghora (Dist. Korba) was illegal due to non-compliance of the guidelines set out vide the EIA Notification dated 14th September, 2006 and therefore the impugned order of the MoEF is liable to be struck down?

(ii) Whether the EAC and the MoEF duly considered cumulative effect of the pollution in the area and probable addition of the load of the pollution on account of installation and operation of the proposed project of M/s. Dheeru Powergen Private Limited (Respondent No. 3)?

(iii) Whether the project site falls in the "Critically Polluted Area"?

(iv) Whether this is a fit case in which "Precautionary principle" and "Sustainable development" as envisaged under Section 20 of the National Green Tribunal Act, 2010 are attracted, in the facts and circumstances of the present case, and as such the EC deserves to be quashed?

Re Point No. (i)

The Environmental Clearance Regulations, 2006 provide for prior Environmental Clearance for commissioning of any industrial activity, as indicated in the Schedule appended to the Notification, in keeping with the National Environmental Policy (NEP). All the projects which fall under Category "A" in the Schedule are required to be processed and cleared by the MoEF. Thus, without Environmental Clearance (EC) granted by the MoEF no project falling within the

Category "A" of the Schedule can be made functional. For the purpose of such a project, three (3) stages, namely, (i) Scoping, (ii) Public Consultation and (iii) Appraisal are set out for the purpose of processing.

Careful perusal of the record reveals that the public members were duly made aware of the nature of project and the EIA Report. It appears that the EIA Report was placed in the public domain prior to the scheduled date of public hearing. It is manifested that there was no serious defect in the process of public hearing. In any case, it cannot be said that the Appellants or inhabitants of the nearby villages were prejudiced due to any kind of procedural defect in the process of public consultation (hearing). The public hearing was held in a public place. There was participation of a large number of public members and the process was video-graphed during the course of hearing. The fact that premises of Tehsil Office, Katghora are at a distance of 8 km from the project site is of not much significance and cannot be considered as sufficient ground to vitiate the public hearing unless it was shown that it offered material hindrance in participative decision making mechanism. The judges are of the opinion that the public hearing was conducted in accordance with due procedure envisaged under the MoEF Notification dated 14th September, 2006. Hence, the point no. (i) is answered accordingly.

Re Points No. (ii), (iii) and (iv)

To clear the deck, it may be stated, at the outset, that Korba is, admittedly, a critically polluted area. The MoEF by Office Memorandum dated 13th January, 2010 imposed a temporary moratorium for a period up till August, 2010 on consideration of projects for Environmental Clearance, which are located in critically polluted areas/ industrial clusters in the country including Korba, identified by Central Pollution Control Board (for short CPCB) based on Comprehensive Environmental Pollution Index (CEPI). By

communication dated 15th March, 2010, the list of critically polluted areas was published. In the said list, Korba (Chhattisgarh) is shown at serial no. 5.

So also, the project site falls within the critically polluted area being in the proximity of cluster of industrial projects like Vandana, Ash Pond of NTPC, etc. There is no merit in the argument that the project in question does not fall within the critically polluted area as demarcated by the Korba action plan dated 12th January, 2011 and the MoEF's moratorium dated 13th January, 2010.

The precautionary principle requires the authority to examine probability of environmental degradation that may occur and result into damage. In the present case, it was utmost necessary to thoroughly examine the viability of the project in question, particularly, when there were identical coal- based power projects in the proximity of the area and the area is declared as critically polluted one. There cannot be any doubt

about the fact that installation of such thermal power plant, based on consumption of coal as fuel, would cause additional pollution load in the surrounding area. The suggested safety measure of increasing height of the chimney may not prove to be sufficient to disperse such excessive pollutants. Such contingency called for caution before giving green signal to the Project which involved "ifs & buts". In the Judges' opinion, therefore, by applying precautionary principle, the EC should not have been granted by the MoEF. As stated before, the economic interest shall be put in the backseat when it is found that degradation of the environment would be long lasting and excessive. It need not be reiterated that the MoEF was aware of such environmental degradation and that is why the moratorium imposed earlier is still continuing. Ordinarily, nobody will take further risk of adding pollution load in the area which is already identified as critically polluted one. It appears that the MoEF did not seriously examine the relevant aspects prior to granting the EC in question.

The learned counsel for the Appellants in this regard relied upon the Judgments (*refer to the original order*), wherein the following principles were laid down:

- Environmental measures to be taken by the Government and statutory bodies must anticipate, prevent any attack which causes environmental degradation;
- Where there are threats of serious irreversible damage, lack of scientific certainty cannot be used as a reason for postponing measures to prevent such degradation;
- The onus is on the developer to show that his actions are environmentally benign.

Having considered the facts and legal position as above, the Judges are of the opinion that the impugned EC is granted without appropriate balancing act to see whether the project is proper and viable on the touchstone of principles of "Sustainable Development" and "Precaution" needed to avoid future disaster or irreversible environmental degradation.

The material points and aspects which are derivatives of the foregoing discussion may be summarized as follows:

(i) Before issuance of the TOR (Terms of Reference) on 25th April, 2008, the base line data was provided only for winter season of the year 2005-2006, though, the final EIA Report was submitted in August, 2009 which included the latest data for the summer of 2009.

(ii) Admittedly, Korba town and surrounding areas are critically polluted standing at 5th position in the list as per the MoEF notification.

(iii) Though, the MoEF imposed moratorium on grant of EC in Korba and surrounding area, on 13th January, 2010, yet granted impugned EC just after five (5) days thereof i.e. on 18th January, 2010. This is a material internal contradiction between the two actions i.e. to impose the moratorium on one hand and to breach the same on the other hand.

(iv) The EAC overlooked certain material issues which were highlighted during the public hearing.

(v) The MoEF used vague and rather slippery terms viz. "minimal damage" and implementation of R&R Plan, etc. in the impugned order of EC, which was granted before submission of R and R plan and CSR action plan.

(vi) The radial distance of 15 km from epicentre of Korba town is considered for the purpose of environmental impact. However, there is no particular yardstick shown as to how only 15 km is the area that may be identified as critically polluted one. The focus only on Korba township is improper and impact on the surrounding area of the proposed project ought to have been duly considered. The ash ponds of other projects like NTPC, Vandana, etc. are either at same distance or little away from the project site, even if radius of 15 km is deemed as proper yardstick for determination of critically polluted area and that the project in question is located in between such ash ponds. The ash ponds of other projects as well as the project in question are part and parcel of the same projects and cannot be

segregated from the Thermal Power Plants.

(vii) Though, the EAC observed that the R&R details were general in nature yet even in the absence of such detailed R&R Plan the EC was recommended to MoEF and MoEF granted EC. R&R cannot be prescribed as post clearance condition.

(viii) The MoEF failed to anticipate probable ill impact of the project, in conjunction with the pollution level caused due to the other projects already existing in the surrounding area.

Taking a stock of the forgoing discussion, the Judges have arrived at the conclusion that the impugned order of the MoEF, granting EC to set up the coal-based Thermal Power Plant as sought by the Project Proponent is illegal and liable to be quashed. Needless to say, the Appeal succeeds and must be allowed.

In the result, the Judges allow the Appeal and quash the impugned order of EC dated 18th January, 2010.

Satpal Singh and Others
Vs
Municipal Council Gardhiwala and Others

APPLICATION NO. 15/2013(THC)

JUDICIAL AND EXPERT MEMBERS: Shri Justice V.R. Kingaonkar, Dr. P.C. Mishra, Shri P.S. Rao and Shri Ranjan Chatterjee

Keywords: Public interest litigation, 'hada rori', Gardhiwala town, Municipal Solid Wastes (Management and Handling) Rules, Punjab Municipalities Act, Punjab Pollution Control Board

Application allowed

Date: 25th April, 2013

The Applicants filed *Writ Petition (Civil) No. 8783/2009* in the High Court of Punjab & Haryana at Chandigarh, being Public Interest Litigation, mainly seeking direction to Respondents for shifting of "Hada Rori" (a place where dead animal's carcasses, hide and remains are dumped) to a suitable place and further to implement provisions of the Municipal Solid Wastes (Management and Handling) Rules, 2000 (in short MSW Rules). The Writ Petition has been transferred to this Tribunal. The Writ Petition has been converted in the form of an Application as required under the National Green Tribunal (Practice & Procedure) Rules, 2011.

The Applicants are inhabitants of Gardhiwala town. Admittedly, an open space used as "Hada Rori" (place for disposal of the carcasses, hide, remains, etc. of dead animals) is situated adjacent to the local grain market. There is no dispute about the fact that inhabitants of Gardhiwala town used and are using the said place for dumping of carcasses, hide and remains of dead animals.

The Municipal Council (Respondent No. 1) failed to perform its obligation to clean the public place by removing the remains of the dead animals. The Council totally failed to implement MSW Rules. With the result, the pollution around the place of "Hada Rori" is enhanced and has reached to the extent of intolerable level. Though, provisions under Section 154 and Section 168 of the Punjab Municipality Act, 1911 cast duty on the Municipal Council to remove and dump the remains of dead animals to a proper place and ensure cleanliness in the township, yet Municipal Council has failed to perform such a duty. The other Respondents also have failed to discharge their obligation. The Punjab Pollution Control Board is required to monitor implementation of the MSW Rules. However, the Punjab Pollution Control Board also committed dereliction in discharging such legal obligation. Though, representations were made by the Applicants to the Deputy Commissioner, yet the Respondents did not pay heed to the requests for appropriate implementation of the MSW Rules. The dumping ground (Hada Rori) ought to have been shifted to a proper place outside the limits of the Municipal Council. The Applicants, therefore, filed the present Application seeking direction to the Respondents as indicated herein before.

Clinching issue involved in the present application is as stated below:

Whether the site of “Hada Rori” falls within the limits of Municipal Council, Gardhiwala and therefore the Respondents are duty bound to follow the Municipal Solid Wastes (Management and Handling) Rules, 2000 or even otherwise the Respondents are duty bound to relocate the site of “Hada Rori” and to take proper care for the purpose of avoiding public nuisance as well as to protect right to life available to the citizens?

The Judges record their finding on the above point in the “affirmative”.

There is no dispute, whatsoever, that carcasses, hide and remains of dead animals are being dumped at the open place which is in the proximity of the township.

Considered from any angle, the Respondents are under legal obligation to ensure that pollution free air is available to the residents of the locality near the site of dumping place “Hada Rori”. The Respondents cannot abdicate their legal responsibility on flimsy grounds, like absence of fund or absence of land for relocation of “Hada Rori”. The Respondents have failed to implement Municipal Solid Wastes (Management and Handling) Rules, 2000 and discharge their duties under the Punjab Municipal Act, 1911.

So also, the Respondents have failed to ensure that Fundamental Right available to the citizens of the township in the matter of protection of life is taken care of. The right to life includes the right to pollution free air and pure water. Having regard to the foregoing discussion, the Judges deem it proper to allow the application and give appropriate directions to the Respondents.

In the result, the Judges allow the Application and direct the Respondents as follows:

1. The Respondents No. 1 to 3 shall take immediate action to shift the dumping ground “Hada Rori” to a suitable place outside the limits of Municipal Council and if necessary by acquiring a suitable land, after negotiating with owner of such land and to complete the shifting process within a period of six months hereinafter.
2. The Municipal Council shall construct a parapet wall around the place so selected for “Hada Rori” with wire mesh affixed at least two (2) feet above on such parapet wall, which shall be of five feet height, in order to avoid entry of stray dogs in the “Hada Rori” after shifting of the dumping ground.
3. The Municipal Council shall consult experts as well as the Punjab Pollution Control Board in order to examine whether the dumping can be made by creating ditch of appropriate depth. The dead animals, being biodegradable waste, could be processed to convert them into manure by composting under the provisions of MSW Rules (Schedule II) if it is found that the same will not cause any adverse impact on the ground water level and will not cause contamination/pollution of the ground water. The Respondents shall make arrangements for processing of wastes within a period of one year herein after.
4. The Punjab Pollution Control Board shall closely monitor the progress on alternate site selection and construction in “Hada Rori” and shall file affidavit on the progress six monthly for the next two (2) years hereinafter, in the Registry of National Green Tribunal.

Shri Gurudas Amerkar and Another

Vs

Goa Coastal Zone Management Authority and Others

APPEAL NO. 75/2012

JUDICIAL AND EXPERT MEMBERS: Justice V. R. Kingaonkar, Shri P.S. Rao, Shri Ranjan Chatterjee, Shri Bikram Singh Sajwan

Keywords: quorum, GCZMA, quasi judicial power, CEZ notification

Application partly allowed

Date: 25th April, 2013

ORAL JUDGEMENT

This Appeal is directed against order dated 21st December, 2012 purportedly passed by the Goa Coastal Zone Management Authority (for short, GCZMA), Respondent No. 1.

The main contention raised by the Appellants is that the impugned order could not have been passed by only five (5) Members of the Authority in as much as the quorum as fixed under the Rule was not available. The contention of the Appellants is that the GCZMA consists of twelve (12) Members and presence of at least eight (8) Members is compulsorily required to render any definitive and legally binding decision. Still, however, the GCZMA could not ensure presence of eight (8) Members as required under the relevant provision. The decision rendered by only five (5) Members is invalid because of non-availability of required quorum. Thus, the impugned decision is liable to be quashed.

The Respondents, however, deny the contention of the Appellant on the ground that the quorum was not fixed under the relevant Rules. They also submit that the impugned decision is valid because of the fact that on merits, the case was considered by the five (5) Members committee of GCZMA which was ratified and validated by the other Members and the fact that there was no divergence of opinions by the others.

The short question which arises for determination is as stated below:

"Whether the formation of committee by the Respondent No. 1 (GCZMA) is legal and proper and whether the impugned decision is rendered illegal and inoperative for want of required quorum?"

Before the Judges proceed to examine legality of the constitution of the committee and the legal requirement of the quorum needed for arriving at any decision of the Respondent, it is worthwhile to locate the source of quasi-judicial power available to the Respondent under the CRZ Notification. By order dated 19th April, 2010, the MoEF constituted GCZMA in exercise of powers conferred by sub-sections (1) and (3) of Section 3 of the Environment (Protection) Act, 1986. Perusal of the Government gazette notification dated 19th April, 2010 reveals that the GCZMA as constituted by the MoEF comprised of twelve (12) Members. It is pertinent to note that it was for the Respondent to deal with inquiries into cases of alleged violation of the provisions of the CRZ and Coastal Zone Management Plan (CZMP). The

said GCZMA was also empowered to take action on basis of the complaints and to issue directions under Section 5 of the Environment (Protection) Act, 1986. Rule XI of the MoEF order dated 19th April, 2010 reads as follows:-

"xi. The Authority shall ensure that atleast 2/3 Members of the Authority are present during the meetings."

The use of words "at least" in the above Rule reflects intention of the Legislative authority. It shows that the quorum is mandated for decision making process of the Respondent.

Considering the foregoing discussion, it is manifest that the impugned decision is invalid for want of required quorum as well as for the reason that constitution of the committee of GCZMA was illegal. The Judges make it clear that they have not touched upon the merits of any other issue. Under the circumstances, the impugned decision will have to be quashed and the matter deserves to be remitted to the RespondentNo.1 for taking appropriate decision in accordance with law.

In the net result, the Appeal is partly allowed.

Gurdail Singh and Another
Vs
State of Punjab and Others

APPEAL NO. 4/2013(THC)

JUDICIAL AND EXPERT MEMBERS: Shri Justice V.R. Kingaonkar, Dr. P.C. Mishra, Shri P.S. Rao and Shri Ranjan Chatterjee

Keywords: consent to operate, brick kiln, Appellate Authority, Punjab Pollution control board, District Food and Supply controller, Jalandhar, Punjab and Haryana High Court, Suspended Particulate Matter, Air (Prevention and Control of Pollution) Act, Water (Prevention and Control of Pollution) Act,

Application allowed

Date: 30th April, 2013

This is an Appeal preferred by two inhabitants of Jalandhar, Punjab, challenging the common order dated 14th August, 2012, passed by the Appellate Authority, constituted under the Air (Prevention and Control of Pollution) Act, 1981 (for short, Air Act), and the Water (Prevention and Control of Pollution) Act, 1974 (for short, Water Act), in Appeal Nos. 14 and 15 of 2012. Those were two different appeals, preferred by Mr. Baldev Raj, (Respondent No. 6) against the orders dated 18th February, 2012 and 9th April, 2012 passed by the Punjab Pollution Control Board (for short PPCB). The first order, passed by the PPCB, under sections 21 and 22 of the Air (Prevention and Control of Pollution) Act, 1981, was for refusal to extend the consent to operate the brick kiln under the Air Act. The Second Order was passed under section 31 of the Air Act giving direction to disconnect electricity supply and also to District Food and Supply controller (for short DFSC) to revoke license of the Brick Kiln of Respondent No. 6.

Baldev Raj was operating a Brick kiln since about 1978. The license granted by DFSC (Respondent No. 5), purports to show that the brick kiln was set up on the land bearing Khasra Nos. 19/4, 16, 24/2 and 25 situated at village Seikhe, Tehsil and District Jalandhar. The brick kiln in question is now inoperative and closed down.

Briefly stated, the case by present appellant is that though license was granted by the DFSC to operate brick kiln on a particular piece of land i.e. khasra Nos. 19/4, 16, 24/2 and 25, yet Baldev Raj is not exclusive owner of the said land. The land is owned by Co-sharers including themselves and Baldev Raj. The "consent to operate" was obtained prior to issuance of the license, in favour of Baldev Raj by the DFSC. The brick kiln was being operated in the midst of residential locality of Jalandhar. It is causing air pollution and is detrimental to the health of the residents of the surrounding area. The brick kiln was being operated in blatant violation of conditions of the consent granted by the PPCB as well as the code and practice prescribed in this behalf. Hence, they lodged a complaint against Mr. Baldev Raj to the PPCB.

Feeling aggrieved by the said two orders dated 18th February, 2012 and 9th April, 2012, Respondent No. 6, preferred two separate Appeals bearing Appeal No. 14 and 15 of 2012 before the Appellate Authority

constituted under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act 1981 by the Government of Punjab. The appeals were allowed by the Appellate Authority.

Though served, Baldev Raj, BKO, (Respondent No. 6), failed to appear before this Tribunal.

The Judges have perused the relevant documents placed on record. They have carefully considered the orders of the PPCB as well as that of the Appellate Authority.

It appears that the PPCB granted consent to operate the brick kiln on 27th December, 2010. The consent was valid till 23rd December, 2011. Further it appears that no further consent was granted by the PPCB to operate the brick kiln. On the basis of appellants' complaint dated 31st January, 2011 the officials of PPCB conducted inspection of the brick kiln on 17th February, 2011. At the relevant time, stack samples were collected in the presence of Baldev Raj, but he refused to sign on the container of the samples. The samples were forwarded to Government approved laboratory for analysis. It was found from the analysis report that Suspended Particulate Matter (SPM) level was 780mg/Nm3. Obviously, it was much above the prescribed standards of 500mg/Nm3.A show cause notice was therefore issued by the PPCB on 14th February, 2011 calling upon Baldev Raj as to why appropriate action shall not be taken against him for operating the polluting Brick Kiln unit. Baldev Raj submitted a reply to the show cause notice stating that his brick kiln was not causing any pollution since he had installed pollution control device. In order to verify the fact situation the officers of PPCB made second visit to the brick kiln unit of Respondent No. 6. It was found that the conditions put forth, while granting consent to operate the unit, were not being complied with by Baldev Raj. So, another show cause notice was issued to him on 12th October, 2011. It appears that Baldev Raj appeared in person before PPCB and requested for another inspection by a different team. Accordingly, PPCB constituted another team of officials and the newly constituted team visited the unit of Baldev Raj on 23rd October, 2011. The Members of the inspecting team noted deficiencies. However, the inspection team was not able to collect the samples of the stack emissions because the brick kiln was not in operation. Eventually, on 3rd February, 2012, the stack samples were collected. The laboratory of State Board analysed the samples and reported that the concentration of Suspended Particulate Matter (SPM) level was 1072 mg/Nm3 against the prescribed standards of 500 mg/Nm3 . As a result of this report the PPCB again issued show cause notice, heard Mr. Baldev Raj personally and passed orders dated 18th February, 2012 refusing to grant further consent to operate the brick kiln. Another order dated 9th April, 2012, under section 31 (A) of the Air Act, was also issued to stop the operation of brick kiln on account of violation of the conditions while granting consent to operate the unit.

What appears from the above mentioned reasons, recorded by the Appellate Authority, is that the sampling procedure adopted by the PPCB was not believed by the Appellate Authority. The Appellate Authority did not call for the records of the government testing laboratory in order to find out the date of receipt of samples and date of testing thereof .

The Government of Punjab had issued an order dated 6th October, 1998; a copy thereof is placed on record. This order is titled as "Punjab Control of Bricks Supplies, price and Distribution Control Order, 1998". Clause (3) of the said order prohibits manufacturing and selling etc. of bricks without licence. It also provides certain norms to be followed at the time of granting licence. Clause (5) empowers the District Magistrate to refuse the grant or renewal of licence.

It appears that the question "whether brick kiln operating in an area less than of 5,000 hectares requires Environmental Clearance" is being considered by the Apex Court. The brick kiln was to be closed down as per the directions of High Court of Punjab and Haryana. The Judges are of the opinion that the Appellate Authority failed to consider the conduct of Respondent No. 6 that he was non-cooperative during the process of collection of samples by the officials of PPCB. He refused to sign containers of the samples and sought inspection by separate inspecting party of the PPCB and he did not explain why he did not sign the container of the samples. In this way, adverse action should have been taken against him. Considering, the forgoing discussion, the Judges are of the opinion that impugned order of the Appellate Authority is improper, illegal and unsustainable. The matter does not stop here. The impugned order shows that it has been signed and delivered by two members of the Appellate Authority.

The Sub-clause (2) of Section 31 of the Air Act and Sub-clause (2) of Section 28 of the Water Act make it explicit that the Appellate Authority shall consist of a single Member or three Members appointed by the State Government. It does not mention a two Member Authority to function as Appellate Authority.

For the reasons aforestated, the Judges are inclined to allow the appeal and set aside the common order passed by the Appellate Authority. Hence, the Appeal is allowed and impugned order is set aside. It follows that both the orders dated 18th February, 2012 and 9th April, 2012, passed by the PPCB, shall be restored and become operative.

Ms Cox India Ltd
Vs
MP Pollution Control Board

Application No. 10/2013 (P.B.76/2012 THC)

Coram: Justice P. Jyothimani, Dr. Ajay A. Deshpande

Keywords: mandamus, distillery unit, principles of natural justice, deforestation

Application Allowed.

Date: May 9, 2013

JUDGMENT

Balram Raikwar v State of MP Ors, May 9 2013

The applicant, M/s Cox India Ltd. was a private Company registered under the Companies Act and started with an object of carrying on a distillery unit with a capacity of 9-lakh units per year, for rectified spirit (country liquor), which started in 1995. The applicant company was permitted to run the unit with the capacity of 3 KL per day on molasses based manufacturing of liquor. Later around 2006, the applicant has submitted an application for additional grant of 8 KL per day as expansion, with the respondent namely the State Pollution Control Board and originally an order was passed by it on 24.01.2006 giving consent to establish for distillery unit on grain basis with 8KL per day. The applicant (project proponent) raised the following legal issues:

1.Set aside the impugned order on the ground of violation of the principles of natural justice.

2.The impugned order cannot be issued under Section 33(A) of the Water Act.

3. The State Pollution Control Board, having taken a decision, as seen in the communication of its Member Secretary dated 07.01.2011 that grain based industry is less pollutant, has chosen to take a contradictory stand under the impugned order.

4. In any event, the communication of CPCB dated 18.08.2006 cannot be treated as a direction binding on the State Board.

The other application No.07/2013, filed by an applicant namely Balram Raikwar, filed originally by way of Writ Petition before the Hon'ble High Court of M.P. seeking for a mandamus against the State Pollution Control Board to take appropriate legal action against the Respondent no. 4, M/s Cox India Ltd., who was the applicant in application no. 10/2013 and also to take action against the Regional Officer of MPPCB, Sagar, who had filed false report. The applicant stated that the distillery unit (project proponent) had been given 67.5 acres of land by Govt. of M.P. by way of exchange, on condition that, the Company shall establish the Pollution Control mechanism and also, make plantation of trees all over the land to make it a green area which would minimize pollution. It is also stated that even though the condition imposed was that the project proponent should plant 3000 trees, there are no such trees available at all and the project proponent has defied the condition under the pretext that 600 trees have died due to draught and therefore there is a factual false statement made by the project proponent.

While the State Board stated that installation of grain based distillery unit is equally polluting in its nature. It is also denied that prior notice was not given before passing the impugned order. Counsel for the Central Pollution Control Board stated that it never directed the State Pollution Control Board to withdraw expansion proposal and therefore, that letter cannot be the basis for the State Pollution Control Board to act and pass the impugned order

However, according to Learned Additional Advocate General appearing for the State Pollution Control Board, there was a show cause notice issued to the project proponent on 12.10.2006 asking the project proponent to submit his objection. But, SPCB was unable to produce any record to show that such notice has been served on the project proponent. Therefore, it was noted that principles of natural justice was violated.

The SPCB, stated that the project proponent had not at all complied with any of the conditions and therefore even if it is assumed that no notice is given before withdrawing the permission of the project proponent for additional capacity, it cannot as a matter of right claim that it should be entitled for an order of consent to operate in respect of the additional capacity.

The Tribunal observed that the order has been passed under Section 33 (A) of Water (Prevention and Control of Pollution) 1974, the said Section empowers the Central Government to give certain directions for better performance of an industry and to avoid pollution and it cannot be made applicable for the purpose of revoking or withdrawing a permission already granted. It enables the SPCB to issue periodic direction for the purpose of maintaining pollution standards so to as to give effect to the avowed object of the said Water Act and Air Act.

The Tribunal constituted a committee consisting of Shri R.S.Kori, Zonal Officer, CPCB, Bhopal and Shri Manoj Kumar Mandrai, Executive Engineer, MPPCB, Bhopal and Shri V.S.Rai, Regional Officer, MPPCB, Sagar to inspect the project proponent's factory to find out and give reply for the two questions raised: (a) as to whether plantation of 3000 trees are sufficient to meet the environmental protection norms and as to whether sufficient space and infrastructure is available for the same; (b) whether the scheme proposed by the project proponent for the purpose of treatment of the discharge of the effluent is acceptable and what is the present status of the treatment plant and nature of pollution being caused.

While answering the first question, the committee had ultimately found that plantation of 3000 trees on 8.541 acres would not be sufficient to meet environmental protection norms. In fact the committee has also pointed out that there is no sign of earlier plantation of 3000 trees observed at the time of inspection. While answering the second point about effluent treatment plant, the observation made in this regard, which is relevant is extracted as follows:

1. The photographs clearly indicate that the effluent treatment plant is in place but it is not being used for treatment of effluent. Its component/tanks are only being used for storage of effluent.

2. The entire Effluent Treatment Plant (ETP) including digester, de-gassifier vessel, lamella clarifier, primary and secondary clarifiers, sludge drying beds, aerators were found non-functional. At the time of inspection, team requested to the industry to show, whether all aerators are in working condition or not. Then the industry started only one aerator and shown to the team. Other aerators were not operation.

3. Sludge Collection Pit made for collection of sludge of lamella clarifier found filled with spent wash and its sludge.

4. The sludge drying beds are not being used and found full of weeds and grasses.

5. The spent wash collection tank is also interconnected with aeration tanks whereas its effluent should be fed into the digester. This arrangement causes the short-circuiting of spent wash (raw effluent) in aeration tank.

6. All the 04 aeration tanks are also interconnected in parallel whereas these should be in series. Last 02 aeration tanks are also connected in parallel with treated effluent collection tank, whereas these should be connected with primary and secondary clarifiers. This arrangement causes the short-circuiting of effluent of aeration tank to the final treated effluent storage tank. It is evident from above that present ETP is non-functional.

Ultimately, the committee gave the following comments:

1. Treated effluent did not confirm with standards prescribed by MPPCB in water consent letter.

2. The sample quality of impounded water in nalla indicates the discharge of effluent outside the factory premises.

3. Presence of Potassium and TDS in water sample open wells may be due to percolation of effluent into the ground water. Therefore industry should seal all the outlets of factory boundary located towards nalla and the effluent impounded in nalla should be pumped to back to spent wash collection tank to prevent drinking of this water by cattle."

The said report reveals a startling state of affairs of the project proponent and the same is not opposed by anyone and in fact the project proponent is a party to the report. The contents of the report shows that the existing plant of the project proponent is totally opposed to what was presented before the High Court as well as this Tribunal by the officials of the SPCB.

Even though, the Tribunal has no hesitation to set aside the impugned order for the reasons stated above, ultimately it is for MPPCB to decide about the proposal given by the project proponent for extension by giving due opportunity to the project proponent.

The Tribunal is of the view that the project proponent, so as to enable it to run 3 KL per day on molasses basis, must do the minimum requirement of plantation of 3000 trees that and that should be done within the time specified by us. It is now seen that in respect of conducting 8 KL per day on grain basis, the requirement of land by the project proponent is much more. However, in the existing land, the tribunal is of the view that on the polluter pay principle, the project proponent should be directed to plant sufficient number of trees.

For all the above said reasons, the tribunal decided that:

(1) Application No. 10 of 2013, M/s Cox India Ltd. stands allowed and the impugned order passed by the MPPCB dated 07.12.2006 stands set aside.

(2) It would be open to MPPCB to give proper notice to the project proponent and after hearing him and giving him sufficient opportunity including the opportunity to remove the defects and comply with various conditions, the MPPCB shall pass appropriate order regarding the proposal of the project proponent for extension. We make it clear that the MPPCB which has by its conduct through its officer has caused huge loss shall not repeat the same.

(3) It is directed that the project proponent will plant minimum 3000 trees of each having 3 feet length and maintain the same for 3 years so as to make the trees self sustainable and that shall be done within 3 months' from today failing which the project proponent shall pay an amount of Rs. 5 lakhs as a compensation and that amount shall be kept by the State Government in a separate account as "Environmental Protection Fund" which shall be maintained by the Chief Secretary of State of MP along

with Principal Secretary, Housing and Environment and Zonal Officer of CPCB and it will be open to this committee to spend this amount for environmental protection in the State as and when required accordingly and report the same to the registry of this Tribunal.

M/s DRG Grate Udhyog
Vs
State of M.P. and Others

APPLICATION NO. 96 OF 2012 THC

JUDICIAL AND EXPERT MEMBERS: Justice Swatanter Kumar, Justice U.D. Salvi, Dr.D.K. Agrawal, Prof. A.R. Yousuf and Dr. R.C.Trivedi

Keywords: residential area, stone crushing unit, Bilaua, Tehsil Dabra, District Gwalior, no objection certificate, school, Madhya Pradesh Pollution Control Board, Air (Prevention and Control of Pollution) Act, beneficial legislation, purposive construction, maxim Salus populi est suprema lex

Application dismissed

Date: 9th May, 2013

A simple question of some legal significance as to the meaning and interpretation of the expression 'residential area' arises for consideration of the Tribunal in the present case. The relevant facts giving rise to the present application, are that the applicant firm is a partnership concern and Mr. Manish Kumar Mittal is one of the partners of this partnership firm, who has instituted the present application. This partnership concern carries on the business of stone crushing. It sought to establish a stone crushing unit at Bilaua, Tehsil Dabra, District Gwalior. The applicant made inquiries and was informed by the Panchayat about a suitable piece of land for the same so that he could obtain a 'no objection certificate' from the Department concerned. Based upon the inquiries made, the applicant vide a registered sale deed dated, 13th October, 2010, purchased the land for establishing a stone crushing unit. He obtained a certificate from the Gram Panchayat for the availability of the land in question situated merely 600 metres away from the residential area. On 1st June, 2011, the petitioner applied for 'no objection certificate' from the Madhya Pradesh Pollution Control Board, (for short the Board). The Regional Officer of the Board vide their letter dated 11th August, 2011, denied the petitioner the grant of no objection certificate on the ground that a school was existing at a distance of 450 metres from the site of the stone crusher and as per the guidelines issued by the Board, the same could not be permitted. Under these guidelines, the minimum distance between a residential area and a stone crushing unit is to be 500 metres.

Aggrieved by the order of the Board dated, 11th August, 2011 and that of the appellate authority dated, 13th December, 2011, the applicant has challenged the correctness and legality of these orders, inter alia, but primarily on the following grounds:

(a) The guidelines do not have the force of law and are, therefore, incapable of being made the basis for declining the consent by the Board, which exercises its powers in terms of Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 (for short "the Air Act"). The Board discharges statutory functions and is bound by the provisions of the law alone.

(b) The expression 'residential area' used in the guidelines does not include running of a school. Thus, the limitation of 500 metres, as imposed by the guidelines is not applicable to the case of the applicant in the face of the admitted facts.

(c) The guidelines issued by various other State Pollution Control Boards specifically provide for inclusion of schools or educational institutions, which are conspicuous by their absence in the guidelines issued by the Board. What is not specifically provided for cannot be read into the provisions by implication, particularly when this amounts to a restriction or prohibition upon the right of the applicant

to carry on business.

The facts are not disputed by the respondent. However, on the question of law, the respondent seriously disputed the correctness of the contentions of the applicant.

Discussion on merits

After having noticed the factual matrix of the case and the guidelines formulated by the Board, the legality of which is in question in the present application, the Judges shall now proceed to deal with the respective contentions raised on behalf of the applicant.

In the present case, the guidelines have been issued by the Board in discharge of its functions to ensure prevention and control of air pollution that may be caused due to operation of stone crushers. These guidelines have been framed by the Board for its own purposes as well as for the general public, the members of which may be interested in establishing and carrying on the business of stone crushing.

The stone crushers are required to take consent of the Pollution Control Board for carrying on their activities. It will even otherwise be just, fair and in the interest of the administration and transparency that such guidelines are framed and are made public, so that all concerned are aware of the same. This itself, would help in eliminating the element of arbitrariness in exercise of the powers by the Board. Thus, for these reasons, the Judges have no hesitation in holding that the above guidelines dated, 5th January, 2004 issued by the Board are valid, have the force of law and are binding on all concerned.

Having rejected the first contention put up on behalf of the applicant, in the view of the Judges, it will be convenient to discuss the contentions (b) and (c) raised on behalf of the applicant together.

In order to illustratively understand the connotation of the expression ‘residential area’ it is necessary to explain the word ‘residence’ first. The Black’s Dictionary, 8th ed. says ‘residence’ means bodily presence

of inhabitants in a given place. It is difficult to give an exact definition and explanation for the term 'residence' as it is flexible and elastic in nature and it must be read in conjunction with the relevant provision where it appears and the object that it seeks to achieve.

It is crystal clear that in the case of a social or beneficial legislation, the Court or Tribunals are to adopt a liberal and purposive construction as the above rule of literal construction. Social or beneficial legislation is intended to achieve a much greater purpose and the very purpose of enacting such law could be frustrated by application of stringent rules of construction. The purpose, in the present case, is to ensure clear and pollution-free air quality to the citizens of the country, and therefore, it is necessary to regulate carrying on of such businesses which cause or which are likely to cause pollution of air. Carrying on a business, trade or profession is a fundamental right guaranteed to an individual in terms of Article 19(1)(g) of the Constitution of India but such a right is subject to reasonable restrictions and limitations. The restrictions, inter alia, and in particular relate to technical qualifications of carrying on any profession, business or trade. The restriction imposed in relation to adherence to prescribed parameters of emissions under the Air Act thus is a restriction made by law.

Now the Judges revert to examination of the expression 'residential area'. 'Residential area' obviously means an area which is being used for residence. In other words, it is an area where people reside. Residence is not an expression that can be interpreted or explained in isolation. It must essentially relate to 'human activity'. Human activity is of essence for understanding or even explaining the expression 'residential area'. The ethos of this expression is activities performed by human beings where they spend time, breath or sit for a reasonable time. The expression 'residential area', read in the context of the guidelines dated, 5th January, 2004, cannot be given a meaning which would result in frustrating their very object and purpose, and also of the relevant provisions of law. The purpose of providing a distance of 500 metres from the residential area is to protect the human beings living in that area and not the buildings per se. The Supreme Court of India upheld such restriction of banning operations of stone crushers and quarries within the radius of 500 metres of the residential area. Even in its judgment, the Supreme Court used the expression 'residential area' in its generic sense.

At this stage, the Judges notice some of the adverse impacts of such activity, which have been scientifically analysed, in relation to air and noise pollution with specific reference to children. Children are prone to higher effects of air pollution than adults as they consume much larger quantity of air per unit body weight that exposes them to higher degree of air pollution.

Similarly, the noise generated by the stone crushers will adversely affect the concentration level of children. Such activity is likely to hamper their ultimate performance.

The activities of the teachers, students and rest of the staff in such institutions satisfy the basic ingredients of a 'residential area'. Such activities get adversely affected by the air and noise pollution resulting from carrying on of activities like stone crushing within a short distance. The purpose of including 'residential area' within the ambit of the prohibition is to safeguard human existence from the ill effects of environmental pollution in those areas. All of them have the fundamental right in terms of Article 21 of the Constitution to breathe fresh air that is free of pollution. The right of the applicant to carry on the business of stone crushing is subject to limitations of law. The conflict between public interest and private interest has to be resolved on the touch stone of the maxim *Salus populi est suprema lex.*

The Judges have held that the residential area would deem to include an educational activity. Thus, the Judges see no reason to interfere with the order of the Board dated 11th August, 2011 and that of the appellate authority dated 13th December, 2011. For the reasons afore recorded, the Tribunal finds no merits in the present application (appeal). The same is dismissed

M/s Lithoferro
Vs
Ministry of Environment and Forest

APPEAL NO. 71 OF 2012

- **Sociedade Timblo Irmaos Ltda Vs Ministry of Environment and Forest (APPEAL NO. 72 OF 2012)**
- **Hardesh Ores Pvt. Ltd. Vs Ministry of Environment and Forest (APPEAL NO. 74 OF 2012)**
- **Sureshbhai Keshavbhai Waghvankar Others Vs State of Gujarat and Others (APPEAL NO. 65 OF 2012)**

JUDICIAL AND EXPERT MEMBERS: Justice Swatanter Kumar, Justice U.D. Salvi, Dr.D.K. Agrawal, Prof. A.R. Yousuf and Dr. R.C.Trivedi

Keywords: mining operations, Goa, Environment (Protection) Act, Environment (Protection) Rules, principles of natural justice, public interest, audi alteram partem rule, doctrine of prejudice, arbitrariness, Shah Commission's report, Central Government order

Application dismissed with directions

Date: 9th May, 2013

The Legislature has vested the Central Government with the power to issue directions, in writing, to any person, officer or authority, in exercise of its powers and in performance of its functions under the provisions of Section 5 of the Environmental (Protection) Act, 1986 (for short 'the Act'). The Central Government, in exercise of the powers vested in it under Section 5 of the Act, issued an order directing that the environmental clearance recorded in respect of each of the 139 cases be kept in abeyance with immediate effect and until further orders, pending detailed scrutiny of each of these cases (*refer to original judgement for an excerpt of this order*).

In exercise of the power under section 25 of the Act, the Central Government framed the Environment (Protection) Rules, 1986 (for short 'the Rules) which were notified on 19th November, 1986. How the powers of Section 5 of the Act are to be exercised was elucidated by enacting the Rules, particularly Rules 4 and 5 of the Rules.

Aggrieved from the issuance of the above directions, the three private stakeholders, namely, M/s. Lithoferro, Sociedade Timblo de Irmaos Ltd. and Hardesh Ores Pvt. Ltd. have preferred the appeals being *Appeal Nos. 74/2012*, *72/2012* and *71/2012* respectively challenging the legality and correctness of the said order. The challenge to the above order, inter alia but primarily is on the following grounds: -

1. The impugned order is violative of the principles of natural justice and cannot be saved even with the aid of proviso to Rule 4(4) and Rule 5(4).
2. The order suffers from the vice of arbitrariness as it was not based on 'public interest' but was a follow-up action to the intent of the Minister of Environment that was declared by her in the Press

Conference held on 12th September, 2012 at Goa. Thus, the impugned order is bad in law and is liable to be quashed even on the ground of legal malice.

3. No reasons have been recorded while passing the impugned order. Whatever reasons have been stated, they are not germane to the facts of the case and to the object of exercise of the prescribed statutory power. The order suffers from patent perversity and illegalities and cannot stand the scrutiny of law.

Now, the factual matrix that has given rise to the above contentions must be noticed.

Since a common question of law and fact arises in all the above appeals, it is not necessary to refer to the facts of each appeal.

The entire gamut of the submissions made on behalf of the appellants is with regard to the non-adherence of the principles of natural justice and non-recording of reasons in the impugned order. Thus, it is necessary for the Judges to examine the basic principles of natural justice.

The *audi alteram partem* rule is intended to inject justice into law. It cannot be applied to defeat the ends of justice or to make the law 'lifeless, absurd, stultifying, self-defeating or plainly contrary to the common sense of the situation.' The Court must make every effort to salvage this cardinal rule to the maximum extent permissible in a given case. It must not be forgotten that 'natural justice is pragmatically flexible and is amenable to capsulation under the compulsive pressure of circumstances. The aim is to secure justice or to prevent miscarriage. Where the statute is silent about the observance of principles of natural justice, then such statutory silence is taken to imply compliance with the principles of natural justice.

The Act has a sole purpose to achieve i.e. to provide environmental safety and restrain persons from polluting the environment and causing detriment to the health of the society. It is in this context that one must understand the general meaning that the courts have given to the expression 'public interest'.

'Public Interest' cannot be treated as a restrictive or rigid term.

With the development of law, public interest has attained a new dimension. In exercise of certain powers by the Government, this principle is of paramount consideration. The doctrine of legitimate expectation and promissory estoppel cannot be pressed into service by a citizen where the public interest justifies action of the State. Where the public interest will be harmed, individual rights must give way to rights of the society at large. Public interest, therefore, has to be considered and applied on the basis of the facts and circumstances of a given case.

Public interest in the present case has to be read in conjunction with environmental protection. Public interest in the present case has to be read in conjunction with environmental protection.

The Central Government has under its control the regulation of mines and development of minerals. Thus, legally it casts a special duty on the Central Government to take necessary steps for conservation and development of minerals in India. Section 17 of the Mines and Minerals (Regulation and Development) Act, 1957 authorises the Central Government itself to undertake prospecting or mining operations under any area not already held under any prospecting licence or mining lease. This is sufficiently indicative of the fact that protection of mines and minerals is the obligation of the State as well as to ensure environmental protection. On humanitarian grounds, and also as per the intent of the statute, it is the

balance between public and private interests that the authorities are expected to maintain. Illegal mining is bound to affect the environmental and ecological balance.

It is also a well-accepted fact that the mining operation is hazardous in nature. It impairs the ecology and people's right to natural resources. The entire process of setting up of mining operations requires utmost good faith and honesty on the part of the intending entrepreneurs.

There is a close relationship between public interest on the one hand and sustainable development on the other. It is demonstrably clear from the above discussion that the expression 'public interest' used by the legislature in Rule 5(4) has to have a direct nexus to the environmental protection.

Before the Judges examine the other contentions, they must deal with the factual matrix of the case and contentions related thereto. There is no doubt that the appellant had obtained permissions from various authorities and had also obtained the environmental clearance from the Ministry of Environment and Forests (for short MoEF). It is also undisputed that the show cause notice dated 11th September, 2012 had been served upon the appellant raising the sole complaint in relation to 'dump mine'. To this, the appellant submitted a reply on 25th September, 2012. No final order with reference to the said show cause notice has yet been passed by any competent authority. The authorities, before issuing the show cause notice dated 11th September, 2012, had inspected the mining lease of the appellant. It was stated that the two conditions mentioned in the notice had been violated and they related to the following:

"(i) No change in mining technology and scope of working shall be made without prior approval of the Ministry of Environment & Forests, and

(ii) No change in the calendar plan including excavation, quantum of mineral, iron ore and waste shall be made."

For violation of the above, it was proposed to revoke the environmental clearance. It has even been specifically stated by the applicant in his application itself that showed that the Commission was constituted under the provisions of the Commission of Inquiry Act, 1952 to go into illegal mining in a number of States, including Goa. The Shah Commission had submitted its report, which was placed before the Parliament on 7th September, 2012. The State of Goa, immediately after placement of the report before the Parliament, passed a general order on 10th September, 2012 suspending all the mining operations in Goa, including that of the applicant. While this order was in force, it appears that the Union Minister of State for Environment and Forests (Independent Charge) had gone to Goa and made a statement that the environmental clearance granted in respect of 93 mines in that State shall be suspended. Thereafter, on 14th September, 2012, the impugned order came to be passed. This order was passed in exercise of the powers vested in the Ministry in terms of Section 5 of the Act. It was directed in this order that the environmental clearance granted in each of the 139 cases by MoEF shall be kept in abeyance pending detailed inquiry in each case.

In paragraph 7 of this order, it was specifically noticed that immediate action in public interest was required to be taken, and therefore, in exercise of the powers conferred under Rules 4(5) and 5(4) of the Rules, the action was taken without giving notice to the appellant. Thus, the order was passed in public interest, keeping in mind the Shah Commission's report, which was placed before the Parliament on 7th September, 2012. Thus, it is obvious that the Central Government had taken note of the entire record,

including Justice M.B. Shah Commission's report and the other orders, as is evident from the impugned order, and then passed the order, in public interest, suspending the environmental clearance granted to the appellant. Thus, in the light of the above provisions, now the Judges have to examine whether the order dated 14th September, 2012 is violative of the principles of natural justice or suffers from any of the infirmities, as contended before the Tribunal at the very threshold.

It is not correct to contend that the impugned order does not state any reasons. On the contrary, the impugned order refers to the background as well as to the reasons which have persuaded the competent authority to exercise its powers in an urgent manner and in public interest. The authority has taken into consideration the contents and records leading to the passing of the order by the State government dated 10th September, 2012. They have also noticed that there are violations of environmental norms, statutory requirements and apprehension of large scale illegalities in the mining operations in the State of Goa. This prima facie view is not ill-founded. It is based upon the Shah Commission's report, which document was prepared after site inspection, collection of evidence and in accordance with the provisions of the Commission of Inquiry Act, 1952. Thus, the Judges are unable to accept the contention that the impugned order is based on no material and does not state any reason. The order ex facie shows application of mind and some reasons have certainly been recorded in the impugned order. The grievance with regard to breach of the conditions of environmental clearance notified by the appellant is separately pending before the competent authority in furtherance to the show cause notice dated 11th September, 2012. Those proceedings have not culminated into passing of any final order as of now. It is apparent that in view of the Shah Commission's report, there is an imminent threat to the environment as well as untimely exhaustion of mining reserves of iron ore in the State of Goa. It is bound to have adverse effects on the ecology of the area, thereby disturbing the ecological and natural balance in the State of Goa. This would apparently amount to irreparable damage to the environment and the ecology. Lest the damage of such a magnitude should take place, it is always wiser to take preventive measures rather than to expose the State to the kind of danger indicated in the Shah Commission's report.

The order, in the present case, is for suspension of the environmental clearance during pendency of the main proceedings, thus, is preventive in nature.

It is clear that carrying on of mining activities, transportation of iron ore, manganese, etc. had been suspended. Thus, there are three different orders in force – suspending any carrying on of mining activity in the State of Goa by all the mine-lease owners including the appellant.

'Arbitrariness' is a term used in contradistinction to the expression 'fairness'. What is arbitrary cannot be fair and what is fair cannot be arbitrary. This has to be examined with reference to the facts and circumstances of a given case. Malice in law means something done in law without lawful excuse. The plea of legal malice is sought to be substantiated in the present case on the basis that the impugned order was followed by the statement made by the Minister of Environment and Forests, a day prior to the order in Goa. In other words, a political statement made has resulted in passing of an omniscient order and thus has the element of arbitrariness. Not only the statement of the Minister, but also the impugned order, clearly show application of mind with reference to the records and the directive being issued in the larger public interest. It was not a case of an appeal from one's own order to oneself. Having examined the

cumulative effect of the record and the contentions raised the Judges are unable to hold that the impugned order suffers either from the vice or arbitrariness or that of legal malice.

Prejudice and Theory of Useless or Empty formalities: -

The order without strict observance of natural justice may not be set aside. The basis for such a view was that on admitted or undisputable facts if only one conclusion could be drawn which the authorities have taken, then the element of prejudice would lose its significance. Non-observance of principles of natural justice must, thus, satisfy some real prejudice being caused to the person concerned and not that it was merely a technical infringement of principles of natural justice. This view has also been reiterated by the Courts that the breach of natural justice by itself would not be prejudicial if the undisputable proposition shows no arbitrariness on the part of the authorities concerned. Not mere violation of natural justice but de facto prejudice other than non-issuance of notice had to be proved.

It is a settled legal position that an order is to be examined on the touchstone of doctrine of prejudice.

While applying the principles to the present case, the appellants have failed to show any prejudice that has resulted from the alleged non-grant of the right of hearing to them. It is not in dispute before the Judges that an interim order was passed by means of the impugned order suspending the mining activity. No hearing had been granted to the appellants. The Judges have already noticed that there were records, reports and orders which had found large scale illegalities, irregularities and extraction of iron and manganese ore in excess of the leased area. Inter alia it was also recommended that mining activity, including that of the appellant, should be banned.

Thus, all the contentions and undisputable facts before the Judges lead only to one conclusion that no prejudice has been caused to the appellant for non-grant of hearing to them. Only one view was possible that no different order could follow, more so in the larger public interest. Similarly, no other view is possible even before the Tribunal that no prejudice has been caused to the appellants for they having not been provided any hearing pre-passing of the impugned order.

In the present case, one very important aspect that the Tribunal has to keep in mind is that the impugned order is not a final order; it is only an order of suspension during the pendency of a detailed inquiry to be conducted by the MoEF. On the cumulative examination of the facts of the present case and report before the Tribunal, it is clear that the theory of useless or empty formality, to some extent, if not in its entirety, would be applicable to the present case.

Having rejected all the contentions raised on behalf of the applicant, still, the Judges must observe that the impugned order was passed on 14th September, 2012 and even till date, the proceedings have not been concluded.

In light of the reasons aforestated and while declining to interfere with the impugned order date 14th September, 2012, the Judges direct the MoEF to complete its detailed inquiry and pass appropriate orders/directions as expeditiously as possible and in any case, not later than three months from today.

Pradip Kumar Agarwalla Proprietor of M/s Assam Brick Craft

Vs

Rohit Choudhury and Others

REVIEW APPLICATION NO. 29/2012

- **M/s Nayan Brick Industry Vs Rohit Choudhury and Others (Review Application No. 30/2012)**
- **M/s Dipti Brick Field Vs Rohit Choudhury and Others (Review Application No. 28/2012)**
- **M/s Mahan Brick Field Vs Rohit Choudhury and Others (Review Application No. 27/2012)**
- **M/s OM Brick Field Vs Rohit Choudhury and Others (Review Application No. 26/2012)**
- **M/s Nirmal Brick Field Vs Rohit Choudhury and Others (Review Application No. 25/2012)**
- **M/s Shyam Brick Industry Vs Rohit Choudhury and Others (Review Application No. 24/2012)**
- **M/s Bajaj Brick Industy Vs Rohit Choudhury and Others (Review Application No. 23/2012)**
- **M/s Numaligarh Brick Industry Vs Rohit Choudhury and Others (Review Application No. 22/2012)**
- **M/s M M Brick Field Vs Rohit Choudhury and Others (Review Application No. 21/2012)**
- **M/s D K Brick Industry Unit 2 Vs Rohit Choudhury and Others (Review Application No. 20/2012)**
- **M/s Shree Mahadeo Brick Field Vs Rohit Choudhury and Others (Review Application No. 19/2012)**
- **M/s Sonam Brick Industry Vs Rohit Choudhury and Others (Review Application No. 18/2012)**
- **M/s Mayur Brick Industry Vs Rohit Choudhury and Others (Review Application No. 17/2012)**
- **M/s Mahabir Brick Industry Vs Rohit Choudhury and Others (Review Application No. 16/2012)**
- **M/s Dipak Brick Field Vs Rohit Choudhury and Others (Review Application No. 15/2012)**
- **M/s Mahabir Brick Field Vs Rohit Choudhury and Others (Review Application No. 14/2012)**
- **M/s DK Brick Industry Unit 1 Vs Rohit Choudhury and Others (Review Application No. 13/2012)**

JUDICIAL AND EXPERT MEMBERS: Justice Swatanter Kumar, Justice U.D. Salvi, Dr. D.K. Agrawal, Dr.G.K. Pandey and Dr. R.C.Trivedi

Keywords: brick kiln, quarrying and mining activities, Kaziranga National Park, modification

Application disposed with observations

Date: 9th May, 2013

By this order the Judges shall dispose of the above 18 miscellaneous applications filed on behalf of the different applicants seeking correction/modification of the order and judgment passed by the Tribunal dated 24th January, 2013 in *Review Application No. 29 of 2012*.

One Mr. Rohit Chaudhary had filed an application stating that he was a resident of Village Ghokaghat and was concerned about the ecology of the area and the future of the Indian Rhinoceros, Elephant and wide species of flora and fauna available in the Kaziranga National Park, which is also a tiger reserve under the provisions of The Wildlife (Protection) Act, 1972. The said applicant filed an application under Section 14(1) of the National Green Tribunal Act, 2010 (for short 'the NGT Act') praying for issuance of appropriate directions to the authorities to safeguard Kaziranga and its ecology. The main grievance of the applicant was that no regulated quarrying and mining activity was permitted in and around the area of Kaziranga National Park and even commercial activities were going on within the no development zone. After pleadings of the parties were completed and the arguments were heard, the Tribunal passed its judgment dated 7th September, 2012.

All the 18 applications with which the Tribunal is concerned presently have been filed by the persons carrying on the business of brick kiln and all their review applications came to be dismissed, though by separate yet somewhat similarly worded orders dated 24th January, 2013.

In the application for corrections/modifications, the applicants have emphasized upon the following errors that exist in the order dated 24th January, 2013:-

(a) The applicants are carrying on the business of brick kiln, however, it has been incorrectly noticed in paragraph 4 of the order that the applicants are running a 'flour mill'. Thus, it is an apparent error.
(b) In paragraph 7, it is stated "further according to Mr. Singh, the applicant-unit is a green category". This statement is factually incorrect.
(c) In paragraph 8 of the order, it is noticed that in the notification dated, 5th July, 1996, the MoEF created 'no development zone' along Kaziranga National Park. This statement again is not correct inasmuch as the 'no development zone' has been created around Numaligarh Refinery site by the said notification.
(d) Lastly, in paragraph 12 of the judgment, a factual error has again been committed by noticing that the brick kiln of the applicants were situated beyond 'no development zone' while they are located within the 'no development zone'

Having heard the learned counsel appearing for the parties, the Judges are of the considered view that the present applications, in substance, are not applications for correction of a typographical or an arithmetical error appearing in the judgment. The provisions of Section 152 of the Code of Civil Procedure can be pressed into service when a judgment, decree or order of the court has only clerical or arithmetical mistakes arising as a result of any accidental slip or omission and only then such errors could be corrected by the court.

As contemplated under Order 47 Rule 1 of CPC, there is a clear distinction in law in the case of an application filed under Section 152 read with Section 151 of the CPC for correction of a mistake or error. In the present case, it is the contention of the applicant that the judgment of the Tribunal dated 24th January, 2013 passed while dismissing the review applications, requires modification. Thus, the prayer is not simpliciter for correction of judgment but also for the review of the same.

An application for review that has been dismissed once before, should be filed rarely and with great caution. The Supreme Court, while emphasising the need for adherence to the salutary rule of not filing such frivolous applications stated that – it is only an exception – should be brought into aid rarely as otherwise it is bound to damage the fabric of the faith in judiciary.

In the considered view of the Judges, the present application is nothing but an abuse of the process of law. It deserves to be dismissed on that ground alone. However, despite the above view, the Judges proceed to discuss the merits of these applications.

Now the Judges would revert to the discussion on the alleged incorrect facts noticed in the order dated 24th January, 2013. Firstly, it is submitted on behalf of the applicants that in paragraph 4 of the order dated 24th January, 2013, the applicants have been described to be carrying on the business of flour mill and not that of brick kilns. It is true that in paragraph 4 it is so stated. However, it is nothing but a typographical omission/mistake. It is nowhere indicated that the Tribunal has not applied its mind to the case of the applicants all of who are stated to be brick kiln owners. In the very opening of the judgment, the Bench has noticed that the applicants are running their respective brick kiln industries or are brick kiln owners. Furthermore, in the judgment at various places, it has been noticed that the applicants are carrying on the business of brick kilns, which is a polluting industry. Even in paragraph 12, the contention of the counsel that brick kiln was the business of the applicants, has been specifically noticed. Thus, the Judges see that no prejudice has been caused to the applicants as a result of this mistake. However, the Judges direct that the word 'flour mill' appearing in paragraph 4 of the order dated 24th January, 2013 shall be read as 'brick kiln'. It is indisputable before the Tribunal that the applicants are not industries or units which fall in 'green category'. In fact, it is not even the case of the applicants themselves. Merely stating so in paragraph 7, may be an unintended statement, but again it has not caused any prejudice to the applicants. The Judges direct this line to be deleted.

The notification dated 5th July, 1996 relates to creation of a 'no development zone'. The appendix to the notification gives the longitude and latitude of the 'no development zone' and is stated to be around and near to the Kaziranga National Park and is also around Numaligarh Refinery site. In fact, they are challenging the statement noticed in paragraph 12 of the order dated 24th January, 2013 that the brick kiln in question is situated beyond the 'no development zone'. According to the applicants, they are located within the 'no development zone'. In view of this admitted position, the omission or typographical mistake loses its significance and cannot be projected as the foundation for challenging the correctness of the order dated 24th January, 2013. Even if the Judges correct the judgment and delete the sentence from the order dated 24th January, 2013, still neither the reasoning nor the conclusion of the order dated 24th January, 2013 gets affected. Despite the above substitution or deletion, in their considered view, neither any prejudice has been caused to the applicants nor it affects the reasoning of the judgments on merits of the case.

It is useful to notice that the directions and orders contained in paragraph 33 to 35 of the judgment dated 7th September, 2012 are applicable to all the units/industries, which are carrying on their activities within the vicinity of the 'no development zone'. Certain units have been directed to be closed while others have been permitted to operate subject to their adherence to the prescribed parameters to the extent that even tea processing units having boilers, using fossil fuel do not operate within the 'no development zone'. All these restrictions have been placed in the interest of environment. They are intended to prevent immense

threat to the bio-diversity, eco-sensitive zone, the ecology as well as the environment by these commercial and polluting industries. Even with the present applications, none of the applicants have annexed the consent granted by the Pollution Control Board. Mere presence of such documents would not ipso facto entitle the applicants to carry on their industrial activity. It will still have to be examined by the authorities concerned whether the unit falls within or beyond the 'no development zone'. All these matters are required to be examined by the authorities concerned in the light of the judgment of the Tribunal.

Even after making the said corrections, as contended by the applicants, there is no reason for the Tribunal to take any view different than the one taken in the order dated 24th January, 2013 dismissing the review application against the main judgment dated 7th September, 2012.

In view of the above discussion, the Judges see no reason to grant the prayer made by the applicants in these applications. All these applications are disposed of with the observations as aforesaid, while leaving the parties to bear their own costs.

Mahakoushal Shaheed Smarak Trust Jabalpur
Vs
State of M.P. and Others

Application No. 84 of 2012 THC AND

- **Dhunseri Petrochem and Tea Limited Vs Union of India Others (Application No. 85 of 2012 THC)**

JUDICIAL AND EXPERT MEMBERS: Justice P. Jyothimani and Dr. Ajay A. Deshpande

Keywords: Noise pollution, Trust, licensee, public address system, Madhya Pradesh Kolahal Niyantran Adhiniyam, Noise Pollution (Regulation and Control) Rules, High Court, Sub Divisional Magistrate

Application allowed

Date: 14th May, 2013

This application has been taken up by the Tribunal on receipt from the High court of Madhya Pradesh. The applicant has challenged the orders dated 4th March, 2011 and 28th March, 2011 passed by invoking the provisions of Madhya Pradesh Kolahal Niyantran Adhiniyam, 1985 (for short "Adhiniyam") and Noise Pollution (Regulation and Control) Rules, 2000 (for short "Rules"). The Sub Divisional Magistrate under the impugned order has warned the applicant trust that if anybody defies the rule by making noise pollution in their premises, the trust will be held liable. The land appurtenant to super structure in the form of a Bhawan put up by the applicant is being given by way of license to third parties temporarily to organize social, cultural and religious functions. It is the case of the applicant that when once the trust issues licence to third party for running social or cultural function, it is for the licensee to obtain necessary permission from the authority concerned for using the public address system. But the grievance of the applicant is that whenever the licensee who obtains licence from the authority concerned, violates the provisions of Adhiniyam or the Noise Pollution Rules of Government of India, the Sub Divisional Magistrate (Respondent No. 3) issues orders like the impugned order to the applicant trust, threatening the trust liable for the conduct of the licensee on the ground that the trust, being the licensor, has overall control over the premises. In the said order, the Respondent No. 3 threatens criminal action against the applicant trust for certain violation made or would be made by the licensee. The impugned orders are challenged contending inter alia that the Respondent No. 3 and 4 who have actually issued the licence to the licensee under the provisions of Adhiniyam and/or rules cannot abdicate their legal obligation as per the Adhiniyam/Rule and impose liability on the applicant, that in as much as the applicant is not the violator, even under Adhiniyam.

It is the case of the respondents that as per Rule 8 of "Rules", the person who owns the premises in which noise pollution is committed also is responsible.

It is clear that under the Environment (Protection) Act, 1986 and Air (Prevention and Control of Pollution) Act, 1981 which are Central Acts they have entrusted the power to the prescribed authorities for effective control of pollution and environmental degradation. In continuation of the same, Rules were framed by the Government of India called as Noise Pollution (Regulation and Control) Rules, 2000 by which various regulatory measures, including maintenance of ambient air quality with respect to Noise levels to be maintained and authority who is responsible to supervise and implement the same have also been specifically mentioned. In the said Noise Pollution (Regulation and Control) Rules, 2000, in Rule 5 the loud speaker pollution level is explained in detail.

The provision of the said Act, even though restricts the use of loud speakers between 10.00 PM to 6.00 AM, the contents thereof is not minute as that of the Central Noise Pollution Rules which is specific in nature. Be that as it may, on an overall reading of both, the Central Act and the State Act, there is no doubt that both the legislations are intended for the purpose of preventing noise pollution.

It is significant to note that Section 15 which imposes penalty not only starts with the word 'whoever contravenes' which is wider in its amplitude and therefore, the intention of law makers is made very clear that they wanted include any person whether he is actually using noise pollution or who is allowing a person to do so as an abetter. An overall view of the Act makes it clear that the idea of the State Government in enacting of the said Adhiniyam is to control noise pollution in the State of Madhya Pradesh. For the purpose of effective controlling, various provisions contemplating prohibition regarding the soft music, loud music, restriction regarding use loud speaker, horn type loud speaker, operation of loud speaker, use of loud speaker in public premises for making announcement are made and ultimately it prohibits all noise in public interest which is categorically stated under Section 10 of the Act. The said legislation, however, provides for such exemption on permissible dates as stated under Section 13 of the Act. Now, when any person contravenes the provisions of the Act, such contravention is treated as an non-cognizable and bailable offence and ultimately when the person who contravenes is brought to the criminal court, he will be imposed with the penalty of Rs. 1,000/-. Merely, because the penalty clause is provided in one of the provisions, one cannot treat it as a penal legislation. The idea is not to punish a person as a primary concept, but to abate noise pollution.

Even assuming that the Adhiniyam is a criminal legislation, it cannot be said that the Tribunal has no jurisdiction.

Now, coming to the next point as to whether the applicant being the licensor, in a position of the owner of the premises, is liable for the Act of the licensee. It is not disputed that between the applicant and different licensees to whom the applicant permit to organize functions from time to time, is purely contractual, but such contract cannot be against the provisions of any law. When the Adhiniyam, 1985 contemplates a restriction on the use of noise pollution in any place and such place is issued licence by the applicant to a licensee by way of a contract, certainly the terms of law have to be read within the terms of contract between the parties in so far as it relates restriction regarding the noise pollution. Therefore, the applicant cannot escape his liability saying that even though he has let out his premises, he has not actually committed any noise pollution. At the same time, one cannot ignore the fact that principal liability is on a person who violates the law and therefore, it is primarily the licensee who has violated and who must be primarily be held responsible.

It is also relevant to point out that in the permission granted by SDM to the licensee of the applicant dated 24th December, 2010, he has specifically mentioned the ambient air quality related to noise, but unfortunately in the impugned order there is nothing to show that the licensee has violated the condition

relating to the ambient air quality relating to noise with any particular details. In the absence of such particulars, the Judges are unable to understand as to how either the licensee of the applicant or applicant himself, as a trust, can be made responsible for an unspecified act. They are of the view that the impugned notice issued by the Respondent No. 3 and 4 are vague in nature and they cannot be complied with even by the licensee. In such view of the matter, while there is no doubt that both, the applicant as well as licensee, are liable under State Act and Central Act, the impugned notice issued by the Respondent No. 3 and 4 cannot be sustained in the eye of law. Accordingly, the Judges set aside the impugned notice issued by the Respondent No. 3 and 4, however, with liberty to the said respondents to act in future in accordance with the Acts as stated above with specific reference to the nature of violation to both the licensee as well as the licensor. While issuing such notices, the Respondent No. 3 and 4 shall follow the directions issued by the District Collector, Jabalpur dated 11th January, 2010. Accordingly, they dispose of the above application in the following terms:

1) The impugned order of the Respondent No. 3 and 4 dated 4th March, 2011 and 28th February, 2011 stands set aside as they are not in accordance with the communication of the District Collector, Jabalpur dated 11th January, 2010 and the relevant rules.
2) The Judges state that the petitioner, as the owner of the property and licensor, is also responsible alongwith licensee in the event of violation made by the licensee or any other person in future.
3) However, in future the responsibility of the licensor shall be, by way of intimating the concerned authorities about the misconduct by the licensee in violating the noise rules and the directions of the Collector and he shall also ensure that before he issues licence, the licensee gets prior permission from Prescribed Authorities for using the sound amplifier system. To the above extent, the applicant shall be liable.
4) The Respondent No. 3 and 4, in future, while giving such notices shall follow not only the directions of the District Collector but also give the exact nature of noise pollution effected by the person concerned, before taking any action as per the Adhiniyam, 1985 and rules.

While parting with, the Judges are informed that no silence zone have been declared in the Jabalpur City under the provision of Noise Rules. Since, notification of Silence zones/areas and also, capacity to monitor the noise levels as per rules are essential for effective implemention of rules against noise pollution, the Judges are of the view that the State Government of Madhya Pradesh shall notify the Silence Zones for the entire State of Madhya Pradesh at an earliest point of time in the public interest. As per the Noise Pollution (Regulation and Control) Rules, 2000, the State Government has legal obligation to categorize commercial, residential or silence zone for the purpose of implementation of noise standards for different area. The State Government being a competent authority shall, if not already, categorize the areas as per Rule 3 and publish with wide publicity within a period of 08 weeks from today.

Rudresh Naik

Vs

Goa Coastal Zone Management Authority

APPEAL NO. 20/2013

JUDICIAL AND EXPERT MEMBERS: Justice Swatanter Kumar, Justice U. D. Salvi, Dr. D.K. Agrawal, Prof. A.R. Yousuf and Dr. R.C.Trivedi

Keywords: marine slipway, construction, dry docks, Goa, Vagurbem village, GCZMA, impugned order, damage, non-recording of appropriate reasons, non-application of mind, Wednesbury principle, arbitrariness

Application allowed with costs

Date: 16th May, 2013

The appellant is the proprietor of the sole proprietorship concern, titled Sudarshan Dry Docks, as well as a partner of the firm, M/s Swastik Cruises. The partnership firm is carrying on the business of tourism, like conducting boat cruises in the rivers of Goa. The firm has engaged three vessels to carry tourists as its normal business activity. In order to facilitate this functioning, the firm had purchased a piece of land to carry on its business activity. The land so purchased is adjacent to the river and this can be utilised for inspection, maintenance and repairs of the vessels as well. To facilitate this activity and to carry out other developmental activities, the appellant had to construct a slipway. For this purpose, the appellant had applied in July, 2009 to the Goa Coastal Zone Management Authority (for short GCZMA) seeking necessary permission to carry out such activities. GCZMA passed an order restraining the appellant from going ahead with the work in regard to the construction of the slipway.

It will be useful to refer to the entire order dated 29th January, 2013 at this stage, which reads that the GCZMA Members felt that although the present proposal is for construction of marine slipway for dry dock which is otherwise permissible activity; however, while going through the proposal the Authority felt that allowing it would cause irreparable damage to the already fragile hilly terrain. Thus, granting permission would be detrimental to the ecology. Hence, the Authority has rejected this proposal.

Contentions:

Inter alia but primarily, the challenge to the impugned order dated 29th January, 2013 is on the following grounds:-

(a) The order does not record any reasons for rejecting the proposal of the appellant.
(b) There is no hilly terrain/region involved in the present case. The finding that it was a hilly terrain is based on 'no evidence' and is founded on conjectures and surmises of the authority itself.
(c) The documentary evidence placed by the appellant before the authority has been wrongly ignored and irrelevant material has been considered by the authority, rendering the order arbitrary.
(d) Even the earlier show cause notices dated 5th August, 2011 and 27th May, 2011 have been set aside by the court or withdrawn by the authority itself, and thus similar grounds should not be relied upon for passing the impugned order.
(e) The area upon which the appellant is constructing the marine slipway for dry dock falls in the port area upon which 'No Development Zone' is not applicable and thus GCZMA has no jurisdiction in relation to the developments carried out in the area. It is a permissible activity and the Captain of

Ports, from whom the appellant has already obtained permission, alone can deal with the matter.

Discussion on Law and Merits of the case:

First and foremost, the Judges deal with the two contentions relating to non-recording of appropriate reasons, non-application of mind and that the findings returned in relation to it being a hilly terrain (region) is unsustainable.

The appellant has placed on record Regional Plan of Goa, which was declared on 4th March, 2011 by the Town and Country Planning Department of the State of Goa. This plan relates to Savoi-veram Panchayat Ponda Taluka and shows different lands and their uses. It also specifically shows the ecologically sensitive area. In the legend of this map, 'no development slope', as well as 'orchards' have been shown, amongst other areas. In this map, Survey No. 41/2 of Vagurbem village, the area in question has been shown and marked as orchards. It is further stated that orchard area is distinct from 'no development slopes'. From this it appears that development activity could be carried out in the orchard area subject to the limitations and in accordance with law.

The above documents have been referred to in the pleadings of the appellant and have also been relied upon heavily during the course of the arguments. It is also averred that these documents were placed before the GCZMA, but have not been considered. In the reply filed on behalf of GCZMA, neither have these documents been controverted nor any specific averment has been made that the area in question is a hilly terrain where no development is permissible.

In the impugned order, it has been noticed that the construction of marine slipway for dry dock is a permissible activity but still the proposal of the appellant has been rejected on the ground that execution of the proposal is likely to cause extensive damage by undertaking unauthorised hill cutting and would thereby cause irreparable damage to the hilly terrain. Thus, the sole ground on the basis of which the proposal of the appellant has been rejected is founded on the factum of the area being a hilly terrain. If the area in question is not a hilly terrain, then the question of cutting the hill area and destroying or damaging the fragile hill area would not arise. The order provides no reasoning whatsoever to show as to on what basis such a vital fact has been recorded.

In exercise of the power of judicial review, the concept of reasoned orders/actions has been enforced equally by the foreign courts as by the courts in India. The administrative authority and tribunals are obliged to give reasons, absence whereof could render the order liable to judicial chastisement. Thus, it will not be far from an absolute principle of law that the courts should record reasons for their conclusions to enable the appellate or higher courts to exercise their jurisdiction appropriately and in accordance with law. It is the reasoning alone, that can enable a higher or an appellate court to appreciate the controversy in issue in its correct perspective and to hold whether the reasoning recorded by the court whose order is impugned, is sustainable in law and whether it has adopted the correct legal approach. To sub serve the purpose of justice delivery system, therefore, it is essential that the courts should record reasons for their conclusions, whether disposing of the case at admission stage or after regular hearing.

This Court has consistently taken the view that recording of reasons is an essential feature of dispensation of justice. A litigant who approaches the court with any grievance in accordance with law is entitled to know the reasons for grant or rejection of his prayer. Reasons are the soul of orders. Non-recording of reasons could lead to dual infirmities; firstly, it may cause prejudice to the affected party and secondly, more particularly, hamper the proper administration of justice. These principles are not only applicable to administrative or executive actions, but they apply with equal force and, in fact, with a greater degree of precision to judicial pronouncements.

The non-recording of reasons in the impugned order dated 29th January, 2013 has resulted in rendering the entire decision making process unfair and arbitrary.

It is neither evident from the order nor from any records produced before the Tribunal that the finding returned in the impugned order that it was a hilly terrain was well reasoned. It appears to be a finding that has been recorded on the basis of certain conjectures and surmises. The relevant and material documents that had been produced by the appellant have been ignored. In other words, relevant considerations have been ignored while irrelevant and imaginary facts have been taken into consideration for arriving at the conclusion cannot be sustained in view of the fundamental principle of Wednesbury. This clearly reflects the element of arbitrariness in the action of the respondent. The administrative action which is tainted with the element of arbitrariness cannot be sustained in law. An administrative order must be free of arbitrariness and bias. The Judges take note of the legal proceedings that have repeatedly taken place in the present case. On all those occasions, the order passed by the respondent was set aside on one ground or the other. This Tribunal even directed the appellant to deposit Rs. 1.5 Lakhs in order to ensure remedying of the damage caused, if any, to the ecology or the environment around the site. This deposit of Rs. 1.5 Lakhs was made subject to the final order that may be passed by the authorities. The authorities have not even cared to touch upon that point in the impugned order. The Judges are of the considered view that the authorities have compelled the appellant to approach the court and the Tribunal time and again, that too, without valid and good reasons. It is expected of a public authority to act in accordance with the law, fairly and without inducing the element of arbitrariness and bias. There is a specific obligation upon such authorities to ensure that they do not generate avoidable litigation. Hence, fairness in their action is a pre-requisite to ensure an efficacious discharge of their statutory obligations. In the considered view of the Judges, the authorities, in the facts and circumstances of the present case, have not acted with complete fairness and have compelled the appellant to approach the courts and the Tribunal repeatedly, without any specific fault being attributed to him. Thus, he is entitled to receive the costs of the present proceedings.

For the reasons afore-recorded and while setting aside the order dated 29th January, 2013, the Judges direct the GCZMA to consider all the issues again, in accordance with law, and expeditiously.

The appellant may file additional documents, if any, within two weeks from the date of pronouncement of this order. The GCZMA shall, upon providing a hearing to the appellant as well as informing him of any other document that the Authority wishes to rely upon, pass the final order within four weeks thereafter. The entire proceedings must culminate into a final order within a period of six weeks and none of the parties will be entitled to any extension of time thereafter. In the facts of the present case, the Judges allow this appeal with costs as payable by GCZMA to the appellant.

Gurdev Singh
Vs
Punjab Pollution Control Board and Others

APPEAL NO. 22 OF 2013THC

JUDICIAL AND EXPERT MEMBERS: Justice Swatanter Kumar, Justice U. D. Salvi, Dr. G.K. Pandey, Prof. A.R. Yousuf and Dr. R.C.Trivedi

Keywords: emissions, pollution, residential area, Ludhiana, Punjab pollution control board, principles of natural justice, small scale industry, cycle parts manufacture, Quando aliquid prohibitur ex directo, prohibitur et per obliquum, Air (Prevention and Control of Pollution) Act

Application dismissed

Date: 23rd May, 2013

The Punjab Pollution Control Board (for short "the Board") on 13th June, 2003, in exercise of its powers vested under Section 31-A of the Air (Prevention and Control of Pollution) Act, 1981, (for short 'the Act') while issuing different directions, also directed the appellant to stop operating all its outlets and stop forthwith discharging any emissions from its industrial premises into environment while operating in the residential area.

The legality and correctness of the above order dated 13th June, 2003, is challenged by the appellant in the present application, inter alia, but primarily on the following grounds:

(i) The impugned order is violative of the principles of natural justice. The appellant was not provided hearing and in any case adequate hearing, by the Board. Thus, the order is violative of the principles of natural justice.
(ii) There are a number of other units in the same vicinity (residential area) which are carrying on similar or other polluting businesses but no action has been taken against them. The appellant has been discriminated. As such, the order is arbitrary.
(iii) The appellant falls in the exempted category and is not required to take consent of the Board for carrying on its industrial activity.

The Board, in exercise of its powers, had issued a notification on 28th April, 1998 declaring the list of tiny small scale industries of 63 different types which were exempted from obtaining consent of the Board. The appellant falls under Entry No. 39 of the list and the entire action of the Board and passing of the impugned order is without jurisdiction.

The above contentions arise out of the factual matrix that the appellant claims to have established a small scale industry in the name and style of Panesar Products, which was carrying on the business of manufacturing of cycle parts. Amongst others, these parts included side supports, round and channel with clip to be used for kids' cycles. The appellant applied to the Board for obtaining its consent. Along with that the appellant also applied to the Municipal Corporation of Ludhiana for obtaining a no objection certificate. The officers of the Board advised the appellant that there was no necessity to grant no

objection certificate to him in view of the notification dated 28th April, 1998. It is also averred by the appellant that his unit was a non-polluting unit, not emitting any air or water pollutant, and even on that score, he was not required to obtain the consent of the Board. As far as the submission of the appellant to Ludhiana Municipal Corporation was concerned, the appellant claims to have submitted all necessary documents with affidavits and the said Corporation finally granted no objection certificate vide their letter dated, 23rd May, 1996.

The Board vide its letter dated 1st June, 1998, divided the industries under three different categories: Red industries which were causing pollution and were industries of hazardous nature; Green industries; and Exempted industries. The industries which fell in green category were the industries which were causing marginal pollution.

The industrial unit of the appellant is situated at House No. 4256/3, Street No.4, Shimlapuri, Gill Road, Ludhiana, which is a residential area.

First and foremost, the Judges deal with the contention in regard to violation of principles of natural justice. The premises of the appellant were inspected on 25th March, 2003 which means that the appellant knew that his unit was violating the prescribed parameters of noise pollution. Thereafter, the notice dated 9th June, 2003 was served upon him to appear before the Board on 10th June, 2003 when he admittedly appeared and filed his objections. From the objections filed and from the record before the Judges, it is clear that the appellant practically admitted the violation of the prescribed standards of noise pollution. It was expected of the appellant to install air and noise pollution control devices from the month of March, 2003 when it was detected by the officers of the Board on 25th March. However, he took no steps. The Judges are not prepared to hold that in the facts of the present case, the appellant was not granted appropriate opportunity to put forward his case.

For proper appreciation of the third contention, it will be more appropriate to dissect this contention into the following two parts:

a. Whether the Board has power and authority in law under the provisions of the Act to exempt any Unit from the applicability of Section 21 and other provisions of the Act.
b. If the above is answered in the affirmative, even then, whether the unit of the applicant falls under any of the entries of the stated ‘exempted list’.

While framing and elaborating the powers and functions of the Board under Section 17 of the Act, the legislature in its wisdom has dealt with even minute details of the functions to be performed by the Board, like the power of inspection, to collect and disseminate information, to advice the Government and to collaborate with the Central Government on various issues to lay down the guidelines. Thus, it cannot be said that an omission to empower the Board with a significant power to exempt industries from operation of the provisions of the Act was an unintended omission on behalf of the Legislature.

The power to exempt from the operation of the provisions of the Act must be specifically provided in the statute itself or it must arise as a result of implied power which indisputably emerges from the scheme of the Act. Besides this, it should be in conformity with the purpose and objects of the Act. The Judges have no doubt that the power to exclude or exempt any unit or industry is specifically neither provided under the provisions of the Act nor does it flow impliedly.

In the light of this position of law, the Board could not have issued the notification dated 28th April, 1998, which, in fact, is only a resolution passed by the Board in its 97th meeting held on 3rd April, 1998. If the statute has not provided any provision in compliance to which a unit or industry could be granted exemption or falls outside the ambit of the provisions of the Act, then the Board cannot do so by an administrative instruction or resolution. *Quando aliquid prohibitur ex directo, prohibitur et per obliquum.*

According to the appellant, he is covered under Entry No. 39 of the list, which reads- *"39: Lathe and welding sets (only electrical) without casting".* It is clear that the unit of the appellant is not only having a lathe machine but also has presses, grinder and even a diesel generator set of 7 KVA capacity. All this is bound to result in air and noise pollution. The appellant is manufacturing cycle parts and thus cannot fall under Entry No. 39 of the afore-referred list.

As far as the plea of discrimination is concerned, the appellant cannot drive any benefit even if the allegations were taken to be correct. If others are polluting, that does not give right to the appellant to pollute.

Having found no merits in any of the contentions raised on behalf of the appellant, the Judges are left with no option but to dismiss the application of the appellant.

While dismissing the application of the appellant, the Judges would grant a period of two months to the appellant to shift his industry from the residential area in question or in the alternative to bring the air and noise pollution parameters strictly within the permissible limits and obtain consent of the Board within the said period. In the event of default of the aforesaid conditions, the impugned order dated 13th June, 2003 shall become operative and the appellant, Mr. Gurdev Singh, shall close his unit and stop the industrial activity in the premises in question without any further opportunity.

Haryana State Pollution
Vs
Control Board Appellate Authority and Another

APPEAL NO. 5/2013THC

JUDICIAL AND EXPERT MEMBERS: Shri Justice V.R. Kingaonkar, Dr. P.C. Mishra, Shri P.S. Rao and Shri Bikram Singh Sajwan

Keywords: Bank guarantee, Distillery unit, Yamuna river, Sonepat, consent to operate, Haryana pollution control board, zero discharge, effluent, High powered committee, State Board, Water (Prevention and Control of Pollution) Act

Application dismissed

Date: 27th May, 2013

By this Appeal/Application filed under Section 14(i) read with Section 16 of the National Green Tribunal Act, 2010 Haryana State Pollution Control Board (for short HSPCB) challenges the order dated 6th November, 2009 passed by the Appellate Authority constituted under Section 28 of the Water (Prevention and Control of Pollution) Act, 1974 (for short "the Act").

By the impugned order, the Appellate Authority directed that consent to operate Distillery unit run by M/s. Haryana Organics (the Respondent) for the year 2008-09 shall be deemed to have been granted and hence forfeiture of Bank Guarantee of Rs. 12.25 lacs as directed by HSPCB is void and be restored to the latter.

Briefly stated, it is the case of HSPCB that in pursuance to a complaint received from the office of the Deputy Commissioner, Sonepat dated 26th October, 2008, the Distillery unit of M/s. Haryana Organics was visited and samples were collected from the outlets thereof. The samples were sent to the authorized laboratories. The sample's analysis indicated that the unit had failed to achieve zero discharge of the effluent and the trade effluent was being discharged in the drain leading to Sonepat, which contaminated the water of Yamuna river. Since there was violation of the directions issued by the three-Member High Powered Committee, M/s. Haryana Organics was called upon to explain its stance. After personal hearing, M/s. Haryana Organics was given warning to comply with the directions. According to HSPCB, in spite of such assurance given by M/s. Haryana Organics there was no compliance made to achieve zero discharge of contaminated effluents. Again, a team of officers of CPCB and SPCB visited the Distillery on 2nd April, 2009 and collected samples of trade effluents that were being discharged from the outlets of the unit. It was found that the samples collected from the outlets of the bottling plant exceeded permissible limits of contamination. Eventually, another opportunity of personal hearing was given to M/s. Haryana Organics on 8th May, 2009 and thereafter a notice was issued under Section 33-A of the Water Act on 11th May, 2009 calling upon the Distillery as to why 25% amount of the Bank Guarantee be not forfeited. During the course of personal hearing, it was assured by M/s. Haryana Organics that within fifteen (15) days the compliance would be made. The part of Bank Guarantee, to the extent of 25% amount was forfeited in view of the guidelines issued by the three-Member High Powered Committee and as per the policy approved by the HSPCB in a meeting dated 9th March, 2009.

It is further the case of HSPCB that the order dated 11th May, 2009 to forfeit amount of Rs. 12.25 lacs, out of Bank Guarantee, was well reasoned and supported by sufficient material. Still, however, the Appellate Authority erroneously interfered with the said order and quashed the directions issued by the HSPCB vide the order impugned. The impugned order passed by the Appellate Board is incorrect and improper.

Having considered rival submissions and the pleadings of the parties, the Judges are of the opinion that the real controversy falls within narrow compass. The controversial issue involved may be stated as follows:-

"Whether, in the facts and circumstances of the present case, HSPCB could have legally forfeited 25% of the Bank Guarantee amount and hence the impugned order is unsustainable"?

At the threshold, it is worthwhile to note that the HSPCB called upon the Distillery to furnish Bank Guarantee of Rs. 50 lacs as a commitment for commissioning of RO/Nano filtration system as per the target specified in this behalf. The direction asking the Respondent to furnish the Bank Guarantee, was issued by the HSPCB in accordance with the recommendations of the three Member High Powered Committee constituted by the Apex Court. It is manifestly clear that the Bank Guarantee was sought as a commitment for commissioning of the RO/Nano filtration system in accordance with the time bound programme that the Respondent - Distillery was required to submit to the HSPCB. It is clear, therefore, that the continuation of the Bank Guarantee after due compliance of the installation of RO/Nano filtration system was not required. For, the purpose was to obtain security by way of the Bank Guarantee to ensure the compliance.

If there was any urgency to ensure installation of the RO/Nano filtration system, to ensure zero effluent discharge, there was no hurdle in the way of HSPCB to execute such work and recover the expenses from M/s Haryana Organics in accordance with Section 30 of the Act.

If all the relevant provisions are read together with Section 33 – A of the Water Act, it is clear that State Board has power to issue any direction to secure performance of its functions under the Water Act. It is imperative that the directions to be issued by the State Board must have reasonable nexus with due performance of its functions under the Water Act. In the Judges' opinion, the Bank Guarantee was sought to achieve particular purpose and if any deficiency was noticed by the HSPCB, till the removal of such deficiency, the Bank Guarantee could have been renewed by extending validity thereof.

In the Judges' opinion, the Bank guarantee or any part thereof could not be forfeited unilaterally without there being any specific term incorporated under any mutual agreement. In the present case, neither there was mutual agreement as such nor was any direction issued by the HSPCB to M/s Haryana Organics to ensure compliances in the exercise of power available under Section 30 of the Water Act. The direction was given by HSPCB to furnish the Bank Guarantee as per the guidelines issued by the three Member High Powered Committee nominated by the Apex Court. Under the circumstances, HSPCB had no legal authority, power and competence to forfeit any part of the Bank Guarantee furnished by M/s Haryana Organics.

The Judges find that HSPCB did not comply with the due procedure as envisaged in Rule 34 (3) of the Water Rules. For this reason too, the forfeiture of 25% of the Bank Guarantee furnished by M/s Haryana Organics was illegal and improper. The Appellate Authority categorically held that forfeiture of Rs. 12.25 lacs was arbitrary and even demand of Bank Guarantee had no basis.

The Appellate Authority took note of the fact that installation of RO/Nano filtration system was done by M/s Haryana Organics and as such the directions had been duly complied with. What appears from the record is that previously M/s Haryana Organics was using molasses as raw material for distillation of rectified spirit. The use of molasses was, however, discontinued at subsequent stage and the Distillery switched over to use of grains as raw material for production of rectified spirit. It is obvious that the pollution level was much controlled due to the change of the raw material. In this view of the matter, and particularly, after due installation of the RO/Nano filtration system by M/s Haryana Organics, the forfeiture was uncalled for.

The Judges do not find, any merit in the present Appeal filed by the HSPCB. They do not, however, find it proper to impose any cost on the Appellant (HSPCB) in as much as M/s Haryana Organics had adopted dilly-dallying tactics and had not followed the time bound programme as per the directions of the HSPCB.

Nisarga Nature Club
Vs
Satyawan B. Prabhudessai and Others

REVIEW APPLICATION NO. 5/2013
&

REVIEW APPLICATION NO. 6/2013

JUDICIAL AND EXPERT MEMBERS: Justice V.R. Kingaonkar, Dr. P.C. Mishra, Shri P.S. Rao, Ranjan Chatterjee and Shri Bikram Singh Sajwan

Keywords: Review, Margao, Goa, conversion of land, petrol filling station, residential use, commercial use, doctrine of Actus Curiae Neminem Gravabit

Application partly allowed and partly dismissed

Date: 31st May, 2013

By filing Review Application No. 5/2013, Shri Satyawan B. Prabhudessai, who was the Respondent No. 1 in the Original Application No. 29/2012, seeks review of judgment dated 21st February, 2013 to the extent of the findings recorded in paragraphs no. 26 and 27 and direction in paragraph no. 28 of the judgment.

By filing Review Application No. 6/2013, original Applicant, namely, Nisarga Nature Club seeks review of the judgment passed in the Application No. 29/2012 and to recall the final order passed therein, whereby that application was dismissed.

Perusal of the relevant record and particularly the original file of the proceedings before the Additional Collector-II, South Goa Distt., Margao, Goa reveals that the Application filed by Shri Satyawan B. Prabhudessai was for conversion of 2500 sq. mtrs. area out of land Survey No. 25/2 in order to install a petrol filling station. Although the Sanad was granted, initially, for conversion of the land to residential use, yet the conversion fees was charged for conversion of the land from agricultural use to commercial use.

From the record it is manifestly clear that within a few days of issuance of the Sanad the error was corrected by the Additional Collector-II, South Goa Distt., Margao. The only error on face of the record is that Shri Satyawan B. Prabhudessai and his Counsel did not take care to place on record the corrigendum dated 8th April, 2008 whereby the words “residential use only” were directed to be read as “commercial use only”. The Judges have also noticed from the office file of the Additional Collector-II, South Goa Distt., Margao that the conversion fees for conversion of agricultural land of the relevant category measuring 2500 sq. mtrs. to commercial use was @ Rs. 40/- per sq. mtr. and as such conversion fees of Rs. 1,00,000/- (Rs. one lakh only) had been recovered from Shri Satyawan B. Prabhudessai. The error is apparent on the face of record and as such it will have to be said that the Sanad was issued for conversion of agricultural land Survey No. 25/2 to commercial use and not for residential use. Obviously, the

observation of this Tribunal that the conversion of land was not specifically permitted for any commercial purpose will have to be deleted from the paragraph 26 of the judgment under review. However, the observation of this Tribunal that the area of 18000 sq. mtrs. was bulldozed instead of converting the area of 2500 sq. mtrs. for commercial use, out of land Survey No. 25/2, is based upon factual finding and need not be corrected.

Having duly considered the submissions of the counsel and the grounds stated in the review application, the Judges are of the opinion that this review application seeks to invoke appellate jurisdiction. They do not find any error apparent on face of record in the context of the findings recorded against the Applicant. They also do not find any factual mistake in this context. This Tribunal cannot sit in appeal against its own judgment.

It is well settled that a review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason. The word "sufficient reason" is wide enough to include a misconception of fact or law by a Court or even by an advocate. An application for review may be necessitated by way of invoking the doctrine of "Actus Curiae Neminem Gravabit" which otherwise means that an Act of the Court shall prejudice no one. Mistake in the nature of wrong quoting of provisions/contentions may also call for a review of the order. Law has to bend before justice. If the Court finds that the error pointed out in the review petition was under a mistake there is nothing to prevent the Court from rectifying the said error.

Considering the forgoing reasons, the Judges partly allow Review Application No. 5/2013 and direct that finding of this Tribunal as shown in paragraphs no. 26 and 27 of the judgment under review, to the effect that "the part of the land survey no. 25/2 to the extent of 2500 sq. mtr. was converted from agricultural use to residential use" shall be deleted.

It follows that Shri Satyawan B. Prabhudessai is not required to take permission afresh from the Collector. However, having regard to the fact that he cleared excessive area of 15500 sq. mtr., the Judges direct that the petrol filling station shall not be allowed to operate till Shri Satyawan B. Prabhudessai deposits an amount of Rs. 7,25,000/- (Rupees seven lac twenty five thousand only) as penal cost for plantation, with the State Government, Goa.

The Review Application No. 5/2013 is accordingly partly allowed and partly dismissed. The Review Application No. 6/2013 stands dismissed.

Rajendra Goyal
Vs
Union of India and Others

APPLICATION NO. 209/2013

JUDICIAL AND EXPERT MEMBERS: Justice Swatanter Kumar, Justice U.D. Salvi, Dr. D.K. Agrawal, Dr. G.K. Pandey and Prof. A.R. Yousuf

Keywords: Salt Industry, Mangrove trees, Sea Belt, construction of mud bunds, Collector, Bharuch, Gujarat, CRZ area, non-application of mind, principle of natural justice

Application allowed

Dated: 11th July 2013

"These appeals are disposed of in terms of the judgment of this Tribunal of the even date, passed in Appeal No. 30 of 2012 titled Ashish Rajanbhai Shah v. Union of India and Ors.

The appellants in these appeals would be entitled to the same reliefs."

Amishaben Thakorbhai Patel
Vs
Union of India and Others

APPEAL NO. 31/2013

JUDICIAL AND EXPERT MEMBERS: Justice Swatanter Kumar, Justice U.D. Salvi, Dr. D.K. Agrawal, Dr. G.K. Pandey and Prof. A.R. Yousuf

Keywords: Salt Industry, Mangrove trees, Sea Belt, construction of mud bunds, Collector, Bharuch, Gujarat, CRZ area, non-application of mind, principle of natural justice

Application allowed

Dated: 11th July 2013

"These appeals are disposed of in terms of the judgment of this Tribunal of the even date, passed in Appeal No. 30 of 2012 titled Ashish Rajanbhai Shah v. Union of India and Ors.

The appellants in these appeals would be entitled to the same reliefs."

Ashish Rajanbhai Shah
Vs
Union of India and Others

APPEAL NO. 30/2013

JUDICIAL AND EXPERT MEMBERS: Justice Swatanter Kumar, Justice U.D. Salvi, Dr. D.K. Agrawal, Dr. G.K. Pandey and Prof. A.R. Yousuf

Keywords: Salt Industry, Mangrove trees, Sea Belt, construction of mud bunds, Collector, Bharuch, Gujarat, CRZ area, non-application of mind, principle of natural justice

Application allowed

Dated: 11th July 2013

The present appellant being aggrieved from the direction issued by the Collector, Bharuch, Gujarat dated, 26th February, 2013 has preferred the present appeal. The said order was regarding damage to Mangrove trees in the land allotted for Salt Industry in Coastal Regulation Zone (for short CRZ) Area. Because of Construction of Obstructing mud-walls in the Sea Belt, the natural flow of sea water has stopped and hence, damage is being caused to the Mangrove Trees. Hence, it was informed to the appellants to immediately make open the natural Sea Belt for the natural flow of the sea water, with a view to see that the sea waters can naturally flow to the Mangrove Trees and thereby, and the damage being caused to the Mangrove Trees is stopped.

The above order, *interalia*, but primarily is challenged on the following grounds:-

(i) The impugned order suffers from the infirmity of non-application of mind. The authority has acted contrary to the principles of natural justice and has not felt the need to dwell upon the various contentions that have been raised by the appellant in its reply dated, 4th February, 2012 and 10th February, 2012 respectively.

(ii) The Collector on the one hand has failed to deal with the contentions of the reply filed on behalf of the appellant, while on the other hand has also failed to record any reason for passing the impugned order.

(iii) The land and the activity of the appellant fell in CRZ (I) and not CRZ (III) for which the appellant had produced records but they have been completely ignored by the Collector while passing the impugned order in the present appeal.

Previously, on 27th January, 2011, the Collector had allotted 300 acres of land to the appellant for the purpose of establishing the salt industry.

The lease in favour of the appellant was granted with certain Terms and Conditions and it was stated in the order of the Collector, which contained 47 Terms and Conditions, that if the appellant fails to follows any condition therein or any condition that is added by the Government later, then the lease contract would automatically terminate without any intimation to the appellant and the compensation as well as the deposit amount would be retained by the Government as well. Prior to this, the Additional Industrial

Commissioner, District Gandhinagar vide its order dated 8th February, 2008, had informed the District Collector Bharuch that there was no need for the Salt producing unit in the District to obtain any C.R.Z. Certificate from the Forests and Environment Department. Hence, the information related to the Revenue villages as well as showing their limits, may be sent directly to the Deputy Salt Commissioner.

The appellant in order to carry out its activity of salt industry had made the bunds around the land so as to collect brine water in the crystallizers for solar evaporation, till salt deposition took place. Thereafter, the deposited salt is scrapped from the crystallizer and collected at the platform before the salinity increases beyond 280 Be. The entire process takes 45 days' time and it is a continuous seasonal process. Salt is manufactured from sea brine or subsoil brine, of the salinity ranging from 20 to 80 Be.

Gujarat Ecological Commissioner, vide letter dated 28th August, 2012, had written to the Principal Secretary, Forest and Environment Department, Government of Gujarat, Gandhinagar and stated that upon conducting the spot verification in salt leases, some of the mangrove trees 'seem' to have been damaged during the bund work. It was also mentioned therein that as per the provisions contained in the CRZ Notification, setting up of new industries and expansion of existing industries is prohibited. The Member Secretary of the said Commission stated that upon spot verification, the salt manufacturing activity was being carried out and bunds had been constructed by removing of soil and some of the mangrove trees seemed to have been damaged during the digging of bunds.

Further it also referred to the fact that about 8 creeks of smaller and bigger sizes are blocked due to construction of the bund and an apprehension was expressed that mangrove trees are likely to be destroyed in future as well. In the provisions and conditions of CRZ Notification Para 7(i), it was stated that part of area falls under the category of CRZ (I).

The Collector issued a Notice dated 4th December 2012, directing the appellant to stop all the activities which were allegedly resulting in the damage to mangrove trees. This notice had made a reference to the letter of the Gujarat Ecology Commission dated 28th August, 2012.

According to the appellant, though this was said to be a notice but in fact it was only a direction to stop all activities. While denying that the applicant had violated the notification and damaged the environment or any mangrove trees, a specific plea was taken that the mangrove trees provided a benefit to the salt industries and thus, the appellant could never damage such trees. The Sarpanch of the village, after inspection of the site had also issued a certificate dated, 8th September, 2012 stating that there was no damage done to the mangrove trees by the salt industry of the appellant, while referring to erection of mud bunds it was said that they were erected strictly in consonance with the terms and conditions laid down in the lease order. Also it was stated that the mud bunds were erected at a distance of 700 meters from the sea and did not cause any damage to the natural sea water. This was a detailed reply and it also stated that the direction to stop all activity was issued to the appellant without affording any opportunity.

According to the Judges, it is appropriate to discuss all the three grounds raised by the appellant together as they are inter-connected and would require common discussion.

At the very outset, we may notice that as far as the plea that the impugned order having been passed without affording an opportunity to show cause against the proposed order is concerned, the same

deserves to be rejected. The appellant has been served with a show cause notice and an opportunity of hearing was provided to him before the impugned order was passed.

The next contention that the Judges have to consider on behalf of the appellant is that there is non-application of mind and non-recording of reasons by the authority while passing the impugned order; and that there is no consideration of relevant evidence, relevant materials and documents placed on record have not been considered by the authority.

The authority concerned is expected to apply its mind to all aspects of a case but most importantly to the contentions raised by the affected party in relation to the grounds or supporting arguments without which no adverse order could be passed against such party. If such grounds are not dealt with in the order passed by the authority, neither the party nor the appellate authority would be able to comprehend as to why their contentions have been rejected, as the reasons are harbinger between the mind of the maker of the order, to the controversy in question and the decision or conclusion arrived at. This is the acid test for examining fair opportunity and proper application of mind by the authority concerned.

In the present case, as it appears from the record before this Tribunal, there were three main allegations against the appellant.

A. The mud bunds constructed by the appellant were illegal and likely to cause damage to the mangrove trees.
B. Appellant had violated 'Condition 42' of the Terms and Conditions of the lease and had not obtained the permission of CRZ or from the Concerned Environmental Department.
C. The appellant was carrying out a prohibitory activity in terms of Notification dated 6th January, 2011, and was causing damage to the Environment.

It will be appropriate to take action on an order which records no reasons and consequently no satisfaction thereof. It is not sufficient to record as to which condition had been violated. It must state as to how the condition had been violated; what the effect of the explanation rendered by the affected parties is; and how the same was unsatisfactory. Recording of reasons even help in balancing the question of onus. In the present case, the order does not contain any reasons. Furthermore nothing has been reflected by the respondent on the file of the Tribunal to show that there were any plausible reasons to the explanation rendered by the appellant.

For the reasons aforestated, the Judges see no reason to sustain the order dated 26th February, 2013. The Judges allow the appeal and quash the impugned order. They further direct the Collector, Bharuch, Gujarat to provide a hearing to the appellant, considering all relevant documents produced by them and pass an order afresh in accordance with law expeditiously and in any case not later than 3 months from the date of passing of this order.

Medha Patkar and Another
Vs
Ministry of Environment and Others

APPEAL NO. 1/2013

JUDICIAL AND EXPERT MEMBERS: Justice Swatanter Kumar, Justice U.D. Salvi, Dr. D.K. Agrawal, Dr. G.K. Pandey and Prof. A.R. Yousuf

Keywords: question of limitation, coal based thermal power plant, villages Dhanora, Chausara, Dogawani Pipariya, Hiwarkhedi, Thawriteka in Chaura, Chhindwara Taluka in Distt. Chhindwara, Madhya Pradesh, publish environmental clearance, public domain, government agencies, Vigilantibus non dormantibus jura subvenient, EIA notification of 2006, development, MoEF, SEIAA

Application allowed to be heard on merits

Dated: 11th July 2013

The appellants claim to be well known social activists engaged in issues of environmental protection, unjust displacement and rehabilitation and resettlement of displaced communities along with broader issues in development planning for nearly 30 years. They also claim to be persons eligible within the meaning of Section 18(2)(e) of the National Green Tribunal Act, 2010 (for short the "NGT Act") and have preferred the present appeal under Section 16 read with Sections 14, 15(b), (c) and 18(1) and (2) of the NGT Act challenging the legality and correctness of the communication dated 16th October, 2012, issued by the Govt. of India, Ministry of Environment and Forests (for short MoEF), granting Environmental Clearance (for short EC) to M/s Adani Pench Power Ltd. (Respondent No. 4), for 2 x 660 MW imported coal based thermal power plant at villages Dhanora, Chausara, Dogawani Pipariya, Hiwarkhedi and Thawriteka in Chaura and Chhindwara Taluka in Distt. Chhindwara, State of Madhya Pradesh.

It is the pleaded case of the appellants that the environmental clearance has been granted to the Respondent No. 4 in violation of the EIA notification of 2006 in an arbitrary manner and it being contrary to law, is otherwise illegal.

The counsel appearing for the respondent, at the very threshold raised the question of limitation even before refuting the above contention of the appellants. The contention on behalf of the respondent is that the environmental clearance was granted and communicated on 16th/17th October, 2012 while the present appeal has been filed on 30th January, 2013. There is a delay of 16 days even beyond the period of 90 days prescribed under Section 16 of the NGT Act and as such the Tribunal does not have even the jurisdiction to condone the delay in filing the appeal. More so, there is no sufficient cause shown by the appellants for condoning the delay in any case in filing the present appeal.

From the above rival contentions, it is clear that the Tribunal has to answer the question of limitation as a preliminary issue. Thus, the judgment was reserved in the present case upon hearing the arguments only on the question of limitation in the first instance.

In face of the above indisputable position that the appellant was not able to get a copy of the EC till the second week of January, 2013 and after downloading at that time, the appellant filed the appeal on 30th January, 2013 within the period of limitation. Thus, the question of condoning the delay and/or showing sufficient cause would not arise in the facts of the present case. The provisions of Section 16 of the NGT Act relate to prescription of limitation for filing of an appeal. Any person aggrieved has the right to file appeal under this provision. However, such an appeal should be filed within 30 days from the date on which the issue is communicated to him. The Tribunal, however, is vested with the power of entertaining an appeal beyond the period of 30 days but within a further period of 60 days from such communication.

The project proponent, upon receipt of the environmental clearance, should upload it permanently on its website. In addition thereto, the project proponent should publish it in two local newspapers having circulation where the project is located and one of which being in vernacular language. In such publication, the project proponent should refer to the factum of environmental clearance along with the stipulated conditions and safeguards. The project proponent then also has to submit a copy of the EC to the heads of the local authorities, panchayats and local bodies of the district. It will also give to the departments of the State a copy of the environmental clearance.

Then the Government agencies and local bodies are expected to display the order of environmental clearance for a period of 30 days on its website or publish on notice board, as the case may be. This is the function allocated to the Government departments and the local bodies under the provisions of the notification of 2006. Complete performance of its obligations imposed on it by the order of environmental clearance would constitute a communication to an aggrieved person under the Act. In other words, if one set of the above events is completed by any of the stakeholders, the limitation period shall trigger. If they happen on different times and after interval, the one earliest in point of time shall reckon the period of limitation. Communication shall be complete in law upon fulfillment of complete set of obligations by any of the stakeholders. Once the period of limitation is prescribed under the provisions of the Act, then it has to be enforced with all its rigour. Commencement of limitation and its reckoning cannot be frustrated by communication to any one of the stakeholders. Such an approach would be opposed to the basic principle of limitation.

The Tribunal must adopt a pragmatic and practical approach that would also be in consonance with the provisions of the Act providing limitation. The framers of law have enacted the provisions of limitation with a clear intention of specifying the period within which an aggrieved person can invoke the jurisdiction of this Tribunal. Equally true is that once the period of limitation starts running, it does not stop. An applicant may be entitled to condonation or exclusion of period of limitation. Discharge of one set of obligations in its entirety by any stakeholder would trigger the period of limitation which then would not stop running and equally cannot be frustrated by mere non-compliance of its obligation to communicate or place the order in public domain by another stakeholder. The purpose of providing a limitation is not only to fix the time within which a party must approach the Tribunal but it is also intended to bring finality to the orders passed on one hand and preventing endless litigation on the other. Thus both these purposes can be achieved by a proper interpretation of these provisions. A communication will be complete once the order granting environmental clearance is placed in public domain by all the modes referred to by all or any of the stakeholders. The legislature in its wisdom has, under the provisions of the Act or in the notification of 2006, not provided any other indicator or language that could be the precept for the Tribunal to take any other view.

In a changing society and for progress and growth of the nation, development is necessary. The path of development must not lead to destruction of environment. There has to be a balance struck between the two. In other words, development and environment must go hand in hand to achieve the basic Constitutional goal of public welfare. If one reads Section 16 of the NGT Act in conjunction with the clauses of the notification of 2006, the obvious conclusion is that the period of limitation beyond 90 days is mandatorily non-condonable. The provisions of Section 4 of the Land Acquisition Act, 1984 provide for different modes of publication of preliminary notification and also states that last of the dates of such publication and giving of such public notice would be the date upon which the period specified shall be computed. In contra to such legislative provisions, the provisions of the present Act are silent and do not intend to provide any advantage to the applicant on fulfilment of obligations by different stakeholders at different times. In such circumstances, the earliest in point of time would have to be considered as the relevant date for computation of limitation.

Another factor that would support such a view is that a person who wishes to invoke jurisdiction of the Tribunal or a court has to be vigilant and of his rights. An applicant cannot let the time go by without taking appropriate steps. Being vigilant and to his rights and alive and conscious to the remedy provided (under the law) are the twin basis for claiming a relief under limitation. *Vigilantibus non dormantibus jura subvenient.* As far as the project proponent is concerned, it has admittedly not discharged its obligations upon grant of environmental clearance on 16th October, 2012. It is pointed out that the project proponent, even till date, has not permanently put the said environmental clearance along with the environmental conditions and safeguards on its website. Neither did it publish the environmental clearance along with its conditions and safeguards; nor did it effect the publication in two newspapers having circulation in the area in which the project is located, one being in vernacular language. The project proponent only published intimation regarding grant of environmental clearance to it in the newspapers on 28th October, 2012. There is nothing on record to show that the project proponent has provided a copy of the EC to the Government Departments, Panchayats, Municipality and/or local bodies in terms of clause 10(i)(d) of the Notification of 2006 and those Departments have thereafter complied with the requirements of the notification. Thus in the case of the project proponent, it cannot be argued that limitation had started running against the applicant on 28th October, 2012 or any date prior thereto as it committed default of its statutory obligation and incomplete compliance cannot give rise to commencement of the period of limitation.

Now, the Judges deal with the plea taken up by the MoEF. According to them, the environmental clearance was granted on 16th October, 2012 and was uploaded on the website of the Ministry on 17th October, 2012. Resultantly, the appeal is barred by 16 days, it having been filed on 30th January, 2013. Their contention is that the Tribunal cannot even condone the delay beyond the period of 90 days in terms of Section 16 of the NGT Act.

On the first blush, the contention appears to have merits, but once examined on actual facts and correspondence placed by the parties on record, the contention needs to be rejected. According to the applicant, the EC order dated 16th October, 2012 could not be downloaded for a considerable period, and in fact, till January, 2013. The applicant duly downloaded the same somewhere around 15th January, 2013 and filed the appeal on 30th January, 2013 within the prescribed period of 30 days, which is much less than the 90 days, the extended period of limitation. The applicant wishes to draw strength for the reason that on 5th December, 2012, it had written a letter to the Ministry under RTI Act demanding EC and other

documents. To this letter, the Ministry responded that the file which was sent for digitization had not been retrieved and that after completion of the work, a copy would be provided. The letter written by the Ministry certainly supports the case of the appellant. If the EC order dated 16th October, 2012 was on the website, all that was required of the Ministry was to inform the appellant that the order was available on their website and that even the executive summary of the EIA report was also available on the website and the appellant could download the same, but for reasons best known to it, a senior officer of the Ministry wrote that the document would be supplied to them in due course. Thus, the documents (soft copy), admittedly were supplied/dispatched to the appellant after filing of the appeal i.e. vide letter dated 8th February, 2013.

As MoEF and SEIAA are the most important stakeholders in the EIA process, the Judges direct MoEF/SEIAA that the EC granted should be uploaded as early as possible, not later than 7 days from the date of such grant and the website to be maintained properly. This may be brought to the notice of all SEIAAs for compliance by the MoEF. Besides, in order to avoid communication gap, MoEF is also directed to mention as one of the conditions in the EC letter that the EC granted be widely published in accordance with the provisions of EIA notification, 2006 by all the stake holders.

For the reasons afore-stated, the Judges are of the considered view that the present appeal has been filed within the period of limitation and the objection raised by the respondent is without any merits. The preliminary objection raised by the respondent is hereby rejected and they direct the appeal to be listed on merits.

Sarang Yadwadkar and Ors
V
The Commissioner, Pune Municipal Corporation and Ors

Application no. 02 of 2013

Judicial and Expert Members: Mr. Justice Swatanter Kumar, Mr. Justice U.D. Salvi, Dr. D.K. Agarwal, Prof. A.R. Yousuf, Dr. R.C.Trivedi.

Keywords: Vithalwadi Temple, Pune Municipal Corporation, Construction, River Mutha, National Highway 4, Heritage Building, Blue line, environmental damage, Blue Line, Illegal dumping, draft Development Plan.

Application is allowed with Directions.

Date: July 11, 2013

The applicants challenge the construction of the road from Vitthalwadi to National Highway-4 bypass, which is being constructed under the Draft Development Plan on the ground that the Draft Development Plan has not been approved by the State Government, no permission from Irrigation Department has been taken and the road touches the Vitthalwadi Temple and its surrounding areas which are Grade I Heritage Buildings and even permission from Archaeological Department has not been taken. This construction, according to the applicants, is bound to cause massive environmental, ecological and social damage. The construction of the road is being carried out in the river bed i.e. within the "blue line". Thus, the applicants pray that the on-going construction work should be stopped immediately and the respondents; any other person or agencies should be restrained from dumping any debris or construction material; the entire debris and soil dumping should be directed to be removed and finally the boundaries of the river should be expressly defined and marked by the local government in conjunction with Irrigation Department and the Archaeological Department.

According to a new Draft Development Plan, Vithalwadi was included in the Pune Municipal Corporation. The Construction is part of the new Draft Development Plan.

According to the applicants, the Respondents (Pune Municipal Corporation) are constructing the road within the Mutha river bed itself and have elevated the level of the road by 20 ft. to 30 ft. by way of illegal dumping rubble and earth and tens of thousands of truckloads of debris and soil are dumped right in the river bed for elevating the road. As a result, there has been reduction of the width of the river Mutha by about 55% and it is bound to result in increased floods in the surrounding densely populated residential areas during rainy season.

The applicants, have raised two specific grounds – one that the road is being constructed by the respondents into the river bed (i.e. blue line) and secondly huge dumping of debris have caused destruction of the riparian zone along the Mutha river.

The Respondents have put forth the reasons for the construction of the road: (i) Serve a public purpose of reducing traffic congestion on Sinhagad Road, (ii) Save the Dam, (iii) Reduce fuel consumption, and (iv)Consequently reduce vehicular pollution. In nutshell, it was going to serve a public purpose. According to them, the environment and ecology is going to benefit from this Road.

The Tribunal is therefore expected to derive a balance between the apprehended environmental and ecological damage on the one hand and the need for construction of the road with its economic

advantages on the other. Keeping in mind the public interest, that by imposition of certain conditions, environmental and ecological interests can be safeguarded, The Tribunal permitted Respondents to complete the project. Accordingly, the following conditions were imposed subject to which the project could continue:

(a) Respondents would be permitted to carry out and complete the project of building only 24 metre wide road from Vitthalwadi to NH-4 bypass as strictly and subject to the conditions stated hereinafter.

(b) Respondents shall make every effort to realign the road to bring it as far as possible closer to and beyond the blue line. It shall ensure to extend the least part of the project in the river bed/blue line.

(c) The road/project shall be constructed on elevated pillars alone in the area that falls within the blue line.

(d) Respondent will remove the debris dumped at the present site and shift the same to the red line by following 1 in 25 years rule.

(e) A massive plantation should be undertaken on both sides of the river, also in the no-development zone by Respondents as well as the State Government of Maharashtra. Adequate protective measures should be undertaken to prevent flooding and submerging of the residential area along the proposed road.

(f) The conditions imposed by the Chief Engineer, Irrigation Department shall mutatis mutandis be part of the Tribunal's directions.

(g) Respondents shall take appropriate steps against unauthorised constructions, if any, raised on and inside the blue line and pass order of demolition or such other order as is permissible in accordance with law. The Tribunal also directed the said authorities to ensure that no encroachment is permitted and no construction in future is permitted on and inside the blue line of the river Mutha.

If the conditions imposed under this order are found to be onerous by the State, particularly Respondent No.1 (Pune Municipal Corporation), then they can even give up the project on river Mutha as an alternative road on the other side of the river has already been constructed to provide the connectivity. In the event the Department decides to give up the road project, it shall be incumbent on it to remove all debris from within the blue line that has been used to create the high rise road segment. It is stated to be a 100 ft. wide road on the left bank of the river Mutha giving connectivity with the same bypass. Thus, in the present case, Respondent No.1 has options and alternatives available to it while ensuring that both the public interest and the environment do not suffer.

M/s. Gokulam Blue Metals
V
Tamil Nadu Pollution Control Board and Ors

Appeal No. 42 of 2013 (SZ)
Judicial and Expert Members : Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran.

Keywords: Stone Crusher, Air Pollution, Buffer zone, Tamil Nadu Pollution Control Board, Expert Committee.

Appeal was allowed subject to certain conditions.

Dated: July 12, 2013

The appeal has been filed by the appellant (Gokulam Blue Metals), which is engaged in the business of blue metals involving the process of stone crushing, against the order of the Tamil Nadu Pollution Control Board dated 25.4.2013 by the which the Pollution Control Board by exercising the powers conferred under Section 31(A) of the Air (Prevention and Control of Pollution) Act 1981 has directed the immediate closure of the stone crushing plant of the appellant on various grounds: Lack of Air Pollution control measures, No Water Sprinkler facility, no cover on conveyor belt, the unit has expanded its activity by providing Hot Mix Plant and Ready Mix Concrete Plant without obtaining Consent of the Board, and that complaints were received against the operation of the unit causing air pollution.
After hearing the respective counsels, the Tribunal, in order to find out the correct factual position, appointed a Single Member Expert Committee, who after a thorough inspection had filed his report before this Tribunal. On the basis of the report (see full judgement) the Tribunal has passed the following Order:

1) Construction of metal / paved road within the premises leading to bunker jaw crusher;

2) Relating to the recommendation that crusher capacity has to be stipulated on daily basis instead of monthly basis, so as to utilise optimally the assimilative capacity of the air shed; while reiterating that the unit shall follow the same, the Tribunal makes it clear that the Tamil Nadu Pollution Control Board shall consider the effect of the sanctioning capacity on daily basis and monthly basis in respect of the other concerned units in the State by appointing an Action Group to make a thorough study about the same and if necessary, file a report before this Tribunal to enable the Tribunal to give guidance in future.

3) Relating to the recommendation on the buffer zone, the Expert has stated that at least 200 m to be provided by the Government or Authorities around the Appellant unit so as to contain any dust in case in case of strong wind.

The Tribunal stated that it is always up to the Tamil Nadu Pollution Control Board to have the overall provision of supervisory powers over the unit to see as to whether the Appellant unit has complied with the above said directions within a period of 4 months and ensure the compliance accordingly.
The Appeal stands Closed.

Goa Foundation and Ors
V
Union of India and Ors

Application no. 26 of 2012

Judicial and Expert Members: Mr. Justice Swatanter Kumar, Mr. Justice U.D. Salvi, Dr.D.K. Agrawal, Prof. A.R. Yousuf, Dr. R.C.Trivedi

Keywords: Western Ghats, Biodiversity, Sustainable Question of Environment, Section 14 (NGT Act), Jurisdiction of NGT.

Application is maintainable.

Date: July 18, 2013

Goa Foundation (Applicant No. 1) is a registered society and claims to be at the forefront in environment campaigns in Goa working towards conserving and protecting the ecology of Western Ghats. Peaceful Society, through Kumar Kalanand Mani (Applicant No. 2) also claims to be the principal convener of the "Save the Western Ghats March". Both these applicants have approached the Tribunal for interim relief for directing the respondents not to issue any consent/environmental clearance or NOC or permission under the Environment Protection Act, 1986, the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981, the Forest Conservation Act, 1980 or the Biological Diversity Act, 2002, within the Western Ghats areas, particularly in relation to those which have been demarcated as Ecological Sensitive Zone I (ESZ 1) and Ecologically Sensitive Zone II (ESZ 2). Also, the respondents should discharge their obligation by exercise of the powers conferred on them under the enactments stated in Schedule I to the National Green Tribunal Act, 2010 (for short "the NGT Act") for preservation and protection of Western Ghats within the framework, as enunciated by the Western Ghats Ecology Expert Panel in its report dated 31st August, 2012 and the applicants further prayed for issuance of such orders or directions as the Tribunal may consider just and fair in the circumstances of the case.

Persistence on the part of various organisations persuaded the Government to constitute the Western Ghats Ecology Expert Panel (for short "WGEEP") on 4th March, 2010, that is, the Dr. Madhav Gadgil Committee. This panel submitted its report to the Government on 31st August, 2011. The same remains to be pending for consideration with the MoEF ever since.

The matter was still pending before the Bombay High Court when this present application came to be instituted before the Tribunal. The Tribunal took up the matter due to the sensitivity attached to the issue. There is a serious threat of damage to the ecology of the Western Ghats and indiscriminate developmental activity is bound to infringe upon the ecological environment of the Western Ghats to the disadvantage of

the public interest. The Public Trust Doctrine requires the authorities to maintain and ensure environmental equilibrium.

The applicant claims to have raised substantial questions of environment for consideration of the Tribunal and has prayed for a relief that the respondents be directed to discharge their obligation. The Respondents on the other hand questioned the maintainability of the present application.

Therefore, the main questions that arose was whether the National Green Tribunal had the Jurisdiction to pass any direction requiring the respondents concerned to accept any of the recommendations of the WGEEP report or that of the High Level Working Group. It was contended that the relief prayed is beyond the provisions of the Act. The Tribunal is not vested with the jurisdiction of enforcing the fundamental rights per se.

The NGT Act was enacted to provide for establishment of the Tribunal for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto. The very Preamble of this Act is a sufficient indicator of the jurisdiction that was to be vested is a sufficient indicator of the jurisdiction that was to be vested in the Tribunal.

A case will come under the ambit of Section 14 of the NGT Act, when the contents of the application and the prayer firstly satisfy the ingredients of it being in the nature of a civil case and secondly, it must relate to a substantial question of environment.

Section 14 when read with the provisions of Section 15, it can, be concluded that the expression 'all civil cases' is an expression of wide magnitude and would take within its ambit cases where a substantial question or prayer relating to environment is raised before the Tribunal.

The second ingredient is ***"Substantial Question of Environment"***. The Tribunal, after taking into consideration various sources for the meaning of the term ***"Substantial Question"*** said, "To put it aptly, a substantial question relating to environment must, therefore, be a question which is debatable, not previously settled and must have a material bearing on the case and its issues relating to environment... Thus, disputes must relate to implementation of the enactments specified in Schedule I to the NGT Act."

The very significant expression that has been used by the legislature in Section 18 is ***'any person aggrieved'***. Such a person has a right to appeal to the Tribunal against any order, decision or direction issued by the authority concerned.

Section 16 of the NGT Act gives a right to any person to prefer an appeal. These expressions have to be considered widely and liberally. The *"person aggrieved",* thus, can be a person who has no direct or personal interest in invoking the provisions of the Act, or who can show before Tribunal that it affects the environment, and therefore, prays for issuance of directions within the contemplation of the provisions of Section 16 of the NGT Act.

Section 14 relates to the provision of ***"Cause of Action".*** To examine what is cause of action, the Tribunal must read the entire petition as a whole. Cause of action is, in fact, a bundle of facts which a party pleads before the Court or Tribunal to claim a relief. It is a bundle of facts pleaded and proved for

the purpose of obtaining the relief claimed in the petition. These are the material facts and if the application discloses even a small cause of action, it is a settled law that the plaint cannot be rejected.

When it comes to a question of the environment under the NGT, It is not individual or a person centric but is socio-centric, as any person can raise a question relating to environment, which will have to be decided by the Tribunal with reference to the dispute arising from such a question.

Unlike the Supreme Court, the Tribunal doesn't have extraordinary jurisdiction. The tribunal has to examine as to whether, within the framework of the NGT Act and while keeping in mind the scheme of the same, its objects and purposes, generally such a petition would lie before the Tribunal or not

In a civil case which raises a question relating to environment, the Tribunal shall have jurisdiction to decide disputes arising out of such a question. Therefore, there is no need to carve out any exception for exclusion which is not spelt out by the legislature itself.

Section 20 of the NGT Act provides that the Tribunal shall take into consideration the three principles — principle of sustainable development, precautionary principle and the polluter pays principle. On the cogent reading of Section 14 with Section 2(m) and Section 20 of the NGT Act, likely damage to environment would be covered under the precautionary principle, and therefore, provide jurisdiction to the Tribunal to entertain such a question. Inaction in the facts and circumstances of a given case could itself be a violation of the precautionary principle, and therefore, bring it within the ambit of jurisdiction of the Tribunal, as defined under the NGT Act. Section 2(m) brings into play a direct violation of a specific statutory environmental obligation as contemplated under Section 5 of the Environment Act as being substantial question relating to environment. These provisions, read with Section 3(1) and Section 5 of the Environment Act, which place statutory obligation and require the Government to issue appropriate directions to prevent and control pollution, clearly show that the legislature intended to provide wide jurisdiction to the Tribunal to deal with and cover all civil cases relating to environment.

The Tribunal held that Western Ghats require protection and there is a statutory obligation upon the State to protect the environment and ecology of these Western Ghats and to ensure that they are not degraded so as to harm the public and environment at large.

A petition that seeks protection of ecology of the Western Ghats by itself would be maintainable. The applicant has been able to make a case of non-performance of the statutory obligation by the State and other authorities concerned on the one hand and that of the need for preventing degradation of the environment and ecology of these Western Ghats under the precautionary principle, on the other. The applicant has a legal right to approach the Tribunal and pray for relief within the scheme of the NGT Act. He is neither expected to show any personal injury nor any actual damage to the environment. Right to life includes right to environment within the meaning of Article 21 of the Constitution of India.

For the reasons aforesaid, the tribunal holds that the present application is maintainable.

Jyoti Mishra and Ors
V
MoEF and Ors.

Application no. 86 OF 2013

Judicial and Expert Members: Justice Swatanter Kumar, Mr. U.D. Salvi, Dr. D.K. Agrawal, Dr. G.K. Pandey, Dr. R.C.Trivedi

Keywords: SEIAA, SEAC, Municipal Solid Waste Management, Invertis University, Air Pollution, Hazardous substances, Nagar Nigam Bareilly, Environment and Ecological Impact, Salus populi suprema lex.

Application is allowed

Dated: July 18, 2013

The State level Environmental Impact Assessment Authority, (for short 'SEIAA'), in its meeting dated 19th December, 2012 agreed with the recommendations of the State Environmental Appraisal Committee, (for short 'SEAC') and declared that the Nagar Nigam (Municipal Corporation), Bareilly, Respondent No.4, was not required to take Environmental Clearance (for short "EC") for Municipal Solid Waste Management (for short "MSWM") Project, Bareilly, under the EIA Notification of 2006 (for short the 'Notification'). Vide its letter of the same date, it so informed the Nagar Nigam, Bareilly. The legality, correctness and validity of this letter dated 19th December, 2012 have been challenged in a number of applications filed against the construction of the MSWM project. They have stated that the Construction of the site will greatly endanger the environment and ecology of the area and they prayed that the Construction be stopped and the SEIAA letter dated 19th December, 2012, be quashed.

The case describes a long timeline of events where the project was granted an NOC. In December, 2012, Respondents No.2 and 3 (State Level Environment Impact Assessment Authority and Uttar Pradesh Pollution Control Board respectively) not only issued authorisation by extending the NOC after it had already lapsed but even took the view and accepted the recommendation of the SEAC and SEIAA that Respondent No.4 was not required to take EC. It abruptly issued the letter dated 19th December, 2012. There was nothing on record before the Tribunal as to what proceedings were taken by Respondent No.3 to examine the technical aspects, environmental impact and the various objections with regard to the site in question. The order dated 19th December, 2012 was issued in the absence of any proceedings or any proper application of mind. Then, after the institution of the application, the order dated 15th March, 2013 came to be issued. In the face of above facts and the records and the law, The Tribunal has no hesitation in holding that Respondent No.4 was required to take EC from SEIA, before setting up and operating MSWM plant. Respondent No.4 is not exempted from seeking that clearance on the strength of circular dated 15th January, 2008.

The establishment and construction of the plant in question appears to have been carried out in blatant violation of the orders of the High Court and Respondent No.3. The High Court as well as Respondent

No.3 had categorically noticed that the NOC had lapsed as on 2nd January, 2010 and the same was not renewed, and therefore, no construction activity could be carried out.

Even when the hearing of this case had started, it was not certain whether the construction of the plant had been completed and if it was operational or not. A few maps and photographs have been placed before the tribunal to show that within a short distance – even less than 500 metres – the Invertis University, hostels of students and other buildings, besides populated villages and water bodies are located; certainly, the plant in question is not the state-of-the-art one. From the photographs that have been placed on record, it is evident that a major part of this plant is open air and the basin pits have also not been prepared as per the Schedule to the MSW Rules. The structure itself is not of the kind which is incapable of being shifted to another place. Moreover, it is bound to have hazardous effects on the health of the residents of the University/villages, some of them being adjacent to the site in question. The site, in which the plant is located, is bound to cause water pollution due to the contamination of water of underground water in addition to affecting irrigation water, air pollution due to the solid waste which has been dumped in the open area and can cause diseases like asthma, emphysema and even cancer due to the hazardous fumes. Thus, the adverse effects of permitting the plant to carry on its activities at the site in question are bound to cause irretrievable damage to public health and environment. When the principle of balance between the public health and the development and functioning is applied, the answer necessarily has to tilt against the continuation of this plant at the site in question.

The Corporation, being a public body, is bound by the principles of public accountability and performance of public duties in accordance with the law of the land. According to the tribunal, the Nagar Nigam, Bareilly, Respondent No.4, has failed to discharge its duties in accordance with the law. Environmental impact, convenience of the residents and ecological impacts are the relevant considerations and all such considerations, in the facts of the case, were weighed against Respondent No.4. The larger public interest must prevail over the narrow end of collection and composting of municipal waste at the site in question. Scientifically, it is not even a comprehensive plant which would help in achieving the objective of collection and disposal of municipal solid waste. Admittedly, neither the plant is site specific nor does it have incinerators to ensure proper treatment and volume reduction and disposal of the municipal waste. It only has a system for bringing the municipal waste at the site for segregation and dumping for composting. Thus, shifting of the plant from the present site at this juncture even would, in no way, tilt the balance against the concept of sustainable development as interests of the citizens who have the Constitutional right to clean environment must prevail over such arbitrary action of the Corporation. Salus populi suprema lex. While applying the principle of balance as a facet of sustainable development, with reference to the facts of the present case, the tribunal has to keep in mind the precautionary principle as well. It is the future of thousands of students and residents of the villages which is at stake. There is not even a plausible explanation, much less a definite reason, for Respondent No.4 to show why they could not shift the plant to one of the earmarked sites in the Bareilly Master Plan-2021 keeping in view the MSW Rules, 2000. The public health and future of the coming generations certainly weighs against permitting the MSWM plant to continue at the site in question. In light of the above stated facts and having examined various technical aspects of this case, The tribunal is of the considered view that the physical shifting of the plant to another appropriate and approved site would not only be technically, economically and environmentally viable but also in the larger interest of all stakeholders including the Corporation itself.

The tribunal gave the following Order:

(a) Immediate closure of the municipal solid waste management plant at Razau Paraspur, Bareilly;

(b) Respondent No.4 is given a permanent prohibitory injunction, restraining them from dumping any municipal waste at the site in question;

(c) A mandatory injunction on Respondent No.4 to remove all the municipal waste dumped at the site within four weeks from today;

(d) The MSWM plant at Razau Paraspur, Bareilly, to be positively shifted to any appropriate site within the territorial area of the municipality earmarked in the Master Plan-2021 of Bareilly, for that purpose in consonance with MSW Rules, 2000. This shall also be subject to Respondent No.4 obtaining consent of Respondent No.3 as well as obtaining EC from the appropriate authority and in accordance with law.

(e) The MoEF to ensure that the Member Secretary or any other officer of the State Board should not be a Member in the SEIAA, in order to facilitate independent assessment of the projects at the SEIAA level.

(f) Till the above is carried out, Respondent No. 4 may continue to dump Municipal Solid Waste at the existing Solid Waste dumping grounds other than the site in question for which Respondent No. 3 should provide clear guidelines for site preparation, dumping, compaction, soil layering, disinfectant spray etc. forthwith.

(g) The site in question should be restored and developed as per Master Plan 2021.

Invertis University
V
Union of India Ors.

APPLICATION NO. 99/2013

Judicial and Expert Members: Justice Swatanter Kumar, Mr. U.D. Salvi, Dr. D.K. Agrawal, Dr. G.K. Pandey, Dr. R.C.Trivedi

Keywords: SEIAA, SEAC, Municipal Solid Waste Management, Invertis University, Air Pollution, Hazardous substances, Nagar Nigam Bareilly, Environment and Ecological Impact, Salus populi suprema lex.

Application is allowed

Dated: July 18, 2013

The State level Environmental Impact Assessment Authority, (for short 'SEIAA'), in its meeting dated 19th December, 2012 agreed with the recommendations of the State Environmental Appraisal Committee, (for short 'SEAC') and declared that the Nagar Nigam (Municipal Corporation), Bareilly, Respondent No.4, was not required to take Environmental Clearance (for short "EC") for Municipal Solid Waste Management (for short "MSWM") Project, Bareilly, under the EIA Notification of 2006 (for short the 'Notification'). Vide its letter of the same date, it so informed the Nagar Nigam, Bareilly. The legality, correctness and validity of this letter dated 19th December, 2012 have been challenged in a number of applications filed against the construction of the MSWM project. They have stated that the Construction of the site will greatly endanger the environment and ecology of the area and they prayed that the Construction be stopped and the SEIAA letter dated 19th December, 2012, be quashed.

The case describes a long timeline of events where the project was granted an NOC. In December, 2012, Respondents No.2 and 3 (State Level Environment Impact Assessment Authority and Uttar Pradesh Pollution Control Board respectively) not only issued authorisation by extending the NOC after it had already lapsed but even took the view and accepted the recommendation of the SEAC and SEIAA that Respondent No.4 was not required to take EC. It abruptly issued the letter dated 19th December, 2012. There was nothing on record before the Tribunal as to what proceedings were taken by Respondent No.3 to examine the technical aspects, environmental impact and the various objections with regard to the site in question. The order dated 19th December, 2012 was issued in the absence of any proceedings or any proper application of mind. Then, after the institution of the application, the order dated 15th March, 2013 came to be issued. In the face of above facts and the records and the law, The Tribunal has no hesitation in holding that Respondent No.4 was required to take EC from SEIA, before setting up and operating MSWM plant. Respondent No.4 is not exempted from seeking that clearance on the strength of circular dated 15th January, 2008.

The establishment and construction of the plant in question appears to have been carried out in blatant violation of the orders of the High Court and Respondent No.3. The High Court as well as Respondent

No.3 had categorically noticed that the NOC had lapsed as on 2nd January, 2010 and the same was not renewed, and therefore, no construction activity could be carried out.

Even when the hearing of this case had started, it was not certain whether the construction of the plant had been completed and if it was operational or not. A few maps and photographs have been placed before the tribunal to show that within a short distance – even less than 500 metres – the Invertis University, hostels of students and other buildings, besides populated villages and water bodies are located; certainly, the plant in question is not the state-of-the-art one. From the photographs that have been placed on record, it is evident that a major part of this plant is open air and the basin pits have also not been prepared as per the Schedule to the MSW Rules. The structure itself is not of the kind which is incapable of being shifted to another place. Moreover, it is bound to have hazardous effects on the health of the residents of the University/villages, some of them being adjacent to the site in question. The site, in which the plant is located, is bound to cause water pollution due to the contamination of water of underground water in addition to affecting irrigation water, air pollution due to the solid waste which has been dumped in the open area and can cause diseases like asthma, emphysema and even cancer due to the hazardous fumes. Thus, the adverse effects of permitting the plant to carry on its activities at the site in question are bound to cause irretrievable damage to public health and environment. When the principle of balance between the public health and the development and functioning is applied, the answer necessarily has to tilt against the continuation of this plant at the site in question.

The Corporation, being a public body, is bound by the principles of public accountability and performance of public duties in accordance with the law of the land. According to the tribunal, the Nagar Nigam, Bareilly, Respondent No.4, has failed to discharge its duties in accordance with the law. Environmental impact, convenience of the residents and ecological impacts are the relevant considerations and all such considerations, in the facts of the case, were weighed against Respondent No.4. The larger public interest must prevail over the narrow end of collection and composting of municipal waste at the site in question. Scientifically, it is not even a comprehensive plant which would help in achieving the objective of collection and disposal of municipal solid waste. Admittedly, neither the plant is site specific nor does it have incinerators to ensure proper treatment and volume reduction and disposal of the municipal waste. It only has a system for bringing the municipal waste at the site for segregation and dumping for composting. Thus, shifting of the plant from the present site at this juncture even would, in no way, tilt the balance against the concept of sustainable development as interests of the citizens who have the Constitutional right to clean environment must prevail over such arbitrary action of the Corporation. Salus populi suprema lex. While applying the principle of balance as a facet of sustainable development, with reference to the facts of the present case, the tribunal has to keep in mind the precautionary principle as well. It is the future of thousands of students and residents of the villages which is at stake. There is not even a plausible explanation, much less a definite reason, for Respondent No.4 to show why they could not shift the plant to one of the earmarked sites in the Bareilly Master Plan-2021 keeping in view the MSW Rules, 2000. The public health and future of the coming generations certainly weighs against permitting the MSWM plant to continue at the site in question. In light of the above stated facts and having examined various technical aspects of this case, The tribunal is of the considered view that the physical shifting of the plant to another appropriate and approved site would not only be technically, economically and environmentally viable but also in the larger interest of all stakeholders including the Corporation itself.

The Tribunal gave the following Order:

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(c) A mandatory injunction on Respondent No.4 to remove all the municipal waste dumped at the site within four weeks from today;

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(e) The MoEF to ensure that the Member Secretary or any other officer of the State Board should not be a Member in the SEIAA, in order to facilitate independent assessment of the projects at the SEIAA level.

(f) Till the above is carried out, Respondent No. 4 may continue to dump Municipal Solid Waste at the existing Solid Waste dumping grounds other than the site in question for which Respondent No. 3 should provide clear guidelines for site preparation, dumping, compaction, soil layering, disinfectant spray etc. forthwith.

(g) The site in question should be restored and developed as per Master Plan 2021.

Rayons Enlightening Humans and Anr
V
MoEF and Ors

APPLICATION NO. 86 OF 2013

Judicial and Expert Members: Justice Swatanter Kumar, Mr. U.D. Salvi, Dr. D.K. Agrawal, Dr. G.K. Pandey, Dr. R.C.Trivedi.

Keywords: SEIAA, SEAC, Municipal Solid Waste Management, Invertis University, Air Pollution, Hazardous substances, Nagar Nigam Bareilly, Environment and Ecological Impact, Salus populi suprema lex.

Application is allowed

Dated: July 18, 2013

The State level Environmental Impact Assessment Authority, (for short 'SEIAA'), in its meeting dated 19th December, 2012 agreed with the recommendations of the State Environmental Appraisal Committee, (for short 'SEAC') and declared that the Nagar Nigam (Municipal Corporation), Bareilly, Respondent No.4, was not required to take Environmental Clearance (for short "EC") for Municipal Solid Waste Management (for short "MSWM") Project, Bareilly, under the EIA Notification of 2006 (for short the 'Notification'). Vide its letter of the same date, it so informed the Nagar Nigam, Bareilly. The legality, correctness and validity of this letter dated 19th December, 2012 have been challenged in a number of applications filed against the construction of the MSWM project. They have stated that the Construction of the site will greatly endanger the environment and ecology of the area and they prayed that the Construction be stopped and the SEIAA letter dated 19th December, 2012, be quashed.

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(e) The MoEF to ensure that the Member Secretary or any other officer of the State Board should not be a Member in the SEIAA, in order to facilitate independent assessment of the projects at the SEIAA level.

(f) Till the above is carried out, Respondent No. 4 may continue to dump Municipal Solid Waste at the existing Solid Waste dumping grounds other than the site in question for which Respondent No. 3 should provide clear guidelines for site preparation, dumping, compaction, soil layering, disinfectant spray etc. forthwith.

(g) The site in question should be restored and developed as per Master Plan 2021.

Shyam Sunder
V
Union of India Ors

Application No. 7/2013

Judician and Expert Members: Shri Justice V.R. Kingaonkar, Dr. P.C. Mishra, Shri P.S. Rao, Shri B. S. Sajwan

Keywords: Protected Forest, HPCL, felling of trees, Mainpuri District, Nh-91, Uttar Pradesh, Divisional Forest Officer, NOC.

Application is allowed

Dated: 18th July, 2013

The question involved in the present case is whether provisions of the Forest (Conservation) Act, 1980, are complied with at a Petrol pump Construction site.

The brief facts of the case are that State had declared area between 711.3 to 742 miles, falling within Mainpuri District, alongside NH-91 in the state of Uttar Pradesh as Protected Forest. HPCL desired opening of 208 petrol retail outlets at various places within territory of State of Uttar Pradesh and Uttrakhand. In pursuance to such policy decision, HPCL issued an advertisement for appointment of dealers for the sale of petrol and petroleum products on certain conditions and sought appropriate lands for that purpose. In response to such advertisement, Respondent, Arpan Kumar offered his land bearing Gata No. 405 situated by side of NH-91 for establishment of petrol outlet. The proposal was accepted by the HPCL. The District Magistrate also granted the NOC. In the meanwhile, DFO (Divisional Forest Officer) by communication dated 13.09.2012 directed Arpan Kumar to obtain NOC for installation of petrol outlet. According to the DFO, a part of the land is within protected forest in the proximity of the NH-91. The District Magistrate called upon Arpan Kumar and HPCL to obtain NOC under the provisions of the FC Act, as a condition for the NOC issued by him. The case of the applicant is that without obtaining the NOC under the FC Act, Arpan Kumar commenced felling of trees from the adjacent protected forest. Moreover, HPCL and Arpan Kumar (lessee and lessor, respectively) started construction activities at the site, even though the Forest Department had not issued the NOC. It is alleged that HPCL and Arpan Kumar have clandestinely cut down a large number of trees in order to prepare road to have access to the Petrol Retail Outlet.

According to the Tribunal the following issues need determination:

(i) Whether NoC dated 21.12.2012 has been granted in violation of the provisions of the Forest (Conservation) Act, 1980 and without following relevant guideline issued by the GoI?

(ii) Whether some trees have been illegally felled from protected forest and the area is cleared which caused damage to the environment?

The land between 711.3 and 742 miles within the territory of district Mainpuri alongside NH-91 has been notified as Protected Area and the land adjacent to the land of Arpan Kumar, which is proposed to be used for establishment of petrol pump (outlet) of HPCL is a part of notified protected forest. There are

photographs showing that Arpan Kumar has been carrying on construction work. The photographs show that the land has been cleared and probably all the trees standing there have been felled and removed. Obviously, the illegal clearing of the forest land by Arpan Kumar or someone else is brought on surface of the record.

The Report submitted by DFO, Mainpuri in pursuance to certain queries which were sought in the context of subsequent application made by HPCL for grant of NoC, clearly indicates that there was illegal felling of eight (8) trees from the protected forest area for clearing the site to have access to the proposed petrol pump(outlet).

Upon careful consideration of the record, The Tribunal observed that it seems that the trees were hurriedly cut down in order to clear the area with a view to avoid seeking the clearance under the FC Act. The attitude of Arpan Kumar and HPCL in proceeding with activities for establishment of such petrol pump without prior clearance under the FC Act appears to be reprehensible. According to the Tribunal, the NoC granted by the District Magistrate, Mainpuri is illegal in as much as the same was issued without prior grant of the clearance under the FC Act and without even awaiting for report of the District Forest Officer. The Tribunal stated that the impugned NoC dated 21st January, 2012 is thus bad in law and will have to be quashed.

The Affidavit of the Forest Range Officer also shows that eight (8) trees were found cut and felled at the site. This belies the claim of Arpan Singh and HPCL.

Another question that remains to be seen is whether the relief sought by the applicant can be granted or that it falls outside the jurisdiction of this Tribunal.

A plain reading of Sub-Section (1) of Section 14 will make it clear that the Tribunal has jurisdiction in respect of all civil cases where substantial question relating to environment is involved. The question involved in the present case is whether provisions of the Forest (Conservation) Act, 1980, are complied with. As stated before, the forest area was cleared by HPCL & Arpan Kumar or rather Arpan Kumar, without obtaining due permission of the Competent Forest Authority. The felling of eight (8) trees for such purpose amounts to breach of section (2) of the Forest (Conservation) Act, 1980. It also involves question pertaining to Environment (Protection) Act, 1986. Hence, it cannot be said that jurisdiction of the Tribunal is not available to the applicant.

In the result, the application is allowed.

Husain Saleh Mahmad Usman Bhai Kara
V
Gujarat SEIAA ORS.

Appeal No. 38/2012

Judicial and Expert Members: Shri Justice V.R. Kingaonkar, Dr. G.K. Pandey, Dr. P.C. Mishra, Prof. A. R. Yousuf, Dr. R.C. Trivedi

Keywords: Water Cooling Technology, Air Cooling Technology, Thermal Power Plant, SEIAA, Bhadreshwar, Bhuj, Environment Clearance, OPG Power Plant.

Appeal Dismissed

Dated: 18th July, 2013

This Appeal raised a somewhat peculiar substantial question of law. Question that fell for consideration was:

"Whether mere change of technology for cooling system from 'water cooling technology' to 'Air cooling technology' in the proposed coal-based thermal power plant, for which Environmental Clearance was granted, becomes a new project and therefore, it is essential to undergo the entire process as contemplated in the Rule 7(i) of EIA Notification dated 14th September, 2006"?

The Appellant claimed to be an inhabitant of village Bhadreshwar (Mundra, Taluk) situated in Bhuj, Kutch, State of Gujarat. By way of present Appeal, he challenged the order dated 15th May, 2012 issued by the Gujarat State Level Environment Impact Assessment Authority (SEIAA), whereby amendment of earlier Environmental Clearance (EC) dated 11th June, 2010 was allowed for change of technology from water cooling system to air cooling system for the Thermal Power Plant. The Respondents are OPG Power Ltd.

The Appellant has contended that the SEIAA granted the EC without proper application of mind. He also contends that the change of process changes the impact it will have on the ecology of the place.

The Tribunal used the minutes of the meetings of SEIAA when the EC was applied for. The two meetings were held by the SEIAA before granting impugned EC. The Tribunal stated that the minutes of the two meetings, if read together, shows application of mind by the Members of the SEIAA. The minutes of first meeting go to show that the air cooling system was considered but version of OPG Power Ltd. was not accepted as gospel truth. It was observed that heat absorbed by cooling air could be emitted into ambient air above the air cooled condenser in form of hot air, which was previously going into sea in form of warm water, and hence there could be impact of hot air leaving the air cooled condenser system. Therefore, the committee desired to have a profile of temperature and relative humidity measured at interval of one (1) meter so as to ascertain the exact distance within which ambient temperature is achieved and hence decided to reconsider the case later on. In the 136th meeting, the SEIAA evaluated the impact of air cooled condenser in place of water cooled condenser. The SEIAA noted that waste water generation will reduce significantly from 62, 750 KL/day to 326 KL/day. It was noted that 99.5%

reduction of waste water generation would be achieved due to adoption of air cooled condenser in place of water cooled condenser. It was further noted that there will be no change in the ash generation quantity as there is no change in the air cooled pattern.

The Tribunal stated that what was required to be seen was whether there was due application of mind by the SEIAA in context of evaluation of the viability of the project in question. The Tribunal stated that unless judicial concise is shocked due to the findings of the SEAC or SEIAA, interference in the grant of EC, merely on basis of hypothetical question, unfounded apprehension and non-scientific basis will not be sufficient reason to quash the impugned order of EC.

In the result, the Tribunal dismissed the Appeal with cost of Rs. 10,000/- (Rupees Ten Thousand only) which the Appellant shall pay to Respondent No. 2 (OPG Power Ltd.) within a period of four (4) weeks.

Mahesh Chandulal Solanki Anr.
V
Union of India Ors.

Appeal No. 22/2011

Judicial and Expert Members: Shri Justice V.R. Kingaonkar, Shri Justice U.D. Salvi, Dr. P.C. Mishra , Shri P.S. Rao, Shri Bikram Singh Sajwan

Keywords: Environmental Clearance, SEIAA, Gujarat, Ductile Iron Pipe, Terms of Reference, EIA report, public hearing, SEAC.

Appeal is dismissed

Dated: 18th July, 2013

This Case deals with the Environmental Clearance (EC) granted by the State Level Environment Impact Assessment Authority ("SEIAA") of Gujarat State (Respondent 4) that permitted M/S Jindal Saw Limited, (Respondent No.5), to expand their "Smaller Diameter Ductile Iron Pipe" Plant in village Samaghogha, Taluka: Mundra, District: Kutch.

The Appellants, residents of village Samaghogha, situated in the proximity of the proposed project site, claim that the environment, in which they live and make their living is going to be affected seriously as a result of the expansion of the said "Ductile Iron Pipe" Plant; and more so as the village Samaghogha is substantially polluted due to concentration of several industries including manufacturing unit of the Respondent No. 5 producing iron pipes, having come up within the limits of Village Samaghogha.

According to the Appellants, the entire process of grant of Environmental Clearance is tainted for the following reasons:

1. Construction of the project was started prior to the grant of Environmental Clearance.

2. Terms of Reference (ToR) were issued on 30.11.2010. However, the Environment Impact Assessment (EIA) study was done between October 2010 and December, 2010 prior to the communication of ToR.

3. Notice of Public Hearing was not adequate in terms of the mandate of EC Regulation.

4. Summary of EIA Report was not supplied in vernacular language in stipulated time.

5. Summary of EIA Report was inadequate and not as required by the EC Regulation.

6. Public hearing was not held in neutral venue so as to permit free, fair and open participation of the members of public.

7. Minutes of meeting were not prepared or read over to the participants as required.

8. There was no detailed scrutiny of final EIA Report and outcome of Public consultation for the purpose of appraisal as required under the said Regulation and the grant of EC was recommended mechanically by the State Level Expert Appraisal Committee (SEAC); in violation of the mandate of the EIA Notification.

After taking into consideration the contentions placed before the Tribunal, the following grounds came up for discussion:

1. Whether the construction of the project was started prior to the granting of Environmental Clearance in question.

Respondent No. 5 had commenced the construction activity for setting up of new Blast Furnace within the available open area of its factory premises at Village Samaghogha. Photographs in the Annexure-4 to the Appeal show excavation and foundation work and nothing beyond it. However, the Respondent No. 5 has not clarified in its Affidavit in reply as to what were those common technical features between the Steel making expansion plant and Ductile Iron (DI) expansion Plant thereby clearly indicating the works involving such common technical features undertaken by it . As a result the point needs to be answered affirmatively.

2. Whether summary of EIA report was not furnished in Vernacular Language.

Perusal of the copy of the letter dated 1.3.2011 of Gujarat State Pollution Control Board and the acknowledgment obtained by Gujarat State Pollution Control Board (GSPCB) at Annexure R-8 & R-9 respectively to the reply filed by the Respondent No. 5, irrefutably and vividly reveals delivery of draft and summary of EIA report (English and Gujarati) to the local bodies/Authorities. Pertinently no grievance was raised by anybody in that regard in time prior to filing of the present Appeal much less at or before the Public Hearing in question. Grievance in that regard is, therefore, a far cry from the truth. The point is therefore answered negatively.

3. Whether summary of EIA report was inadequate and not as required by the Environmental Clearance Regulations /EIA Notification.

Environmental Clearance Regulations, 2006 casts duty on the Project Proponent to address all the material environmental concerns. Thus, the focal point of EIA report is anticipated environmental impact and mitigation measures. The Tribunal finds in the summary EIA report, reference to assessment of air pollution, noise pollution, water pollution and land pollution and mitigation measures to be adopted by the Project Proponent. Except a statement nothing has been pointed out by the Appellant to show how this EIA report was inadequate so as to thwart public response as contemplated in EC Regulations. The point is, therefore, answered negatively.

4. Whether the Public Hearing was not held in neutral venue.

The Public Hearing in the present case was held in the premises of the O. P. Jindal Vidhya Niketan school run by the Respondent No. 5 in Village Samaghogha. Perusal of the record, both documentary and video graphic, reveals that the Public Hearing was held in the presence of Additional District Magistrate and Additional District Collector, District Kutch, the Regional Officer of PCB, Bhuj and was attended by 275 persons from various villages including the village Samaghogha situated around the said site. It is clearly demonstrated that the Members of the Public were provided with the platform for free, fair and open participation at the said venue. Nothing was pointed from the record that anything was amiss in holding of Public Hearing at the said venue which could be construed as violation of Environmental Clearance Regulations 2006. The point is, therefore, answered is negatively.

5. Whether there is any contravention of the Environmental Clearance Regulations /EIA Notification.

The minutes of the meeting of the SEAC clearly reveal that SEAC had not recommended the grant of EC mechanically and had applied its mind to the final EIA report and outcome of Public consultation for the purpose of appraisal as required under the said EC Regulations. Nothing has been pointed that the Minutes of the meeting were not recorded as per the EC Regulations. The point is, therefore, answered accordingly.

6. Whether any such contravention would vitiate the grant of Environmental Clearance in question.

From the facts it is disclosed before the Tribunal that there is nothing to demonstrate or suggest that any lapse in strict compliance of the procedure prescribed in Environmental Clearance Regulations has in any way prejudicially affected the course of justice keeping in mind the material Environmental Concern. It is nobody's case that draft EIA report and its summary were not made available when asked for except saying that the same were received on 16.3.2011. Perusal of the recommendation made by SEAC at Annexure R-4 to the affidavit reply of SEAC (Respondent No. 4) reveals conditions imposed for grant of such Environmental Clearance. No irrationality or procedural impropriety has been pointed out in making of such recommendations. The recommendations are exhaustive and the conditions stipulated, cover not only the general concerns of the locals but also govern the environmental parameters like water, air, noise, solid/ hazardous waste and green belt. Amendment to the Environmental Clearance done at later stage is incidental one made only to correct the description of the project. The point is, therefore, answered negatively.

Nevertheless, the Project Proponent did over step the limitation imposed by the Environmental Clearance Regulations by starting with the construction before grant of Environmental Clearance. Regarding construction activities undertaken prior to the grant of EC, the Tribunal does not agree with the contention of the Project Proponent that the alleged construction work relates to the grant of an earlier Environment Clearance.

In the result, the Appeal is dismissed with direction that the Respondent No. 5 (Project Proponent) shall deposit Rs. 1,00,00,000/- (Rupees One Crore only) with the office of the NGT within four (4) weeks and the same shall be disbursed as per the Registry. The Gujarat State Pollution Control Board shall make six-monthly monitoring of Ground Water Level and TDS (Total Dissolved Solids) content of ground water within the premises of the project and take necessary steps to check the water level and TDS content before reaching dangerous leve

Raza Ahmad
V
State of Chhatisgarh Ors.

Appeal No. 27/2013(THC)

Judicial and Expert Members: Mr. Justice M.Chockalingam, Dr. Ajay A. Deshpande

Keywords: Bilaspur, Chattisgarh, EIA report, Environment Clearance, NEAA, Jurisdiction, Limitation, Diversion of land, Land Use, Chhattisgarh Nagar Tatha Gram Nivesh Adhiniyam Act, 1973.

Appeal Dismissed

Dated: 2nd August, 2013

The appellant, an active Member of Chhattisgarh Swabhiman Manch (a social and political organization), has brought forth this appeal challenging the impugned notification no. F/7-24/32/2010 dated 03.02.2011 issued by Respondent no. 1 whereby the land use of certain land reserved for green belt development plan of Bhilai was modified to industrial purpose to regularise the construction of Bhilai Jaypee Cement Ltd. (BJCL) (Respondent no. 10) as also the Environmental Clearance dated 01.05.2008 granted to respondent no. 10 which has been wrongly categorised as B2 and thus, without a preparation of EIA report, conducting of public hearing/consultation is otherwise totally illegal.

The main question that arose in the present case was whether the Tribunal had the jurisdiction to try this case.

The environmental clearance was granted to the respondent no. 10 by the respondent no. 2 on 01.05.2008 and the appellant had the knowledge about the grant of environmental clearance on 08.05.2008 but filed the writ petition before the High Court of Chhattisgarh, Bilaspur on 08.09.2011 i.e. nearly after one year after commencement of NGT Act on 18.10.2010. It therefore seemed like it was done to circumvent the impediment on the point of limitation. The High Court in its Order stated:

"The basis point of challenge is the environmental clearance dated 01.05.2008. The notification for the diversion of the land as well as the order approving the construction is subsequent to it and is based on it."

The main subject matter of challenge is the grant of environmental clearance to the respondent no. 10 by the respondent no. 2 which was done on 01.05.2008 i.e. the date when the first cause of action arose. The appellant has not availed the remedy available under the provisions of The National Environment Appellate Authority (NEAA) Act. Even as per the averments made by the appellant, 'the Director Town & country Planning', Bhilai respondent no. 5 has issued notice to respondent no. 10 regarding the land use modification without the permission, in its original condition. It is highly doubtful whether the appellant can apply and ask for restoration of land in question. The limitation of 5 years, as provided under Section 15 of the NGT Act, 2010 cannot at all applied to the present case since no one should use an area earmarked as green for any other purpose. In the instant case, the State Government has modified the land use from green belt to industrial by exercise of statutory powers conferred on it. In other words, the land notified as industrial area by the State Government is being used by Respondent no. 10 for industrial purpose. If the relief of restoration as asked for by appellant is to be considered and granted, necessarily the validity of the act of modification of land use by the State Government of Chhattisgarh has to be gone into and examined and if to be done so, it has to be done under the provisions of Chhattisgarh Town and Country Planning Act. The said enactment is outside the seven enactments of the Schedule – I of NGT Act, 2010 and hence no doubt it would fall outside the jurisdiction of the NGT.

The primary question in the appeal, as pointed out by the High Court in its order of transfer has a legality or otherwise of the grant of the EC dated 01.05.2008 in respect of which the appellant did not avail the remedy within the stipulated time under the provisions of NEAA Act and has filed the writ petition long after the lapse of one year and the other two questions namely the conversion of the use of land and also the restoration of land to its original condition are the questions based on it and would arise consequently to the first one.

Apart from that the appellant has also challenged the notification dated 03.02.2011 where by the modification from the green belt to industrial purpose was made and sought to quash the same. The relief sought for by the appellant would not fall within the jurisdiction of the Tribunal since the said conversion of the land use was in exercise of the powers under Section 23(A) Chhattisgarh Nagar Tatha Gram Nivesh Adhiniyam Act, 1973.

The Counsel for the respondent no. 10 submitted that the appellant has challenged the Environmental Clearance dated 01.05.2008 issued by the respondent no. 2 and the conversion of land use from green belt to industrial purpose. Both reliefs do not fall under the purview National Green Tribunal Act, 2010 or within the jurisdiction of the National Green Tribunal. It is the specific case of the appellant that the Environmental Clearance was granted by the respondent no.2 to respondent no. 10 on 01.05.2008. No appeal was filed before the NEAA under Section 11 of the NEAA Act on or before 17.10.2010 i.e. even after approximately 900 days. The NGT Act came into force on 18.10.2010. Though, the appellant has filed the Writ Petition (PIL) before the High Court of Chhattisgarh, Bilaspur only on 08.09.2011. Thus, the appellant has not availed the remedy under NEAA Act. The said Act stood repealed under the NGT Act w.e.f. 18.10.2010. The Tribunal is a creation of statute and the jurisdiction cannot be stretched beyond what is expressly conferred by the Act. No statutory authority, whether empowered by the Apex

Court, can act in contravention of the statute. Since, no appeal was filed under NEAA Act prior to 18.10.2010, it would be stated that there was no pending case to be adjudicated under Section 14 of the NGT Act, 2010, apart from that the appellant has filed PIL before the High Court of Chhattisgarh on 08.09.2011 i.e. long after the commencement of the NGT Act which came into force on 18.10.2010 and thus, it is quite clear that the appeal was barred by time and filed beyond the prescribed period of time envisaged under the NGT Act. The dispute of land use change carried out by the Government of Chhattisgarh as per the provisions Chhattisgarh Town and Country Planning Act, 1973 also do not fall under the enactments specified in the Schedule – I of the NGT Act. Under Section 14(1) of the NGT Act, the Tribunal has jurisdiction over all civil cases where a substantial question relating to environment including the enforcement of any legal right relating to environment is involved and such question arising out of the implementation of the enactment specified under the Schedule – I and thus, the above dispute as to the land use falling under the provisions of the Chhattisgarh Nagar Tatha Gram Nivesh Adhiniyam, 1973 falls outside the jurisdiction of the Tribunal. The jurisdiction of the Tribunal cannot stretch the language of the statute and thus, the petitioner at no stretch of imagination can be allowed to plead that the limitation has to be reckoned from 03.02.2011 as per his own interpretation and convenience.

The Tribunal stated that it was aware that the subject matter in question was related to environment and it was of serious concern and that the Tribunal is specially constituted to deal with all environment disputes. Dismissing the appeal as not maintainable would appear to be unreasonable. But the Tribunal is helpless in this matter. Being a statutory body, it is bound by the language of the statute. Hence, in view of the discussions made above, the Tribunal has no option than to dismiss the appeal not maintainable as barred by time and one outside the jurisdiction of the Tribunal. Hence, the appeal is dismissed accordingly.

Shri K. Swamydhas
V
The Member Secretary, TN State Coastal Zone Management Authority, Chennai and Anr

Appeal No. 1/2013(SZ)

Judicial and Expert Members: Mr. Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran

Keywords: Coastal Regulation Zone Notification 2011, Kanyakumari, Resort Hotel, Panchayat, Town and Country Planning Act.

Appeal is allowed

Dated: August 07, 2013

This appeal is filed for challenging the order of communication of the 1st respondent dated 20.11.2012 addressed to the 2nd respondent. In the said impugned communication the request made by the appellant for approval for putting up a residential house in 0.4 ha of land situated in Survey No. 606/15, Kanyakumari Village, Agastheeswaram Taluk, Kanyakumari District came to be rejected on the ground that the same is situated in Coastal Regulation Zone (CRZ) Notification 2011.

The brief facts leading to the passing of the impugned order are that originally in respect of the same extent of land, the appellant wanted to put up a beach resort and a hotel and that came to be rejected on the ground that the extent of land namely 0.4 ha is not sufficient for the purpose of putting up a resort or hotel. It was thereafter that the appellant made a modified application form No. 1 for the purpose of putting up a residential house and he applied in the above said form to the District Coastal Joint Management Authority for clearance.

After hearing the Counsels for both the parties, the Tribunal is of the view that once the Authority contemplated under the Town and Country Planning Act has given permission for putting up house construction in the area and it is admitted by the respondents themselves that the area concerned is entitled for putting up housing unit, there is absolutely no justification on the part of the respondents in rejecting the claim. Moreover, even as per the CRZ notification 2011, it is not in dispute that the site wherein the house is sought to be put up by the applicant is facing road and therefore there is absolutely no violation in this regard and that the certificate is also available which is issued by the Special Grade Town Panchayat. The Town Panchayat in the said certificate (in vernacular) has clearly stated that the Survey No. 608/15 near Kanyakumari Special Grade Town Panchayat is a road under National High Ways and it is certified that the building plan for the proposed construction is satisfies the building rules.

This shows that the building which is sought to be constructed in Survey No. 608/15 is in compliance with the building regulations and it is nobody's case that the site is not abutting to the road and therefore the same is within the ambit of the CRZ notification. The applicant has also clearly stated that after the application was forwarded by the District Committee, the 1st respondent had called the applicant to

appear on a date for the purpose of explaining the project. However, he was never given the opportunity to do so even after he went to Respondent 1 with a team of experts in order to provide an explanation.

In such circumstances, without even having been explained the project to the authorities, it is not known how the authorities could have arrived at the decision of closure. According to the Tribunal, this is in clear violation of the principles of natural justice. The 1st respondent has not filed a reply for the same. The attitude of the 1st respondent in not assisting the Tribunal in proper manner is an incorrigible attitude which has to be deprecated. It is, therefore, an admitted fact that housing site can be put up even by the impugned order and the Tribunal did not see any reason or justification on the 1st respondent to reject the claim of the applicant. It still remains a fact that it is always open to the authority under the Town and Country Planning Act, if there is any violation committed by the applicant to take appropriate action while putting up the construction and this power is always available to the competent authority.

The appeal is allowed and the impugned order is set aside with no costs.

M. P. Pollution Control Board Vs Commissioner Municipal Corporation Bhopal and Ors.

Original Application No. 160 (THC) of 2013 And Original Application No. 161 (THC) of 2013 And Original Application No. 162 (THC) of 2013

Judicial and Expert Members: Mr. Justice Swatanter Kumar, Mr. Justice U.D. Salvi), Mr. Justice S.N. Hussain, Dr. P.S. Rao, Mr. Ranjan Chatterjee

Keywords: Madhya Pradesh Pollution Control Board, Jurisdiction of NGT, Court of Chief Judicial Magistrate, Municipal Solid Waste (Management and handling) Rules, 2000, Section 14, Section 15, CrPC.

Dated: August 8, 2013

By this order, the Tribunal has disposed of the above three applications preferred by the Madhya Pradesh Pollution Control Board (the Board).

A complaint under Sections 44, 47 and 88 of the Water (Prevention and Control of Pollution) Act, 1974 (Water Act) and Sections 15 and 16 of the Environment Protection Act, 1986 (Environment Act) was instituted in the Court of the Chief Judicial Magistrate (CJM), Bhopal by the Board. According to the Board, it had been declared as the prescribed authority under the amended Rule 7 (i) of the Municipal Solid Waste (Management and Handling) Rules, 2000 (the Rules).

According to the Board, the Central Government had published a notification to enforce the Rules which had come into force with effect from 25th September, 2000. The Rules required that every Municipal Authority would be responsible for collection, segregation, storage, transportation, processing and disposal of municipal waste in any form. The Municipal Corporation, Bhopal, (Corporation) was required to obtain the authorization under the Rules as well as it was required of the said Authority to improve the existing landfill sites as per the provisions of these Rules by 31st December, 2001, to monitor the performance of the waste processing and disposal facilities, identification of landfill sites for future use and making the sites ready for use by December, 2002 and to set up the waste processing and disposal facility by 31st December, 2003. The Corporation and the persons accused in the complaint had failed to carry out the said steps. On the contrary, the Corporation was disposing of municipal solid waste of Bhopal City at Bhanapura Trenching Ground without any treatment and in an unscientific manner, thereby causing pollution and health hazards to the residents of the nearby areas. The Board issued letters and then served a letter but there was no response from the Corporation. The Board then filed a complaint

to the Chief Judicial Magistrate. The matter thereafter remained pending for quite some time, however, vide order dated 24th June, 2013, passed in Complaint No. 1364/2004, the complaint case was transferred to the National Green Tribunal (NGT).

The Tribunal stated that this complaint had been filed before the Court of the CJM in consonance with the provisions of the Code of Criminal Procedure, 1973 (for short the 'CrPC'), which is applicable to the Environment Act in a limited way, i.e. to the extent of search and seizure, as contemplated under Section 10 of the Environment Act. The complaint has been filed under Section 15 read with Section 16 of the Environment Act, as stated earlier, which requires that wherever there is a failure to comply with or a contravention of any provisions of the Act, Rules, orders or directions, such defaulters shall be liable to be punished in accordance with the provisions of Section 15 of the Environment Act. Under Section 19 of the Environment Act, the jurisdiction to take cognizance of an offence for such default is specifically and only vested in the Court. The Court can take cognizance only when the requirements stated under Section 19(a) and 19(b) are satisfied, i.e., the complaint should be moved by an authorized officer and a notice of not less than 60 days in the prescribed manner, of its intention to institute such a complaint has been given to the defaulter. The jurisdiction of civil courts to entertain any suit or proceeding in respect of any act done, action taken or order or direction issued by the Central Government or any other authority or officer in pursuance to any power conferred by or in relation to its or his functions under the Environment Act is barred in terms of Section 22 of the same. The question that arose was whether the Tribunal has the Jurisdiction to try this case?

The jurisdiction of this Tribunal is controlled by Sections 14 and 16 to 18 of the National Green Tribunal Act, 2010 (the NGT Act). Section 14 states that the Tribunal shall have jurisdiction over all civil cases **(emphasis supplied)** where a substantial question relating to environment arises and such question arises out of the implementation of the enactments specified in Schedule I.

The Environment Act is one of the Acts stated in Schedule I to the NGT Act but then it is limited by the words **'all civil cases'.** Thus, the Tribunal will have the jurisdiction only over the civil cases relating to environment, as stated under Section 14 of the NGT Act. The expression 'civil cases' has intentionally been used by the Legislature in complete contradistinction to criminal cases. The Tribunal is a creation of a statute and thus, its jurisdiction will have to be construed with reference to the language of its provisions. Being a statutory body, it is bound and controlled by the provisions of the statute itself.

Section 15 of the NGT Act gives wide jurisdiction to this Tribunal. Under this provision, the Tribunal can pass an order; give relief and compensation to the victims of pollution and in relation to other environmental damage arising under the enactments specified in Schedule I of the NGT Act.

This Tribunal, thus, has no jurisdiction to deal with criminal cases falling within the purview of the Code. For the offences, that are alleged to have been committed in terms of Sections 15 and 16 of the Environment Act, a complaint would lie before and cognizance can alone be taken by the Court of competent jurisdiction, i.e. Chief Judicial Magistrate/Magistrate, competent to try such offences.

For the above reasons, the Tribunal declines to exercise jurisdiction in these cases and directed the Registry to return the complaint cases to the CJM, Bhopal, who may proceed with the case in accordance with law.

M/s Sterlite Industries (India) Ltd.

V

Tamil Nadu Pollution Control Board and Ors.

Appeal No. 57 of 2013 [Appeal No. 22 of 2013] And
Appeal No. 58 of 2013 [Appeal No. 23 of 2013]

Judicial and Expert Members: Mr. Justice Swatanter Kumar, Dr. D.K. Agrawal, Dr. G.K. Pandey, Dr. R.C.Trivedi.

Keywords: Pollution, Precautionary Principle, Copper, Industry, SO2, Smelting, Calibration checks, Punitive Action, Sterlite Industries.

Application is allowed partly with certain conditions.

Dated: 8th August, 2013

Vide order dated 29th March, 2013, the Tamil Nadu Pollution Control Board (the Respondent Board), in exercise of its powers under Section 31-A of the Air (Prevention and Control of Pollution) Act, 1981, directed closure of M/s. Sterlite Industries (India) Ltd. (appellant-company) with immediate effect. On that very day, it also, by a separate communication, again in exercise of its powers under Section 31-A of the Air Act, directed the Superintending Engineer, Tamil Nadu Electricity Board, Thoothukudi, to disconnect the electricity supply to the appellant company. The correctness and legality of this order have been challenged by the appellant-company, primarily on the ground that it is arbitrary and discriminatory.

The appellant-company is engaged in the manufacture of copper cathodes and copper rods. These are manufactured by a process – smelting copper concentrate – This is the main raw material. In the process there is a certain amount of SO2 that is released. This is usually regulated by an analyser supported by software which has also been recommended by the Respondent-Board as a tamper proof system. It is the case of the Appellant Company that in order to keep a check on the emissions, Calibration checks are undertaken.

The Appellant Company was taking all precautions and directions that were recommended by NEERI (The National Environmental Engineering Research Institute) and therefore according to the appellant-company, its plant was running without any violations and with the approval and sanction of the competent authorities.

On 23rd March, 2013, the appellant was informed that there have been cases of eye irritation and throat suffocation amongst the people of Thoothukudi.

On inspection, the calibration process was again carried out. The observed values during such requested calibration were within the normal range and it was assessed that the analyser was working normally and

that the emission levels were within the prescribed norms. In effect, they were given a clean chit by the DEE (District Environmental Engineer).

On 24th of March, 2013 the appellant company got a notice where it was alleged that the appellant-company had contravened the provisions of Section 21 of the Air Act while referring to eye irritation and throat suffocation complaints received from various residents. It was also stated that SO2 trend graph of ambient air quality indicated that the value shot up suddenly from 20 µg/m3 to 62 µg/m3 and that the SO2 emission monitor was not connected with the CARE Air Centre of Respondent Board. They got a show cause notice of 3 days.

In a Special Leave Petition filed in the Supreme Court, after taking into consideration various facets, more importantly the possible pollution resulting from carrying on of its manufacturing activities, while permitting it to carry on its commercial and manufacturing activities, directed the appellant-company to pay a compensation of Rs.100 crores for having polluted the environment in the vicinity of the plant.

The very material finding that has been returned by the Supreme Court in the judgment of 2nd April, 2013 is that subject to deposit of Rs.100 crores, the appellant-company has been permitted to continue its manufacturing activities. This dictum of the Supreme Court would have to be given due weightage by the Tribunal while determining the controversy in the case within the limited jurisdiction carved out by the judgment itself.

The plant of the appellants contributes substantially to the copper production in India and copper is used in defence, electricity, automobile, construction and infrastructure etc. The plant of the appellants has about 1300 employees and it also provides employment to large number of people through contractors.

The Tribunal held that environmental restrictions must operate with all their rigour but no action should be suspicion-based which itself is not well-founded. It was stated that all cases related to environment law are to be decided in accordance of the three principles: Sustainable Development, The Precautionary Principle and The Polluter Pays Principle.

Precautionary principle should be invoked when the reasonable scientific data suggests that without taking appropriate preventive measures there is a plausible indication of some environmental injury or health hazard. The Tribunal, in exercise of its power of merit-review and being an expert body itself has to examine all aspects of such cases whether they are factual, technical or legal. Having comprehensively examined all these three aspects, The Tribunal passed the following order:

(i) The interim order dated 31st May, 2013 permitted the Appellant Company to carry on its activities in accordance with law is made absolute.

(ii) The recommendations and suggestions made in the report of Special Expert Committee constituted by this Tribunal vide its order dated 31st May, 2013 shall be binding upon the appellant-company. It shall ensure compliance of the directions, recommendations and suggestions as spelt out in that report within a time bound manner and expeditiously and in no case later than eight weeks from the date of pronouncement of this judgment.

(iii) The appellant-company, as per the statement made at the Bar, has agreed to comply with all the directions given by the court, without any hesitation and in a time-bound manner.

(iv) The report of the Special Expert Committee shall be deemed to be an integral part of this order and all its conditions, directions, suggestions and recommendations would mutatis mutandi apply to the appellant-company.

(v) The appellant-company shall place its data of stack and ambient air quality in 'public domain', i.e. online dissemination of data.

(vi) The application for renewal of or obtaining consent of the appellant-company is presently pending with the Respondent-Board. The Respondent-Board shall consider and pass appropriate orders in relation to the said application in accordance with law, expeditiously.

(vii) The Tribunal directs the Respondent-Board to take due notice of the report submitted by the Special Expert Committee dated 10th July, 2013 while dealing with the consent application of the appellant company.

(viii) The Special Expert Committee constituted vide order dated 31st May, 2013 by the Tribunal shall supervise and oversee the manufacturing process and industrial activity including pollution related issues of the appellant-company and shall submit a report to the Tribunal as well as to the respondent-Board bimonthly (once in two months.

The Tribunal hereby constitutes a Special Committee of the Secretary (Health), Government of Tamil Nadu, Member Secretary-Pollution Control Board, Tamil Nadu, Director General of Health Services of Tamil Nadu, Respondent No.5-Vaiko and two independent experts, one from the field of environment and the other from public health, to be nominated by the MoEF.

This Committee shall conduct a study and place on record the causes for the health hazards that are resulting in and around the industries and the industrial clusters, like SIPCOT. It will give the reasons why the young ladies in those villages in the State of Tamil Nadu are suffering from termination of pregnancies and why the people are suffering from various ailments like throat and eye irritation and suffocation in breathing. This Committee shall further place on record the recommendations for remedying such environmental injury and health hazards. These recommendations shall be placed before the Tribunal within a period of six months from today.

(ix) The report prepared in relation to health hazards by the Committee constituted under this order shall file the same within the stipulated period whereupon this report shall be placed before the appropriate Bench of the Tribunal for such further directions as may be deemed necessary by the Tribunal.

The application is allowed partly in the above terms. The industry would be permitted to carry on its activity subject to the above directions. No orders as to costs.

Jarnail Singh Anr.

Vs

Union Territory Chandigarh Anr.

Application No. 53/2013(THC)

Judicial and Expert Members: Mr. Justice Swatanter Kumar ,Justice U.D. Salvi, Dr. D.K. Agrawal, Mr. P.S. Rao, Mr. Ranjan Chatterjee.

Keywords: Union Territory of Chandigarh, Administration, Polythene/ Plastic bags, Ban, Draft Notification, Discrimination, Environmental hazards.

Application is Dismissed

Dated: 8th August, 2013

On 30th July, 2008, the Administrator, Union Territory of Chandigarh(Respondents), in exercise of the powers vested in him under Section 5 of the Environment (Protection) Act, 1986, issued a notification prohibiting usage, manufacture, storage, import, sale or transportation of polythene/plastic carry bags in the U.T. of Chandigarh.

The constitutionality, legality and correctness of the above notification has been challenged by the applicants [Applications No. 26/2013(THC) and 53/2013(THC)]. The challenge to the notification is based on the factual premise and grounds as stated hereinafter. Jarnail Singh and Karnail Singh (applicants) claim to be engaged in manufacture and supply of virgin polythene bags which are not recycled ones, virgin/natural food grade HM, LLDPE, LDPE poly bags, plastic sheets, plastic rolls and all kinds of industrial packaging material under the name and style of M/s Goodwill Plastic Industries. The applicants raised various grounds of challenge specifically on the basis of discrimination against entrepreneurs and employees and that the ban is only on polythene carry bags and not on other plastic materials.

The brief facts are that, on 10th February, 1992, the Chandigarh Administration issued a notification under Section 5 of the Environment Act providing that the thickness of the polythene bags shall not be less than 30 microns while maintaining the same size i.e. not less than 8" x 12". This continued for a number of years and on 6th December, 2005, the Chandigarh Administration issued a draft notification proposing a total ban on the manufacture and use of polythene/plastic carry bags. This notification has been challenged by the applicants.

The Tribunal in its order stated that the notification dated 30th July, 2008 imposes a ban only on polythene carry bags and not on other packaging plastic/polythene material like plastic rolls and all kinds of industrial and food packaging material. The order banning the manufacture, storage, sale, etc. of polythene carry bags is based upon rational studies undertaken by the expert bodies. The experience of

the Government, is even obvious as the UT Administration of Chandigarh felt it impossible to manage the environmental hazards arising from littering of these plastic carry bags and when its efforts in that behalf had failed, it invited objections from all concerned to the draft notification dated 6thDecember, 2005. Upon due consideration, the authorities had taken a view putting a partial restriction. This would not render it discriminatory inasmuch as even the applicants are carrying on their business in all other fields of plastic manufacturing, sale, etc. except to the extent of polythene carry bags. A reasonable restriction can be imposed wholly or partially. The fact that it has been imposed partially would not render the notification bad in law on the ground of discrimination.

The Tribunal also stated that there is a direct nexus between the object sought to be achieved by issuance of the notification and the object sought to be achieved under the provisions of the Environment Act. The intention is to stop the menace of littering of plastic carry bags everywhere causing blockage of drains, animal deaths thereby leading to environmental pollution and degradation and causing environmental hazards. The larger public purpose and interest is sought to be achieved by issuance of this notification in comparison to the small economic and business interests of the applicants or persons placed like them. Thus, the private interest must give in to the public interest or the greater good of the society. It is a matter of common knowledge of which the Tribunal can even take a judicial notice, that the plastic carry bags are thrown everywhere indiscriminately and they result in serious environmental hazards. This affects not only public health but also public conveniences. The restriction imposed thus is neither unreasonable nor can it be said that it has no nexus to the object sought to be achieved by the provisions of the Environment Act.

Many countries have largely replaced the use of plastic bags by either switching over to re-usable bags and/or 'biodegradable' and/or 'compostable' bags. In India, share of plastic waste in total municipal solid waste has risen from around half per cent in 1996 to over 9 per cent in 2005. It is reported that almost half of this waste comprises of used plastic bags and packaging material. The environmental consequences of such plastic waste in solid waste are well known as it takes hundreds of years to degrade and fill up landfill sites. Plastic litter can also lead to clogged drains, which result in sanitation, flooding and sewage problems. In addition, plastic bags can harm animals through ingestion and the improper incineration of plastic bags pollutes the air and releases toxic substances. These concerns have caused governments across the world, including the authorities in India, to introduce legislation to limit the use of plastic bags. They have used a variety of regulatory instruments for this purpose which include the mandatory pricing of plastic bags, explicit levies on each bag, taxes at the manufacturing level, discounts on the use of 'own bags', awareness campaigns, command and control approaches and, in some cases, a total ban on the use of plastic bags. The evidence on the effectiveness of such policies world over is promising. For example, plastic bag retail levies in Ireland have resulted in a dramatic fall in the demand for plastic bags, and an environmental levy at the point of manufacturing in Denmark has been similarly effective.

The Tribunal cannot find any fault in the issuance of the notification dated 30th July, 2008 by the Administrator, UT Chandigarh, on the ground that the States of Punjab and Haryana have not issued similar notifications. The Chandigarh Administration has no administrative or legislative control over the States of Punjab and Haryana. It is for those States to issue such notifications in that behalf. However, the Tribunal would certainly require the Chief Secretary of both the States of Punjab and Haryana respectively to consider this aspect and place such restrictions, as they may deem fit and proper to help the cause of environment. Places like S.A.S. Nagar and Panchkula have become part of the city of

Chandigarh and the Administration of these towns/States would be well advised to promulgate such law to bring it in uniformity with the notification issued by the Administration of UT Chandigarh to serve the larger public interest.

The Application is Dismissed.

Further in view of our above discussion, the Tribunal also considers it appropriate to direct the authorities concerned in all the States to explore the possibility of introducing use of bio-degradable or compostable plastic bags as opposed to polythene plastic bags of any thickness.

For the reasons afore-recorded, the Tribunal finds no legal or Constitutional infirmity in the notification dated 30th July, 2008 issued by the Chandigarh Administration. Rather, this is a step towards better environmental administration and in the larger public interest.

M/s Goodwill Plastic Industries Anr.
Vs
Union Territory Chandigarh Anr.

Application No. 53/2013(THC)

Judicial and Expert Members: Mr. Justice Swatanter Kumar, Justice U.D. Salvi, Dr. D.K. Agrawal, Mr. P.S. Rao, Mr. Ranjan Chatterjee.

Keywords: Union Territory of Chandigarh, Administration, Polythene/ Plastic bags, Ban, Draft Notification, Discrimination, Environmental hazards.

Application is Dismissed

Dated: 8th August, 2013

On 30th July, 2008, the Administrator, Union Territory of Chandigarh (Respondents), in exercise of the powers vested in him under Section 5 of the Environment (Protection) Act, 1986, issued a notification prohibiting usage, manufacture, storage, import, sale or transportation of polythene/plastic carry bags in the U.T. of Chandigarh.

The constitutionality, legality and correctness of the above notification has been challenged by the applicants [Applications No. 26/2013(THC) and 53/2013(THC)]. The challenge to the notification is based on the factual premise and grounds as stated hereinafter. Jarnail Singh and Karnail Singh (applicants) claim to be engaged in manufacture and supply of virgin polythene bags which are not recycled ones, virgin/natural food grade HM, LLDPE, LDPE poly bags, plastic sheets, plastic rolls and all kinds of industrial packaging material under the name and style of M/s Goodwill Plastic Industries. The applicants raised various grounds of challenge specifically on the basis of discrimination against entrepreneurs and employees and that the ban is only on polythene carry bags and not on other plastic materials.

The brief facts are that, on 10th February, 1992, the Chandigarh Administration issued a notification under Section 5 of the Environment Act providing that the thickness of the polythene bags shall not be less than 30 microns while maintaining the same size i.e. not less than 8" x 12". This continued for a number of years and on 6th December, 2005, the Chandigarh Administration issued a draft notification proposing a total ban on the manufacture and use of polythene/plastic carry bags. This notification has been challenged by the applicants.

The Tribunal in its order stated that the notification dated 30th July, 2008 imposes a ban only on polythene carry bags and not on other packaging plastic/polythene material like plastic rolls and all kinds of industrial and food packaging material. The order banning the manufacture, storage, sale, etc. of polythene carry bags is based upon rational studies undertaken by the expert bodies. The experience of the Government, is even obvious as the UT Administration of Chandigarh felt it impossible to manage the environmental hazards arising from littering of these plastic carry bags and when its efforts in that behalf

had failed, it invited objections from all concerned to the draft notification dated 6thDecember, 2005. Upon due consideration, the authorities had taken a view putting a partial restriction. This would not render it discriminatory inasmuch as even the applicants are carrying on their business in all other fields of plastic manufacturing, sale, etc. except to the extent of polythene carry bags. A reasonable restriction can be imposed wholly or partially. The fact that it has been imposed partially would not render the notification bad in law on the ground of discrimination.

The Tribunal also stated that there is a direct nexus between the object sought to be achieved by issuance of the notification and the object sought to be achieved under the provisions of the Environment Act. The intention is to stop the menace of littering of plastic carry bags everywhere causing blockage of drains, animal deaths thereby leading to environmental pollution and degradation and causing environmental hazards. The larger public purpose and interest is sought to be achieved by issuance of this notification in comparison to the small economic and business interests of the applicants or persons placed like them. Thus, the private interest must give in to the public interest or the greater good of the society. It is a matter of common knowledge of which the Tribunal can even take a judicial notice, that the plastic carry bags are thrown everywhere indiscriminately and they result in serious environmental hazards. This affects not only public health but also public conveniences. The restriction imposed thus is neither unreasonable nor can it be said that it has no nexus to the object sought to be achieved by the provisions of the Environment Act.

Many countries have largely replaced the use of plastic bags by either switching over to re-usable bags and/or 'biodegradable' and/or 'compostable' bags. In India, share of plastic waste in total municipal solid waste has risen from around half per cent in 1996 to over 9 per cent in 2005. It is reported that almost half of this waste comprises of used plastic bags and packaging material. The environmental consequences of such plastic waste in solid waste are well known as it takes hundreds of years to degrade and fill up landfill sites. Plastic litter can also lead to clogged drains, which result in sanitation, flooding and sewage problems. In addition, plastic bags can harm animals through ingestion and the improper incineration of plastic bags pollutes the air and releases toxic substances. These concerns have caused governments across the world, including the authorities in India, to introduce legislation to limit the use of plastic bags. They have used a variety of regulatory instruments for this purpose which include the mandatory pricing of plastic bags, explicit levies on each bag, taxes at the manufacturing level, discounts on the use of 'own bags', awareness campaigns, command and control approaches and, in some cases, a total ban on the use of plastic bags. The evidence on the effectiveness of such policies world over is promising. For example, plastic bag retail levies in Ireland have resulted in a dramatic fall in the demand for plastic bags, and an environmental levy at the point of manufacturing in Denmark has been similarly effective.

The Tribunal cannot find any fault in the issuance of the notification dated 30th July, 2008 by the Administrator, UT Chandigarh, on the ground that the States of Punjab and Haryana have not issued similar notifications. The Chandigarh Administration has no administrative or legislative control over the States of Punjab and Haryana. It is for those States to issue such notifications in that behalf. However, the Tribunal would certainly require the Chief Secretary of both the States of Punjab and Haryana respectively to consider this aspect and place such restrictions, as they may deem fit and proper to help the cause of environment. Places like S.A.S. Nagar and Panchkula have become part of the city of Chandigarh and the Administration of these towns/States would be well advised to promulgate such law

to bring it in uniformity with the notification issued by the Administration of UT Chandigarh to serve the larger public interest.

The Application is Dismissed.

Further in view of our above discussion, the Tribunal also considers it appropriate to direct the authorities concerned in all the States to explore the possibility of introducing use of bio-degradable or compostable plastic bags as opposed to polythene plastic bags of any thickness.

For the reasons afore-recorded, the Tribunal finds no legal or Constitutional infirmity in the notification dated 30th July, 2008 issued by the Chandigarh Administration. Rather, this is a step towards better environmental administration and in the larger public interest.

Smt. Padmabati Mohapatra
V
UOI Ors.

Application No. 79/2012

Judicial and Expert Members: Mr. Justice Swatanter Kumar, Mr. Justice U.D. Salvi, Dr. D.K. Agrawal, Mr. P.S. Rao, Mr. Ranjan Chatterjee

Keywords: Environment Clearance,Cuttack, Coal based Thermal power plant, MoEF, Air and Water pollution, Land Acquisition Act, Chandka Sanctuary, limitation, Condonation of Delay.

Application is allowed

Dated: 8th August, 2013

This is an application filed by the applicant-appellant under Section 5 of the Limitation Act, 1963 read with Section 14(3) and 16 of the National Green Tribunal Act, 2010 (for short 'the NGT Act') for condonation of delay in filing the present appeal. The applicant claims to be an 'aggrieved person' within the meaning of the NGT Act and challenges the grant of Environment Clearance (for short 'the EC') by the Ministry of Environment & Forests (for short 'the MoEF') in terms of its order dated 15th February, 2011 to establish and operate a coal-based thermal power plant of the capacity of 1000 megawatt at Village Naraj-Marthapur in District Cuttack, State of Orissa.

The major challenge of the applicant is to the EIA proceedings and the report. It is contended that the thermal plant of this magnitude is bound to pose environmental implications and would cause both water and air pollution problems. Even the notification under Section 4 of the Land Acquisition Act does not cover Reserve Forest and social forestry area without taking any approval from the Central Government and the State Government. The plant in question will be consuming 6 million tons of coal per annum. It will be generating 5238 tons of fly ash per day and 1310 tons of bottom ash per day. In addition to intense heat, this plant will be releasing 3380 tons of fuel gases per hour which include 19.45% of carbon dioxide. All these gases will add to the green house effect resulting in further increase in temperature and build up of heat with adverse impact on the flora and fauna of the area and on the precious wildlife habitat in the locality. It will affect the vegetation in the area resulting in drying up of water sources along with noise pollution and consequent biotic pressure which will put immense stress on both wildlife and its habitat in the neighbouring Chandka Wildlife Sanctuary and Nandankanan Wildlife Sanctuary. These are the dimensions of environmental impact as stated by the applicant.

According to the applicant, the proceedings have been held and orders were passed and given effect to without obtaining leave of the High Court of Orissa in violation of its stay order dated 29th May, 2009.

The Respondents had contended that the application was barred by limitation. However, the tribunal stated that the applicant has been able to show sufficient cause for 23 days' delay in filing the present appeal. It is correct that the Tribunal will not have jurisdiction to condone the delay where the appeal is

filed beyond the prescribed period of 30+60 days in terms of Section 16 of the NGT Act. In the present case, however there is no delay in excess of 90 days. In fact, both the respondents have failed to discharge their obligations in accordance with law. They failed to put the EC order in the public domain and ensure that any aggrieved person is able to access such order in accordance with the prescribed procedure and law. In fact, both MoEF and the project proponent are at fault and cannot be permitted to take advantage of their own wrong.

The respondents have failed to discharge their composite obligations comprehensively. Thus, in the present case, it is not possible in law to define a date when the order would actually or deemed to be communicated to the applicant. The communication of the order being incomplete in law, the limitation cannot be reckoned from any of the dates stated by any of the respondents. While construing the law of limitation, this Tribunal must take a pragmatic view balancing the rights of the parties to the lis. The objection of limitation when renders a petition barred by time, it takes away the right of one and protects the right of the other. One who raises an objection of limitation, onus lies on him to show that the requirements of law, triggering the period of limitation, have been satisfied.

For the reasons afore-stated, the Tribunal finds merit in the application under consideration. The delay of 23 days in filing the appeal is condoned. The application, thus, is allowed; however leaving the parties to bear their own costs.

Aradhana Bhargav Anr.
V
MoEF Ors.

Application No. 46/2013

Judicial and Expert Members: Mr. Justice M.Chockalingam, Dr. Ajay A. Deshpande

Keywords: Pench Diversion Project, Pench National Park, NGT Act, 2010, Environment Clearance, Madhya Pradesh, Limitation.

Application is dismissed and barred by limitation.

Dated: 12th August, 2013

The applicants, claiming as persons interested in the protection of environment and ecology and also the persons personally being affected have filed this application under the provisions of the NGT Act, 2010 whereby they have challenged the validity of the environment approval made in communication No. 12/6/81/-ENV-5/IA dated 21.04.1986 and the communication J-12011/23/2002-IA-I dated 30.11.2005. They have alleged that the proposed project is closely situated to Pench National Park which is situated in Seoni District of Madhya Pradesh. The Pench National Park has been included in the umbrella of Project Tiger and the 19th Project Tiger Reserve in the year 1992. The original environmental approval was granted in the year 1986. The environmental approval granted on 21.04.1986 does not contemplate and cater to all conditions and parameters under which the river Pench project need to be evaluated in view of the sustainable development and hence, in view of the changed circumstances also, the project required environmental clearance under EIA notification 2006. It has been alleged that the project proponent has illegally commenced the construction on 04.11.2012 without valid prior environmental clearance, and thus, is continuously violating the provisions of the Environment Protection Act, 1986 and other Acts enumerated under the Schedule-I of the NGT Act, 2010. Since, the construction and other related activities are going on the cause of action is continuing cause of action, therefore it is well within limitation.

Respondent no. 3 and 4 (State of Madhya Pradesh and Water Resource Dept., M.P, respectively) made application No. 447/2013 seeking dismissal of the main application on the ground of delay alleging that the application has not been preferred within the period prescribed by the provisions of NGT Act. Hence, the preliminary objection raised by the respondents on the question of limitation was first taken up for consideration.

Advancing arguments on behalf of the respondent no.3 and 4, the Counsel would submitted that the main application filed under Section 14 and 15 of the NGT Act was barred by limitation. The Department of Environment, Forest and Wild Life, Government of India granted environmental approval to the Pench Diversion Project on 21.04.1986 subject to certain safeguards to be implemented during the execution of the project.

The MoEF in order to ascertain as to whether the project related work was commenced prior to 1994, made an inspection by the dam site. The report dated 30.09.2005 pursuant to the inspection made it clear

that the project related activities such as preconstruction infrastructure work pertaining to development of approach road, residential quarter, office, rest house building at the site, drilling dam site were already initiated in the year 1987-88 and six bridges along with approach roads were constructed up to 1992-93. On the strength of the inspection report, MoEF conveyed to the Water Resources Department, Govt. of MP vide letter dated 30.11.2005 that the project does not require fresh environmental clearance and the conditions stipulated in the environmental clearance dated 21.04.1986 should be strictly complied with.

While, the matter stood thus, the applicants have brought forth this application *inter alia* initially seeking a direction that the communication of the environmental clearance dated 21.04.1986 and a subsequent communication dated 30.11.2005 whereby it was ordered that the project did not require fresh environmental clearance and the stipulated condition in the environmental clearance dated 21.04.1986 should be strictly complied with, were invalid.

From the very reading of Section 14 of the NGT Act, it would be quite clear that the Tribunal has jurisdiction over all civil cases only where a substantial question relating to the environment including enforcement of any legal right related to environment is involved and also the said substantial question should also arise out of the implementation and is included in one of the seven enactments specified under the Schedule – I. Even, if the applicant is able to satisfy the above requisites, the Tribunal can adjudicate the disputes ***only if it is made within a period of six months from the date on which the cause of action in such dispute first arose and the Tribunal for sufficient cause can condone the delay for a period not exceeding 60 days in making the application.***

According to the facts of the case and the evidence put forth, it is clear that the construction work started almost a decade ago. In the instant case, the period of limitation has begun to run long back. The period of limitation once commences operating, it does not stop but continues to operate with its rigour. An interpretation accepting the continuing cause of action would frustrate the very object of the Act and the purpose of prescription of limitation. In the instant case, it is contended by the respondent project proponent that nearly 600 crores have been spent and more than 50% of the work is over, hence, the project proponent who obtained the environmental clearance in the year 1986 and has completed not less than 50% of the work by spending hundreds crores of rupees would be thrown to jeopardising his project at the long lapse of years. Needless to say, if it is allowed, it would be against the very intent of the law. Even it may be true that the applicants are aggrieved persons and it may even be true that there was violations of provisions of law but action should have been initiated within the prescribed period of limitation. The Tribunal also maintained that there are other reliefs that can be sought by the applicants within the framework of this act. However this application is barred by Limitation. The Application is dismissed.

Shri. P. Purushothaman Salem
V
The Commissioner Corporation of Salem Salem and others

Application No. 8/2012(SZ)(THC)

Judicial and Expert members: Mr. Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran

Keywords: Cell phone tower, Tamil Nadu Pollution Control Board, Karungalpatti, Consent Order, Water Act, Air Act, Diesel Generator.

Application is disposed of.

Dated: 12th August, 2013

This application has been filed by the applicant for a direction against the respondent to consider his representation in respect of the running of the Yarn Twisting unit run by the 5th respondent in his business place at Karungalpatti, Salem-6 by using weaving machines or cell phone towers, etc.

By an earlier order dated 24.7.2013, the Tribunal has observed that if the application for consent filed by the 5th respondent (Mr. Ramamoorthy) is pending before the 3rd and 4th respondents (Tamil Nadu Pollution Control Board and The District Engineer, Tamil Nadu Pollution Control Board respectively), there is no bar for the 3rd and 4th respondents to consider the same in accordance with law and pass appropriate orders. It is brought to the notice of this Tribunal by the counsel appearing for the Tamil Nadu Pollution Control Board that, in fact, the Pollution Control Board has passed the consent order on 6.8.2013 and the 5th respondent has produced a copy of the original consent order, a reading of which shows that the consent has been given up to 31.3.2014 under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981.

It is seen that in the consent order under Air Act, the noise level has been restricted at 55 dB (A) between 6 a.m. and 10 p.m. and at 45 dB (A) between 10 p.m. and 6 a.m. That apart, under Water Act, many other conditions have also been incorporated. The condition in the Air Act also makes it very clear that the 5th respondent shall ensure that the DG (Diesel Generator) set at the terrace (for Cell Phone Tower) is not operated and shall take steps to remove the DG set. The Tribunal also directed that the 5th respondent shall not use the DG set at any time and in fact the counsel appearing for the 5th respondent has undertaken that the he shall remove the DG set in the terrace after informing the agency who has installed the Cell Phone Tower. The 5th respondent, who is also present as party in person, undertakes to remove the DG set forthwith.

The counsel appearing for the applicant has submitted that in as much as the consent order has been passed on 16.8.2013, a copy of the said order be given to him to enable him to file an appeal before the Appellate Authority, Tamil Nadu Pollution Control. The counsel appearing for the 5th respondent agrees to give a copy of the consent order to the counsel for the applicant so that he can file an appeal.

It is made clear that in order to enable the applicant to move an appeal before the said Appellate Authority effectively, the 5th respondent shall not operate the unit as per the consent order till 19.8.2013. In the meantime, it is open to the applicant to move the Appellate Authority, Pollution Control and obtain any interim order as may be given by the Appellate Authority, Pollution Control. It is also made clear that if, by 19.8.2013, the applicant fails to obtain any interim order, it will be open to the 5th respondent to act as per the consent order dated 6.8.2013 of Tamil Nadu Pollution Control Board.

If the agency who has erected the Cell Phone Tower, M/s. Indus Tower, is aggrieved by the order of the Tamil Nadu Pollution Control Board, it is open to them also to approach the said Appellate Authority, Tamil Nadu Pollution Control Board.

With the above directions, the application stands disposed. No costs.

C. Annathai W/o. Duraisamy Chennai
V
The Chairman Tamil Nadu Pollution Control Board Chennai and others

Application No. 23/2013 (SZ)(THC)
Judicial and Expert Members: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran

Keyword: Tamil Nadu Pollution Control Board, Flour Mill, Noise Pollution, Air Pollution, Rent Control Court, License, Corporation of Chennai.

Application is Dismissed with costs.

Dated: 19th August, 2013

This application which has been taken on file by the Tribunal after having been transferred from the Hon'ble High Court of Madras, has been filed for a direction to the 1st and 3rd respondent, (the Tamil Nadu Pollution Control Board and Corporation of Chennai), to dispose of the representation dated 30.11.2012. In the said representation, the applicant has informed the 1st and the 3rd respondent that by the conduct of the 5th respondent by carrying on the flour mill at the ground floor of the property belonging to the applicant, there has been pollution caused both of noise as well as air. The applicant is stated to be an elderly person, aged 65 years and by virtue of the pollution caused by the 5th respondent (B. Dayalan) in the ground floor, the applicant is unable to live peacefully on the 1st floor.

The 5th Respondent has claimed that the applicant has instituted the suit as a rouse to get possession because there is a case pending against him in the Rent Control Court by the same applicant.

It is the case of the counsel appearing for the applicant that there was no licence obtained from the Corporation of Chennai and therefore the business of running the flour mill on the ground floor is illegal. However, the counsel appearing for the 5th respondent had produced a licence in court which has been issued by the Corporation of Chennai valid upto 31.3.2014. However, the said licence still stood in the name of the mother of the 5th respondent. The Tribunal directed the Tamil Nadu Pollution Control Board (TNPCB) to inspect the flour mill concerned and file an affidavit about the existing position regarding the running of the flour mill by the 5th respondent.

In the affidavit, the TNPCB stated: *"It is respectfully submitted that during inspection, it was observed that no deposition of chilli powder in the first floor of the applicant's residence. No odour nuisance was observed. The grinding machine used for grinding chilli powder is located at the rear end of the flour mill"*

The Tribunal gave the following Order:

'Once the authority under law, namely the Tamil Nadu Pollution Control Board, on inspection, has found that the noise level caused by the 5th respondent is within the permissible limits and there is no pollution

caused to the applicant who is stated to be living in the 1st floor, it is not for the Tribunal to go beyond the same unless someone raises objection to the correctness of the said report of the Tamil Nadu Pollution Control Board. In such view of the matter, the Tribunal sees no reason to disbelieve the report filed by the Tamil Nadu Pollution Control Board in the form of an affidavit.'

Accordingly, the application stands dismissed with a cost of Rs.10,000/- (Rupees ten thousand) only, to be deposited to the Environmental Protection Fund created by the Tribunal by the applicant within 2 weeks from the day of passing the order.

Shri C. Balakrishnan Chennai
V
The Member Secretary Tamil Nadu Pollution Control Board and others

Application No. 8/2013(SZ)

Judicial and Expert Members: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran

Keywords: Church activities, noise pollution, Tamil Nadu Pollution Control Board, Inspector of Police

Application stands closed

Dated: 19th August, 2013

This application is related to the alleged noise pollution stated to have been created by the 3rd respondent (Jesus Comforts Ministry Trust) which is carrying on its church activities in the premises bearing No. 46, Second St., North Thirumalai nagar, Villivakkam, Chennai. The applicant is stated to be the neighbour to the 3rd respondent church and according to his complaint, the 3rd respondent, while carrying its religions activities, is causing noise pollution during day time as well as night time and it is stated that the noise level is beyond the permissible level. The applicant has given many complaints to the 2nd respondent which did not yield any redressal and hence, complaints were lodged with the Tamil Nadu Pollution Control Board. Since there was no response, the applicant approached the Tribunal by filing an application for direction against the 1st and 2nd respondents (Tamil Nadu Pollution Control Board and Inspector of Police respectively) to take necessary action and steps to prevent noise and nuisance caused by the 3rd respondent.

After hearing both the counsels, at the instance of the Tribunal during the course of the arguments, the 3rd respondent in order to put an end to the animosity between the church and the applicant, filed an affidavit dated 7th August, 2013 giving certain undertakings.

(i) That the respondent shall install air tightened air-condition to the Prayer Hall within six months from date of order so as to avoid the alleged noise pollution and nuisance as alleged by the applicant and till such time streamline the followings except on the special occasions namely: Christmas, New Year, Good Friday, Easter day, Holly Cross Day, marriages and any other special occasions as notified by the Government or the Christian Religious head as the case may be.

(ii) The respondent undertakes not to open the five number of glass windows facing on the applicant's house while conducting prayers, mass functions and marriages, etc., so as to arrest the noise pollution and nuisance as alleged by the applicant;

(iii) The respondent undertakes to utilise only one mike during the daily morning prayers between 5 a.m. and 6 a.m. and also not to utilise other music instruments excepting key-board so as to arrest the noise pollution and nuisance as alleged by the applicant;

(iv)The respondent undertakes to wind up the evening prayers and services at the latest by 9 p.m. in the nights positively;

(v) The respondent undertakes to conduct mid-night prayers only once in a month on the specified day without utilizing any music instruments excepting key-board and a mike.

Accordingly, the application stands closed with the direction that the 3rd respondent shall act as per the undertaking. It is also made clear that the said undertakings given by the 3rd respondent shall be scrupulously followed and not to exceed the permissible limits of the provisions of law by strictly adhering to the limits prescribed therein. The application stands closed.

P. Muthu Chandrasekarapuram and Ors
V
The Tamil Nadu Pollution Control Board and Ors

Application No. 10/2013(SZ)

Judicial and Expert Members: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran

Application stands closed.

Dated: 19th August, 2013

This application has been filed for a direction against the 2nd respondent and 3rd respondent to inspect the dyeing units of the Respondents which are stated to be running without effluent treatment plant and direct the same to comply with the requirements of the Tamil Nadu Pollution Control Board (Pollution Control Board) norms. The respondent Nos. 5 to 24 are stated to be dyeing units in Namakkal and by virtue of their activities, the discharging of the effluents has caused environmental pollution in the Thattankulam lake situated in Chandrasekarapuram. The applicant has specifically mentioned about the 14 units and has stated that they do not have any effluent treatment facility at all and by virtue of the discharge of the effluent, there is odour and the colour of the tank water has changed and the hardness of the water has changed beyond permissible limits and this has led to the application in the High Court, which in turn has transferred the application to this Tribunal.

After hearing the counsel appearing for the applicant as well as the respondents, the Tribunal directed in the order dated 27.8.2013, the Pollution Control Board to inspect the units especially the 9 units which are stated to be discharging effluent without proper treatment and file a report. In the order, the Tribunal has also directed the Pollution Control Board to state specifically as to whether by allowing these units to carry on their work any environmental imbalance and hazards in the area would arise.

On inspection, the Pollution Control Board filed a status report dated 14.8.2013 and ultimately stated that there are 9 units that are closed. In the annexure filed along with the report the Pollution Control Board has also stated that in respect of these units, on inspection, the Board has found that on 13.8.2013 these units were not functioning. In view of the report given by the Pollution Control Board and also the affidavits filed by the individual unit owners, the Tribunal takes the view that except recording the undertakings given in the affidavit, no further orders are required in this application.

The application stands closed by recording the said affidavits or undertakings given by the units except the respondent Nos. 14, 25 26 and 28 (M. Muthusamy, Mani's Dyeing Unit, Valathi (alias) Mani, Dyeing Unit and Rajendran Dyeing Unit respectively) with the direction to the Pollution Control Board to monitor the undertakings given and make sure they are followed scrupulously by the project proponents.

The Tribunal also made it clear that it is up to the Tamil Nadu Pollution Control Board to consider the applications, if any, pending with them and pass appropriate orders in accordance with law, having satisfied that the units have achieved ZLD system.

The application stands closed. No costs.

International Marwari Association Anr.

Vs

West Bengal Pollution Control Board Ors.

Appeal No. 53 (THC)/2013 (W.P. No. 11626/2011 of Calcutta HC)
And

Appeal No. 43 (THC)/2013 (W.P. No. 15441/2010 of Calcutta HC)
And

Appeal No. 44 (THC)/2013 (W.P. No. 20645/2010 of Calcutta HC)
And

Appeal No. 45 (THC)/2013 (W.P. No. 2655/2007 of Calcutta HC)
And

Appeal No. 52 (THC)/2013 (W.P. No. 11626/2011 of Calcutta HC)
Appeal No. 53 (THC)/2013 (W.P. No. 11626/2011 of Calcutta HC)

Judicial and Expert Members: Shri Justice V.R. Kingaonkar, Dr. G.K. Pandey, Prof. A. R. Yousuf, Shri B.S. Sajwan, Dr. R.C. Trivedi

Keywords: MoEF, Notification, National Committee on Noise Pollution Control, Common Judgement, Firecrackers, Noise Pollution, Air Pollution, West Bengal Pollution Control Board, Environment Protection Rules, Entry 89.

Application allowed partly.

Dated: 21st August, 20

Common Judgement

The National Green Tribunal, through this common judgement, decided all the above noted Original Applications. All the above noted Applications are of similar nature and the *lis* is the same one. Appeal No. 53(THC)/2013 (this Case) was treated as the leading case.

The applications mainly challenged fixation of lower noise level impulse at 90 dB (A) at 5 meters from source for manufacturing and sale of firecrackers instead at 125 dB (A) at 4 meters from source which is prescribed by the Ministry of Environment & Forests (MoEF) as per their Notification dated 05.10.1999. They further sought more liberally fixed standards of noise level for firecrackers in keeping with the maximum limit provided at serial no. 89 of Schedule -1 appended to Environment (Protection) Rules, 1986.

The Applicants in the leading case is Association of traders and some manufactures, dealing in manufacturing firecrackers in the State of West Bengal. Respondent No. 1 is West Bengal Pollution Control Board (WBPCB). Respondent No. 2 is the State of West Bengal (State). Respondents No. 3 to 5 are officials of the State attached to the Department of Environment, Government of West Bengal and Police Commissioner's Office.

The basis for this application is the impugned order passed by WBPCB dated 03.10.1997 whereby maximum noise level from fire crackers was fixed at 90 dB (A-I) at 5 meters distance from the point of bursting. The manufacturing of firecrackers which would produce sound of more than 90 dB (A-I) was thus banned.

It is pertinent to note that the sound level for the firecrackers was fixed by the MoEF under Entry No. 89 of Schedule –I appended to the Environment (Protection) Rules, 1986:

"Entry 89: Noise standards for firecrackers:-

A. (i) The manufacture, sale or use of firecrackers generating noise level exceeding 125 dB(AI) or 145 dB(C) pk at 4 meters distance from the point of bursting shall be prohibited.

(ii) For individual firecracker constituting the series (joined firecrackers), the above mentioned limit be reduced by 5 log10 (N) dB, where N=number of crackers joined together."

The Apex Court in *Forum Prevention of Environmental and Sound Pollution Vs. UOI and Anr* approved the same. In the face of the Judgment of the Apex Court, it does not stand to reason that the benchmark fixed by the MoEF could have been changed by the WBPCB.

Another issue that came up subsequently was that the National Committee on Noise Pollution Control (Committee) conducted four meetings for dealing with the issue of Noise caused by firecrackers. The National Committee on Noise Pollution Control recommended that maximum noise level up to 125 dB (A-I) at 4 meters from the point of bursting may be proper. The recommendations of the National Committee on Noise Pollution Control, ultimately, were approved. Therefore there was a contradiction between the two. The Supreme Court stated that if the MoEF order and the Committee's recommendations are irreconcilable, then the High Court shall decide the effect. Thus the applications have come to the NGT.

The Tribunal, after taking into consideration the contentions of both the counsels, directed the Central Pollution Control Board (CPCB)/Ministry of Environment & Forests (MoEF) to conduct a fresh study on "Noise Pollution and its Impacts" and to suggest specific norms for manufacturing, sale and distribution of the firecrackers inter-state and intra-state. In case, it is found that the sound decibels shall be lowered down due to change in the circumstances, the Central Board/MoEF may take a decision if so needed and if so advised, may file appropriate application before the Apex Court for the purpose of vetting such decision. The Central Board/MoEF may, however, appropriately suggest the norms in keeping with the scientific study conducted with the help of experts. The Tribunal directed that the Central Board/MoEF shall examine the relevant issues afresh and take decision within a period of six (6) months and if so required by taking legal opinion of the Attorney General's Office or Department of Law and Justice, Ministry of Law & Justice.

The Tribunal made it clear that the WBPCB is at liberty to take independent decision in accordance with the powers available under the Air (Prevention & Control of Pollution) Act in consultation with the CPCB if the reduction of the noise level emanating from firecrackers is found necessary for certain specific reasons, having regard to the recipient quality thereof.

The Applications are accordingly partly allowed in terms of findings recorded hereinabove. The Applications are disposed of to the extent of the prayer to allow production, sale and distribution of firecrackers as per the limit fixed vide the MoEF Notification dated 05.10.1999. No costs.

Gaur Green City Residents Welfare Association
V
The State of U.P. Ors.

Original Application No. 33/2012

Judicial and Expert Members: Shri Justice V.R. Kingaonkar, Shri Dalip Singh, Dr. G.K. Pandey, Prof. A. R. Yousuf, Dr. R.C. Trivedi

Keywords: GIS, Power Sub-Station, Green Belt, Residents Welfare Society, Environment Protection Act, Forest Conservation Act, WHO guidelines, Municipal Law, Jurisdiction of Green Tribunal, Section 14.

Application is dismissed

Dated: 21st August, 2013

This is an Application filed under Section 14 of the National Green Tribunal Act, 2010. The Applicant is an Association known as Gaur Green City Residents Welfare Association (RWA).

The Applicant challenges installation of a 400 KV Gas Insulated Power Sub-station (for short, GIS) over Green Belt running parallel to NH-24.

The following questions came up for consideration and were answered accordingly.

1) Whether use of Green Belt for installation of GIS Power Sub-station requires Forest Clearance (FC) under the Forest (Conservation) Act, 1980?

The Tribunal held that the provision for Green Belt is a matter of policy. It is not a matter of right for residents of any locality as such. The Tribunal cannot ignore the fact that the Green Belt is not a part of the plot on which Gaur Green City is developed. It was known to the developer and builder as well as to the residents of the Applicant (RWA) that the Green Belt is not part of the property owned by them. Nor they have any Easement Right in the context of the Green Belt. Admittedly, there is distance of about 10/15 meters between the boundary wall of Gaur Green City and the residential buildings and also a distance of about 30 meter from the proposed GIS Sub-station and the boundary wall of the Gaur Green City. Needless to say, the Green Belt is neither appurtenant nor adjoining to the boundary of the Gaur Green City. This discussion would clarify topographical account of the Green Belt qua the Gaur Green City.

1. *Whether the proposed GIS Power Sub-station is likely to create high intensity Electro Magnetic Field which will have adverse effect on health of the members of the Applicant, particularly, causing Childhood Leukemia, due to its proximity to the residential colony?*

The Apex Court had in an earlier judgement stated that for a forest land it has to be notified, deemed or declared as such. It is observed that any land where trees are grown could not be termed as forest. It has been further held that prior EC for such projects is not required under provisions of the Environment (Protection) Act, 1986. A certain tract of land may be recorded as forest for the purpose of local law of the State but it may not require any FC under the Forest (Conservation) Act, if the activity of non-forestry purpose is covered by exemption as contemplated under the Forest (Conservation) Act, 1980. Permission under Section 2 of the Forest (Conservation) Act, 1980 was **not necessary** for installation of GIS Power Sub-station and it cannot and shall not cause any impediment in the execution of the said project.

There appears to be no Indian standards set out or particular guidelines approved for Non-Ionizing radiation. The most reputed United Nation's Organization (UNO) is the World Health Organization (WHO). Therefore, the guidelines issued by the WHO are more reliable as compared to other guidelines. The guidelines of WHO do not show that the electromagnetic field that would be created by installation of the Power Substation in question is likely to cause any significant health hazard to the residents of Gaur Green City. One cannot be oblivious of the fact that the residential premises of the members of the Applicant are at a distance of more than 35/40 meters from the GIS Power Substation. The Question is answered in the "negative".

2. *Whether the impugned project is being executed without proper appraisal and without consideration of other suitable sites available for installation of the Power Substation and, therefore, it is liable to be quashed?*

The Applicant has suggested some other places where the Power Substation can be installed. The Tribunal stated, firstly, the choice of place is not domain of the Applicant. Secondly, a committee was appointed to see the suggested alternative sites. The Committee report shows that neither of the alternative sites is suitable. According to the Tribunal, the project does not require any grant of EC by following the Regulation 7(1) of the MoEF Notification dated 14.09.2006, it was not necessary, therefore, to go through the exercise of screening, scoping, public hearing and appraisal. Therefore, answer to the Issue No. (3) is recorded in the "Negative".

3. *Whether question or dispute in respect of violations of the Municipal Law and alleged changes in the Master Plan, 2021 fall within ambit of jurisdiction available to the NGT?*

The Tribunal is concerned only with the environmental issues. The opening words of Section 14 of the National Green Tribunal Act, 2010 (NGT Act) indicate intention of the Legislature. It requires

the Tribunal to settle disputes in cases where “substantial question” relating to the environment is involved. Needless to say, any finding recorded by this Tribunal on the question of violation of the Municipal Law and alleged illegal changes in the Master Plan, 2021 is likely to prejudice the opinion of other competent forum. In this view of the matter, the answer on issue no. (4) is in the “Negative”.

Installation of the GIS Power Substation on the small part of the Green Belt is in keeping with principle of sustainable development. There cannot be duality of opinion that any development should be.

compatible with the Environment. Still, however, the Applicant must prove real possibility of threat to the environment or dangerous impact of such development on human beings. The Applicant failed to prove either. The Application is dismissed. However, the Tribunal deemed it proper to give certain directions to the Project Proponent regarding the environment safety and security of the residents in areas nearby.

Gau Raxa Hitraxak Manch and Gauchar Paryavaran Pouchav Trust Rajula
V
Union of India Ors.

Appeal No. 47/2012

Judicial and Expert Members: Shri Justice V.R. Kingaonkar, Dr. P.C. Mishra, Shri P.S. Rao, Shri Ranjan Chatterjee

Keywords: Environment Clearance, Gujarat Pipavav Port Ltd, MoEF, EIA Report, Stage of Appraisal, ToR, Mangrove forests.

Appeal is partly allowed.

Dated: 22nd August, 2013

This is an Appeal against order dated 05.06.2012 passed by Ministry of Environment & Forests (MoEF) (R-1) granting Environmental Clearance (EC) to expansion of a Port. M/s Gujarat Pipavav Port Ltd. (R-3) initially started its port in 1998. The port was gradually expanded on three occasions, in the years 2000, 2003, and 2006. The present Appeal is filed under section 14(1) of the National Green Tribunal Act, 2010 challenging the EC dated 05.06.2012, granted for further expansion of the Port, about three times of the current length for handling 26 million tonnes of bulk and about 8 times of TEU's Containers than the present capacity, to M/s Gujarat Pipavav Port Ltd. (R-3)

The Appellant is a registered trust. The Appellant proclaims itself as environmental and social activist and has challenged the impugned order, whereby, the MoEF (R-1) granted EC for encompasses proposed addition of berths, utilisation of more area and installation of equipment which will have enhanced capacity as stated above to handle the cargos. There is a Mangrove forest alongside the coastal wall of the port in question which faces environmental damage and degradation.

M/s Gujarat Pipavav Port Ltd. (R-3) has encroached on Gauchar Land (village grazing land). According to the applicants, this will adversely affect flora and fauna of the area and disrupt the life of the villagers living close by. The applicants have contended that they raised a number of pertinent questions in the public hearing, however none of them were paid heed to and the EC was granted.

It is the case of the Project Proponent that all the issues had been considered and a revised EIA report was filed.

The Tribunal held:

The procedure for an environment clearance is a 4 step process. The Bench emphasized on each stage of the process, especially stage 4 – Appraisal. The following portion of the same was emphasized, "*On conclusion of this proceeding, the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned shall make categorical recommendations to the regulatory authority concerned*

either for grant of prior environmental clearance on stipulated terms and conditions, or rejection of the application for prior environmental clearance, together with reasons for the same."

Stage 4 is therefore, not a mere formality. It does require the detailed scrutiny by the EAC or SLEAC of the application as well as documents filed such as the final EIA Report, outcome of the public consultation, including public hearing proceedings, etc.

Thus, it is difficult to appreciate the argument of the Counsel about the validity of the order irrespective of the fact that no reasons have been recorded in the minutes of EAC or in the impugned order. Perusal of the impugned order shows that there was no independent application of mind by the MoEF (IA Division) to the material placed before it and report of the EAC. The impugned order shows that the EAC had sought additional clarifications from the Project Proponent.

Obviously, it was clear that the EAC was not satisfied at the initial stage after the public hearing was held and as such decided to call for further information by issuance of modified ToR. It was necessary, therefore, to examine as to whether the additional ToR was duly responded to by the Project Proponent and such responses were of satisfactory nature. From the impugned order, it is difficult to say that such exercise was undertaken by the MoEF.

In the considered view of the Tribunal, therefore, it was necessary to keep the impugned order in abeyance for the present with direction to the MoEF and EAC to appraise the project afresh and pass the necessary reasoned order either for approval thereof or for the rejection, whatsoever it may be found necessary, on merits thereof. The authorities shall not be influenced by any discussion made hereinabove. The Tribunal clarifies that they have not given any opinion on merits of the matter concerning Stage (4) – Appraisal. It will be open to the authorities to consider the relevant aspects and if so required by making comparison with the measures adopted by the other such ports located elsewhere in the country for avoiding the adverse impact on environment and the surrounding area.

In the result, the Appeal is partly allowed. The impugned order dated 05.06.2012 passed by the Respondent No. 1 (MoEF) shall be kept in abeyance for a period of six (6) months hereafter. The matter is remitted to the EAC and MoEF for the purpose of reconsideration of Stage-(4)-Appraisal in the light of the discussion made hereinabove. The authorities may relook into the matter, have objective appraisal of the project on the basis of the available material, on basis of comparison with expansion of other ports in the country, if so required and thereafter to take decision on merits. The Appraisal of the project be made and final order may be passed by the concerned authorities within statutory period as provided by MoEF Notification dated 14.9.2006 after receipt of copy of this order. The Appeal is accordingly disposed of in the above terms. No costs.

Sajag Public Charitable Trust
V
Municipal Corporation of Gwalior Ors.

Application No. 30/2013(CZ)

Judicial and Expert Members: Mr. Justice Dalip Singh, Mr. P.S.Rao

Keywords: De-Concretisation, State of Madhya Pradesh, Gwalior, Aditya Prasad Case, Tiles, Concrete, Municipal Corporation, Trees.

Application stands disposed of.

Dated: 30th August, 2013

This application has been preferred by the petitioner, Sajag Public Charitable Trust primarily against the Municipal Corporation, Gwalior and the State of Madhya Pradesh through the Collector, Gwalior seeking a relief that the respondents be ordered to remove the concrete tiles from around the base of the trees in the city and around city of Gwalior where such concretisation has been done so that the trees which are important to the environment may be protected and the environment in turn will also be protected.

The respondents have not disputed the need to remove the tiles and the concrete from around the base of the trees and have also indicated in the reply that the Municipal Corporation, Gwalior has already undertaken the task of removing the tiles and concrete material from around the trees and details of the same have also been furnished along with their reply. Accordingly, so far as the merits of the matter are concerned, there remains not much to be decided except that certain guidelines need to be issued which shall be followed by the respondents while carrying out the aforesaid work of de-concretisation:

(1) The work of removing the tiles and the concrete, etc. shall be carried out manually and not by any mechanical process which may endanger the trees itself.

(2) Such de-concretisation shall be carried out up to the extent of 6'x6' around the trees as far as possible depending on the locality, age and girth of the tree.

(3) While carrying out the aforesaid task, care will be taken not to damage the trees or expose its roots so as to endanger the trees itself.

(4) Efforts shall also be made to ensure that no loose soil is left which may result in the uprooting of the tree or causing the tree to fall as a result of the aforesaid work of de-concretisation. The firmness of the soil around the tree would be ensured.

(5) The respondents shall ensure that all the sign boards, names, advertisements, any kind of boards or signage, electric wires, high tension cables or any such cables or wires and nails and screws are removed

from the trees forthwith, Respondent no. 2, shall issue instructions to all concerned departments including telephone authorities and electricity department, cable operators, etc. to take all necessary prohibitive and precautionary measures to prevent the defacing of trees in any manner, save only its trimming when it becomes absolutely necessary in accordance with law.

(6) Respondent 2 shall issue necessary instruction to all departments concerned particularly the Municipal Corporation, PWD, Telephone and Electricity Departments and others to ensure compliance of the above order and directions contained in the order of the Principal Bench, National Green Tribunal dated 23.04.2013 in the case of *Aditya N.Prasad Vs. Union of India & Ors.*, so that the above work is completed within two months from today.

With the above said directions, this application stands disposed of. However, the matter be listed on 12th November, 2013 on which date Counsel appearing for the respondent no.2 shall apprise the Tribunal about the compliance of the above order.

Dr SK Palanivelu Mohanur Road
V
The Member Secretary Tamil Nadu Pollution Control Board and Anr

Application No. 101/2013(SZ)

Judicial and Expert Members: Mr. Justice M. Chockalingam, Prof. Dr. R. Nagendran

Keywords: Consent, Nagampalli, Air (Prevention and Pollution Control) Act, 1981, Water (Prevention and Pollution Control) Act, 1974, Consent to establish, Consent to operate, Tamil Nadu Pollution Control Board, Stone Crusher unit.

Application is disposed of.

Dated: 3rd September, 2013

This application has been filed before the Tribunal by the applicant praying for direction to the respondents to consider the application of the applicant for issuance of consent under the Air (Prevention and Pollution Control) Act, 1981 and Water (Prevention and Pollution Control) Act, 1974, for grant of consent for the existing quarry and crusher unit in S.F. No. 1341/1, 1341/2, 1339/1 and 1339/2 of Nagampalli Village, Aravakurichi Taluk, Karur District.

The counsel for the 1st respondent submitted that the applicant applied for consent to establish and consent to operate his crushing unit on 13.2.2013 and the inspection by the authorities was made on 14.3.2013 and the pendency of the application necessitated the applicant to file this application before this Tribunal and the applications are still pending for consideration.

At the time of admission, it was represented by the Tamil Nadu Pollution Control Board that the Writ Petition in W.P. (MD) No. 1134 of 2011 is pending on the files of the Madurai Bench of the High Court of Madras and the same is connected to the matter in question. It is admitted that the 3rd applicant is not a party to the said writ proceedings and the said Writ Application was filed against the previous owner who ceased to have any interest in the unit under question and hence the Tribunal is unable to see any reason why the said Writ Application should be taken up along with this application.

Taking into consideration the above situation and also the long pendency of the application filed by the applicant, the Tamil Nadu Pollution Control Board is directed to consider the application of the applicant for Consent to Establish and Consent to Operate on or before 30th September 2013 and pass appropriate orders on merits and in accordance with law. With the above directions, the application is disposed of. No Costs.

A.T. Yuvaraj Erode District
V
Rani Chemicals Kalingarayanpalayam and others

Application No. 174/2013(SZ)

Judicial and Expert Members: Mr. Justice M. Chockalingam, Prof. Dr. R. Nagendran.

Keywords: Bleaching, Chemical manufacturing, Effluents, plastic, rag pulp, water pollution, Tamil Nadu Pollution Control Board, District Environment Engineer, Inspection.

Application disposed of.

Dated: 4th September, 2013

The applicant, in this case, has alleged that the 1st respondent's (M/s. Rani Chemials) unit was involved in the manufacturing of bleaching liquid which has been a cause for rampant air and water pollution in and around the village and the unit has been operating without complying with the mandates prescribed under Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974 (hereinafter called the Air and Water Acts). Though the 3rd respondent (District Environment Engineer) granted consent order in the month of September 2012, the 1st respondent in clear violation of the conditions prescribed that no trade effluent was generated at any stage of the manufacturing process was letting out the effluents that was generated during the process of manufacturing into the neighbouring lands which has resulted in water pollution and made it unsuitable for drinking purpose. The 2nd respondent (M/s. Hero Rag Bulb Industries) who was manufacturing plastic and rag pulp was also alleged to be letting out the effluents, sometimes in semi-solid state, into the neighbouring well and water bodies without any effluent treatment. This had virtually affected the primary source of water for the villages and also caused serious water pollution.

Pursuant to the complaint by the public, an inspection was made by the flying squad of the District Environmental Engineer on 27.2.2013 when it was found that a large number of chlorine cylinders within the premises have been stored without any safety measures.

While the matter was pending, a direction was issued to the authorities of the Tamil Nadu Pollution Control Board to make an inspection and file a report as to whether the units are functioning or not. The respondents Nos. 3 and 4 have filed a status report and reply. A perusal of the same would make it clear that pursuant to the orders of the Tribunal dated 25.7.2013, the District Collector, Erode made orders on 21.8.2013 to Revenue Divisional Officer, Erode to lock and seal the two units immediately and the units were sealed by the Revenue Divisional Officer in the presence of the Pollution Control Board officials on 24.8.2013. It is pertinent to note that pursuant to the orders of this Tribunal, the units of the 1st and 2nd respondents were locked and sealed on 24.8.2013. But even from the statement of the applicant, the units were not functioning from 8.8.2013 onwards.

The District Environmental Engineer, Tamil Nadu Pollution Control Board, Erode has filed a reply submitting that the Revenue Divisional Officer, Erode has sealed the units on 24.8.2013 and again the units were inspected on 30.08.2013 and found to be in sealed condition and not in operation. Hence it is evident that both the units were in locked and sealed condition and not in operation. Hence the grievance put forth by the applicant in respect of the alleged pollution of air and water, even if true, has come to an

end and hence the reply of the Tamil Nadu Pollution Control Board as made above, had been recorded and the application filed by the applicant was disposed of. It is made clear that without obtaining consent from the Tamil Nadu Pollution Control Board, the 1st and 2nd respondents should not operate the units. Accordingly the Application is disposed of and the contempt application filed by the applicant is also disposed of.

Kehar Singh
V
State of Haryana

Application No. 124/2013

Judicial and Expert members: Mr. Justice Swatanter Kumar, Mr. Justice U.D. Salvi, Mr. Justice S.N. Hussain, P.S. Rao, Mr. Ranjan Chatterjee

Keywords: Limitation, Sewage Treatment Plant, maintainability, Environment clearance, Land Acquisition act, Cause of action.

Application allowed

Dated: 12th September, 2013

The respondent, in this case, has challenged the maintainability of the present application ground that it is hopelessly barred by time and also in view of the fact that no environmental clearance is contemplated in law for establishing a Sewage Treatment Plant (for short the 'STP'), besides controverting the factual averments made by the applicant in his application.

It is the specific case of the applicant that the action of the respondent in establishing the STP at the site in question is in direct contravention of the Environmental Clearance Notification, 2006 (for short the 'Notification of 2006') which stipulates the requirements for such projects to obtain prior EC even before the commencement of the work.

According to the applicant, he came to know of the setting up of the STP at the site in question from the newspaper dated 19th May, 2013 and he has filed the present application without any delay on 24th May, 2013.

The following two questions came up for consideration.

1. Whether the application filed by the applicant is barred by time and whether the Tribunal has any jurisdiction to condone the said delay?

2. Whether it is mandatory for a project proponent to obtain environmental clearance prior to the establishment of STP?

From a bare reading of section 14 of the NGT act, it is clear that the Tribunal has jurisdiction over all civil cases where substantial question relating to environment is involved and such question arises out of implementation of the enactments specified in Schedule I to the NGT Act. Sub-section (3) of Section 14 deals with the period of limitation. It opens with a negative expression and requires that the application for adjudication of disputes under Section 14 has to be filed before the Tribunal within a period of six months from the date on which the cause of action for such dispute first arose. However the tribunal can entertain an application where a sufficient cause is given for the delay. The Tribunal will have no jurisdiction to condone the delay beyond sixty days after the expiry of six months from the date on which the cause of action for such dispute first arose.

Accordingly, it cannot be stated that the cause of action contemplated under Section 14 of the NGT Act could be related to and deemed to have triggered the period of limitation for the purpose of Section 14 of the NGT Act. The cumulative effect of the above discussion would be that, the limitation has to be computed from the date when there was a firm decision by the Government or other authorities concerned

to establish the STP at the site in question and it was so publicly declared and the date for the same being 19/20th May, 2013 and the applicant having filed the petition within a few days (within the prescribed period of limitation of six months), the question of the application being time barred does not arise. Another contention was also raised that it being a continuing cause of action, the objection raised by the respondent would be of no consequence. The Tribunal did not consider it necessary to deal with this contention in any elaboration in view of the finding above that the petition is not at all barred by time.

The entire controversy revolves as to the effect of the issuance of the notification under Sections 4 and 6 of the Land Acquisition Act and whether it will constitute cause of action under the NGT Act. The Tribunal has no hesitation in answering this question in the negative. The reasons for the same are that the notification issued under Sections 4 and 6 of the Land Acquisition Act per se does not raise a substantial question relating to environment. This notification is for a different and distinct purpose.

The questions arising in relation to the validity of acquisition or payment of compensation do not constitute 'dispute' within the meaning of and for the purpose of Section 14 of the NGT Act. The Tribunal, in any case, would have no jurisdiction to venture upon the adjudication of such an issue. Furthermore, the Government was competent to change the 'public purpose' stated in the notification under Section 4 and could even de-notify the area or give up the entire project upon hearing objections under Section 5 of the Land Acquisition Act. Change of purpose and de-notification by the State Government in accordance with law is permissible.

The object of the legislation is to protect, sustain and improve the environment. So an interpretation, which would further this object has to be adopted, rather than a strict construction, which may result in rendering the very object and provisions of such legislations ineffective and futile. The bare reading of the guidance manual by MoEF shows that establishment, expansion and even modernisation of CETPs ('Common effluent treatment plant') require EC, being a category B project. Any treatment plant that deals with such effluents having more than 10% of industrial contributions by volume has to be treated as a combined treatment plant. On the strength of this guide, it becomes clear that the material consideration for determining the nature of the project or activity is the kind of effluent that it receives for the purpose of treatment.

On the strength of the same guide, it becomes clear that the material consideration for determining the nature of the project or activity is the kind of effluent that it receives for the purpose of treatment. There is nothing on record to show that the STP in question is so established as to treat exclusively sewage and nothing else. On the contrary, the sketch filed by the respondent shows that the sewage is carried by an open drain and would be so carried to the site of STP (for treatment). It is just by the side of a metal road and travels through the *abadi* and the sludge is carried through an open drain from the entire city. This is demonstrable of the fact that it is not sewage per se that is taken by the open drain to the site but is a mixture of various distinct effluents. Thus, such an STP would even fall under the entry 7(h) because this plant would be treating the effluents in the semi-solid form and even sludge and would contain more than 10% of industrial or other contaminated chemical effluents. The Tribunal can reasonably conclude that the open nallah does not carry only the sewage waste but other effluents as well which are required to be treated by a CETP and the capability of the STP requires scientific and appropriate scrutiny from an expert body before it can be permitted to become operational and it is a fit case where it would cover combined waste water treatment plant i.e. CETP excepting sewage along with industrial effluents.

For the reasons afore-recorded, the Tribunal answers both the questions in favour of the applicant and against the respondent. While allowing the application, it is directed that the respondent seeks EC from SEIAA at the earliest and in any case not later than one month from the date of judgement. The Tribunal further directs SEIAA to process the application and complete the entire exercise of granting clearance -

conditional or otherwise - or refusing the same within two months thereafter. In the circumstances of the case, the Tribunal did not direct removal of the plant to the extent to which it has already been constructed at the site as all acts done so far and that may be done hereafter would be subject to the grant of EC to the project in question by the competent authority.

Kamta Saini
V
Union of India Ors.

Application No. 29/2013(CZ)

Judicial and Expert Members: Mr. Justice Dalip Singh, Mr.P.S.Rao

Keywords: MP Pollution Control Board, Petrol Pump, Effluent discharge, Hindustan Petroleum Corporation, maintainability of application, District Collector, fuel filling station, service station.

Application Dismissed

Dated: 25th September, 2013

This application has been filed under Section 18 read with Section 14, 15, 16 and 17 of the National Green Tribunal Act, 2010 by the applicant praying therein for cancellation of the pre-consent dated 01.04.2013 (wrongly stated as 31.03.2013 in the Application)in respect of land bearing Khasra No. 156/01 and 156/03 vide consent no. COG GRT H-2044 granted to the respondent no. 9 (Jaiswani Petrol Pump) by the MP Pollution Control Board for establishment of a petrol pump in the aforesaid land. The grievance raised is that the land in dispute over which the petrol pump is being established by the respondent no. 9 is adjoining a tank by the name "Adhartal" in the city of Jabalpur in Madhya Pradesh and that in case the aforesaid petrol pump is commissioned, the water of the tank shall be polluted as a result of discharge and flow of water and other material like petrol, diesel, oil, etc. from the petrol pump into the lake.

The Hindustan Petroleum Corporation Ltd. has also submitted their reply wherein apart from raising objections regarding the maintainability of this application; a reply on merits has also been submitted wherein details of the steps taken for the installation of the present petrol pump have been stated. It has been stated that permission from the District Collector has been obtained in accordance with Rule 144 of Petroleum Rules, 2002 for "fuel filling station" at the site in question. It has clearly been stated that the present one is only a "fuel filling station" and not a "service station". Therefore, the question of generating any hazardous waste which may flow into the Adhartal Tank is ruled out. It has also been stated that all care has been taken and in accordance with Rule 126 of the Petroleum Rules, 2002.

Admittedly, in the instance case, the respondent no. 9 has been granted a licence only for installation of a "fuel filling station" and not a petrol pump with "service station". Their reports and the inspection carried out by the Pollution Control Board authorities are based upon the facts that since the activity shall be confined by the respondent no. 9 only to the establishment and operation of a fuel filling station where there would be zero discharge of water and effluent and no such waste would be generated on account of this limited activity of fuel filling station, the Tribunal is of the view that in the facts and circumstances of the present case, no permission under the Water (Prevention and Control of Pollution) Act, 1974 and its rules was required.

So far as "the memo of information" which has been filed by the applicant in court, wherein some news items and the complaint regarding leakage of petroleum product into the wells and the water getting affected is concerned, the Tribunal may only add that from the records and inspection report, it appears that up to 23.08.2013 when the inspection was carried out by the authorities of the Pollution Control

Board, the present petrol pump had not even been established and the work of placing the tanks was going on. As such, the question of any leakage from the site of the disputed petrol pump to be installed by the respondent no. 9 does not arise.

Thus, the contention raised upon the above reports is rejected as it cannot relate to the activity of the project proponent in any manner. Looking to the totality of the facts and circumstances of the present case, the Tribunal finds no merit in the present application.

The Application is dismissed with no order as to costs.

Virani Construction Company
V
State Level Environmental Impact Assessment Commitee II (SEAC II) Maharashtra Ors.

Appeal No. 72/2013

Judicial and Expert Members: Shri Justice V.R. Kingaonkar, Dr. Ajay.A.Deshpande

Keywords: SEAC. SEIA, Environmental Clearance, MoEF Notification, Section 16, maintainability, Jurisdiction.

Appeal is not maintainable

Dated: 26th September, 2013

The appellant in this case is a developer. He has been authorized to construct buildings on the plots bearing Survey Nos. 36/4, 37/1 and 37/2, situated at village Kausa (district Thane). The Appellant initially proposed to carry out residential-cum-commercial construction project; having total construction area of 19,796.74 sq. meters on the above three plots. The appellant submitted plans to the Thane Municipal Corporation (TMC) for approval. The plans were approved. The TMC issued required commencement certificate dated 9th April, 2012. Subsequently, the Appellant decided to construct more area. Comprehensively, the total construction as proposed was of 38,071 sq. meters. Since it was over and above 20,000 sq. meters, the appellant approached the State Environmental Assessment Committee (SEAC) for grant of Environmental Clearance (EC), in accordance with the MoEF Notification dated 14th September, 2006.

The SEAC held that the construction of 5968 sq. meters, built up area was done by the appellant in violation of the MoEF Notification dated 14th September, 2006, and hence, the State Environmental Impact Assessment Authority (SEIAA), after due verification may initiate credible action, in accordance with OM dated 12th December, 2012, issued by the MoEF. Thus, proposal was referred to the State Environmental Impact Assessment Authority (SEIAA). The State Environmental Assessment Committee (SEAC) observed that the proposal will be considered only after the State Environmental Impact Assessment Authority (SEIAA) will take appropriate action or will give further instructions in the matter.

In the appeal, certain directions are sought against the SEAC, particularly, for consideration of construction proposal in full on environmental aspects. Not only that but the Appellant seeks declaration that previous construction of 8083 sq. meters, does not amount to violation of provisions of the Regulations enumerated in the MoEF Notification dated 14th September, 2006.

A plain reading of Section 16 clearly shows that an Appeal can be entertained, if it is against the provisions issued under Section 5 of the Environment (Protection) Act, 1986, or order granting the EC, or refusing the EC. There appears no escape from conclusion that the Appellate jurisdiction of the Tribunal, is not equivalent to the Writ jurisdiction available to the High Court, under Art.226 of the Constitution. It is obvious, therefore, that this Tribunal cannot grant any declaratory relief and cannot issue any direction

in the manner as prayed by the Appellant. In other words, the Tribunal cannot direct SEAC to consider the proposal of the Appellant in full, excluding the area of the construction which was done prior to submission of the proposal. The Tribunal cannot direct SEAC to segregate the earlier construction from remaining part of development project. Needless to say, the Appeal is pre-mature and incompetent.

The Tribunal stated that it cannot declare that the construction to the extent of 5,965 sq. meters as a legal one. The Tribunal cannot entertain the Appeal against the decision of SEAC, which is not a final order as such. The SEAC, by the impugned decision only referred the proposal for necessary action to SEIAA, and decided to consider the proposal after the necessary action, or any other instructions of the superior Authority. The impugned decision, therefore, does not trample any legal right of the Appellant. What is found from the nature of the pleadings and prayers indicated in the Appeal Memo, is that by filing this Appeal, the Appellant desires to regularize the illegal construction, which has been already done inspite of the fact that no EC is granted for the project, though the said construction is part and parcel of the said project.

Taking a stock of the foregoing discussion, The Tribunal decided that the Appeal is not maintainable and is incompetent. It is of further opinion that the appellant filed the present Appeal with mala fide intention to put pressure on SEAC and SEIAA, in order to escape from credible action contemplated against him. In this view of the matter, the Appeal is liable to be dismissed with exemplary costs. The appeal is dismissed with costs of Rs.1,00,000/- (Rs. One Lac). In case of default of payment of the said costs, in the manner stated by the Tribunal, it will be constrained to direct attachment of the constructed building of the Appellant and may issue further directions to defer the proposal of the Appellant from consideration till the said amount is paid, or for any other coercive action, as may be permissible under the Law.

M/s Aadi Properties (P) Ltd.

V

State Level Environmental Impact Assessment Commitee II (SEAC II) Maharashtra Ors.

Appeal No. 73/2013

Judicial and Expert Members: Shri Justice V.R. Kingaonkar, Dr. Ajay.A.Deshpande

Keywords: SEAC. SEIA, Environmental Clearance, MoEF Notification, Section 16, maintainability, Jurisdiction

Appeal is not maintainable

Dated: 26th September, 2013

M/s. Aadi Properties Ltd., Appellant herein, originally desired to carry out the work of development of a plot measuring about 15031 sq. meters, bearing CTS No.1196 (B) at Kanjurmarg (Taluka Kurla and District Mumbai suborn). The area of said plot was under reservation of District Centre as per the Government Notification dated 4th December, 2008. It was decided that development of such reserved plot be permitted on condition that the developer would agree to give 30% built up area with the land appurtenant for the District Commercial Centre/Town Centre /Town Sub-Centre, as required by the Municipal Commissioner, free of cost. On satisfaction of such condition, the developer was entitled to have permissible F.S.I. of the plot for development without taking into account built up area of the Town Centre. Thus, the owner/developer was allowed to use TDR/Additional FSI (0.33) of 70% land on certain conditions.

According to the Appellant, the construction work had commenced as per the sanctioned plans. There was no need to seek Environmental Clearance (EC), as the proposed construction was less than 20,000 sq. meters.

The Appellant's case is, that later on, it desired to carry out construction of about 59,300 sq. meters, on the said plot comprising of F.S.I and Non F.S.I. construction, exclusive of the construction of amenity building. Therefore, the Appellant approached the State Environmental Assessment Committee (for short, 'SEAC') for environment clearances.

Before the Tribunal proceeded to consider the appeal on merits, it was noted that the prayers in the Appeal, clearly go to show that certain directions are sought against the SEAC, particularly, for consideration of construction proposal in full on environmental aspects. Not only that but the Appellant seeks declaration that previous construction of 8083 sq. meters, does not amount to violation of provisions of the Regulations enumerated in the MoEF Notification dated 14th September, 2006.

A plain reading of Section 16 clearly shows that an Appeal can be entertained, if it is against the provisions issued under Section 5 of the Environment (Protection) Act, 1986, or order granting the EC, or refusing the EC. There appears no escape from conclusion that the Appellate jurisdiction of the Tribunal,

is not equivalent to the Writ jurisdiction available to the High Court, under Art.226 of the Constitution. It is obvious, therefore, that this Tribunal cannot grant any declaratory relief and cannot issue any direction in the manner as prayed by the Appellant. In other words, the Tribunal cannot direct SEAC to consider the proposal of the Appellant in full, excluding the area of the construction which was done prior to submission of the proposal. The Tribunal cannot direct SEAC to segregate the earlier construction from remaining part of development project. Needless to say, the Appeal is pre-mature and incompetent.

The Tribunal cannot entertain the Appeal against the decision of SEAC, which is not a final order as such. The SEAC, by the impugned decision only referred the proposal for necessary action to SEIAA, and decided to consider the proposal after the necessary action, or any other instructions of the superior Authority. The impugned decision, therefore, does not trample any legal right of the Appellant. What is found from the nature of the pleadings and prayers indicated in the Appeal Memo, is that by filing this Appeal, the Appellant desires to regularize the illegal construction, which has been already done inspite of the fact that no EC is granted for the project, though the said construction is part and parcel of the said project.

Taking a stock of the foregoing discussion, The Tribunal decided that the Appeal is not maintainable and is incompetent. It is of further opinion that the appellant filed the present Appeal with mala fide intention to put pressure on SEAC and SEIAA, in order to escape from credible action contemplated against him. In this view of the matter, the Appeal is liable to be dismissed with exemplary costs. The appeal is dismissed with costs of Rs.1,00,000/- (Rs. One Lac). In case of default of payment of the said costs, in the manner stated by the Tribunal, it will be constrained to direct attachment of the constructed building of the Appellant and may issue further directions to defer the proposal of the Appellant from consideration till the said amount is paid, or for any other coercive action, as may be permissible under the Law.

Pandurang Sitaram Chalke Anr.
Vs
State of Maharashtra Ors.

Application No. 14/2012

Judicial and Expert Members: Shri Justice V.R. Kingaonkar, Dr. Ajay.A.Deshpande

Keywords: Stone Crusher, Illegal Mining, Maharashtra, pollution, Precautionary principle, Compensation

Application is disposed of with conditions

Dated: 1st October, 2013

Application relates to the issue of illegal mining in the agricultural areas as well as forest and non-forest areas in Sukvali village, Taluka Khed, District Ratnagiri, Maharashtra. The Applicants claim to be agriculturist and have taken up the issues raised in this Application before various Forums and Authorities, prior to approaching the Tribunal.

It is the case of the Applicants that the dust particles from the Respondents' stone crushers, are spread over and have affected paddy crops from adjoining agricultural lands. The dust fines that collects in the paddy fields during the Monsoon affects the paddy crops and for last several years the land owners of the adjoining agricultural land have stopped growing paddy crops due o reduction in fertility of the soil and the adjacent lands have become completely barren and useless for any agricultural activity.

The Applicants further state that Respondents are not taking any precautions while carrying out blasting activities for mining of black stone, resulting in hazardous pollution, damages and irreparable loss to the fields and houses of the villagers of Sukivali Village. The Applicants have further claimed that the mining and stone crushing activities have affected the overall environment of the village and the adjacent area. It is the case of the Applicants that these environmental damages were brought to the notice of Respondents, but they never paid any heed to it nor did they ever compensate the villagers for the environmental damages.

Applicants have therefore, prayed for:-

a) Directing the Respondents to cancel /withdraw and/or recall forthwith all the agreements of parties if executed in favour of Respondents.

b) To direct to remove forthwith the boulders, stone crushers and other structures erected in violation of the various Rules and Regulations.

c) An appropriate compensation may be awarded to the Applicants and all affected family members.

After hearing the Counsels for the parties in extenso and gone through the documents and information submitted so far the Tribunal raised the following issues for discussion. They are:-

1) Whether the application is within the limitation as per the NGT Act?

2) (a) Whether the activities of the mining and the stone crushers at village Sukivali are causing pollution and environmental damages?

(b) If yes, then what is the nature and quantum of Environmental impact?

3) Whether the Applicants have made out a case for compensation and relief in the present case and, if yes, for what amount?

4) What precautions are further required in the present case?

The Tribunal gave the following judgement:

As for the Limitation, It is observed in the present application, that the petitioner has made representation to various authorities about the environmental damages and then approached NGT. It is further observed that the application is mainly for restoration of environmental damages and compensation, which are covered under Section 15 of NGT Act, 2010.

Considering the above facts, the Tribunal is of considered opinion that the application is within the limitation as prescribed under Section 15 of the NGT Act and can therefore, be dealt with.

Based on the records available, though, the activities of mining and crushers can lead to pollution and environmental degradation, yet in the present case there is hardly any record, which conclusively prove that the damage is caused to the environment and further, that can be linked to the activities of Respondent No's 9 to 13. And therefore, in the instant case, the answer to the issues No.2 is answered in the 'Negative'.

The Applicants prayed for compensation under Section 15 of the National Green Tribunal Act, 2010. However, they have not submitted any details of the quantum like the type of compensation, cause of compensation and amount of compensation. There is no record, information and data in the submissions of the Applicants as well as Respondents which can consequently show that there is an environmental impact except the excessive mining as mentioned above. Under the circumstances, the Tribunal is not inclined to award any compensation in the present case.

The stone mining activities are common and required for infrastructure development. The stone crushing activities are known to be polluting activities and are already covered under the Consent Management Regime of the State Pollution Control Board. Specific standards and guidelines have also been evolved for the environmentally sustainable operations of the stone crushers. The stone mining activities are involved with blasting activities which can cause damages in the surrounding areas. Further, the material transportation from both stone mining as well as crushers leads to air pollution besides the traffic hazards. Considering all these aspects and also fact that the stone quarrying and also, the stone crushers are many times located in the rural areas and are located near the habitation, it is necessary that all the Regulatory Authorities including the District Mining Officer and the State Pollution Control Board shall take enough precaution based on the 'Precautionary Principle' to mitigate environmental impacts and damages. The Doctrine of the public trust is one of the settled principles of the environmental governance. This Doctrine is more an affirmation to the State Power for utilization of public property for public good. It is also an

affirmation of the duty of the State to protect people's common heritage and environment and therefore, these Regulatory Authorities are expected to play a pro-active role in the enforcement and compliance of the environment regulations in order to avoid such conflicts. The above mentioned one instance of unauthorized and excessive mining can be considered as a cause of environmental non-compliance, which needs to be acted upon by regulatory agencies. All the mined material and machinery are removed from the respective sites during pendency of the Application as per various interim orders of the Tribunal. It is also found that the Applicants have not made out a case to award compensation in as much as no particular damage is proved as a result of these mining activities of the Respondents or due to operation of the Stone Crushers.

The following directions were given by the Tribunal:

- State Pollution Control Board shall conduct necessary ambient air quality monitoring as per the Central Pollution Control Board guidelines and standards at least once in six months in the said area for next 3 years.
- The hot mixed plants are known to cause air pollution, particularly, due to the emissions volatile organic carbons and therefore, shall not allowed to operate till they provide necessary air pollution systems including the scrubbers to mitigate VOC with emissions.
- The mining authorities shall conduct regular inspection of the stone mining activities and ensure that the mining activities are strictly carried out in adherence to the mining permissions.
- Maharashtra Pollution Control Board in its submission has submitted that these mining activities cannot be continued till they get necessary EC. The Authorities shall ensure that all these mining activities are allowed to operate only if all the necessary permissions are granted and the units have complied with the guidelines issued by Maharashtra Pollution Control Board. Accordingly, the Application is disposed of in above terms. No costs.

Solid Real Estate Private Limited Bengaluru

Vs

The Member Secretary Tamil Nadu Coastal Regulatory Zone Management Authority and Director of Environment

Application No. 276/2013(SZ)

Judicial and Expert Member: Justice Shri M. Chockalingam

Keywords: declaration, construction, violation of Coastal Regulation Zone Notification, 2011, TN Coastal Regulatory Zone Management.

Application is disposed of

Dated: 11th October, 2013

When the application is taken up for hearing as to admission, heard the learned Senior Counsel appearing for the applicant. The averments made in the applications are looked into. After hearing the Senior Counsel and looking into the averments made, it is quite clear that the application is filed based on the apprehensions of the applicant herein. A declaration is sought for the construction of a compound wall around the applicant's owned/leased land situate in Survey Nos. 98/5B2, 98/5B1, 98/7, 98/9A, 98/9B, 98/6A, and 98/6B admeasuring a total extent of 11.41 acres or thereabouts in 36, Muttukkadu village, Chengalpet Taluk, Kanchipuram District, State of Tamil Nadu would not amount to violation of Coastal Regulation Zone Notification, 2011 and Environment Protection Act, 1986. What is averred is only an inspection made by the authorities of the Tamil Nadu Coastal Regulatory Zone Management, but no where it is averred that proceedings were initiated or order passed thereon. Under the circumstances, no interference by the Tribunal is contemplated under any provisions of the Act. The application, in the considered opinion of the Tribunal, is premature and there cannot be any impediment for the applicant to approach the Tribunal if the circumstances warrant so. Accordingly, the application is disposed of.

Dileep B. Nevatia
V
State of Maharashtra Ors.

Application No. 202/2013

Judicial and Expert Members: Shri Justice V.R. Kingaonkar, Dr. Ajay. A. Deshpande

Keywords: Sirens, Multi Toned Horns, Ministry of Road Transport and Highways, Section 26, 28, MoEF, Right to Information Act, 2005.

Application disposed off

Dated: 11th October, 2013

By this application the original Applicant sought indulgence of the Tribunal, under Sections 26 and 28 of the National Green Tribunal Act, 2010, (for short, 'NGT Act'), particularly, against the Secretary, Ministry of Road Transport and Highways and the Director General of Police (DGP), Maharashtra for not implementing on the final order dated 9th January, 2013, passed by the National Green Tribunal (Principal Bench), New Delhi, in the Original Application No.36 of 2011. The Applicant pointed out that by order dated 9th January, 2013, the National Green Tribunal, (Principal Bench), Delhi, gave certain orders:

I. Directing the Ministry of Road Transport & Highways to notify the standards for sirens and multi-toned horns used by different vehicles either under Government duty or otherwise within a period of 3 months hence.

II. Directing the State of Maharashtra and the Transport Commissioner, Government of Maharashtra, Respondent Nos. 1 and 3respectively to take adequate step to notify the standards for sirens and multi-toned horns for different zone, within a period of one month from the date of the notification.

III. The Transport Commissioner, Government of Maharashtra, was also directed to ensure the number of vehicles installed sirens and multi-toned sirens are limited to the bare minimum so as to comply with ambient air quality standards as specified in the Noise Pollution (Regulation & Control) Rules, 2000.

IV. The Police Commissioner of Maharashtra was also directed to ensure that no private vehicle should be allowed to use sirens or multi-toned horns in residential and silent zones and in the vicinity of educational institutions, hospitals and other sensitive areas and also during night except emergencies and under exceptional circumstances. The Police Commissioner shall further ensure and take precaution to the effect that the residents and residential areas are not affected by indiscriminate use of loud speaker during night time in other words the use of loudspeaker should be strictly restricted to the prevailing Rules and Regulations.

The Applicant stated in his application that the directions enumerated as above, have not been implemented by the Authorities, and, therefore, they are liable for penal action, as per Section 26 read with Section 28 of the National Green Tribunal Act, 2010. He made inquiry by filing Applications under the Right to Information (RTI) Act, 2005.

The under Secretary of The Ministry of Road Transport and Highways (for short "MoRTH"), had filed reply affidavit pointing out that the MoRTH, was not given any opportunity for hearing and filing of the reply to the Original Application No.36 of 2011. MoRTH, submitted that it is not liable to any penal action for non-compliance of the directions issued by the National Green Tribunal (Principal Bench), Delhi and hence, sought dismissal of the Application. No reply was filed by the Maharashtra Pollution Control Board (MPCB) and the MoEF, as the directions were not given to the MoEF in particular, as well as to the MPCB as such.

According to the Applicant, since Union of India, through the Secretary of MoEF, was made a party, it was not necessary to separately add the MoRTH, as a party to the Original Application. The Tribunal found it difficult to countenance this argument advanced on behalf of the Applicant. The Tribunal stated that in absence of the MoRTH, as a party to the Original Application No.36 of 2011, it is difficult to say that there is willful non-compliance of the direction No.(i), which is issued by the National Green Tribunal, while deciding the Original Application No.36 of 2011

So far as the Director General of Police is concerned, the Tribunal further stated that when no standards have been prescribed for noise, in the context of the sirens/multi-toned horns, it is difficult to say that the Director General of Police, has intentionally failed to comply with the direction No. (iv), as enumerated above. Still, however, it was expected from the Director General of Police to give response to the Application.

The Tribunal had been informed by the Counsel for MPCB, that the High Court of Bombay had given certain directions in the context of noise levels and zoning of the areas for implementation of ambient quality of noise. The Counsel had, however, failed to produce copy of such Judgment, as per the order dated 27th September, 2013, as a result of which the Tribunal was unable to see the nature of such directions issues by the High Court of Bombay.

As far as the question of fixing the standards of sirens and multi-toned horns fitted in the different vehicles is concerned, the Tribunal pointed out that it is important to note that sound signals (levels) are required to be approved by the 'Registering Authority', in whose jurisdiction such vehicles are kept. By way of little diversion from the issue of liability for fixing of standards, it may be said that "Siren sounds are intended to alert the public that emergency vehicle is nearby and responding to an emergency. These sounds should be recognized as the call for the 'right-of-way' of the vehicle.

Coming to the question of the legal responsibility of the concerned 'Authority' to fix the norms of sound decibels that can be determined for the purpose of sirens and multi-toned horns, the Tribunal found that the Respondents, including the MoRTH, have no uniform opinion about the 'Authority', which should fix such standards. The Tribunal pointed out that fixation of standards for ambient sound levels or the sound of regular horns, is quite different from that of fixing of the standards of sound levels and the horns and that also, by fixing certain zones and particular hours for use of such sirens/multi-toned horns, fitted to the vehicles, which come within ambit of Rule 119 (3) of the Central Motor Vehicles Rules, 1989. An approval of such standards by the 'Registering Authority of the State' in whose jurisdiction such vehicles are kept is necessary. Standards are required to be approved by the 'State Registering Authority', within territory of which such vehicles fitted with sirens/multi-toned horns are used. The same is responsible for registration of the vehicles in the State.

In the opinion of the Tribunal, the directions given by the National Green Tribunal, while deciding the Original Application No.36 of 2011, are required to be modified, in keeping with the provisions of the Noise Pollution (Regulation and Control) Rules, 2000, the Central Motor Vehicles Rules, 1989, and the relevant provisions of the Air (Prevention & Control of Pollution) Act,1981.

Hence the present Tribunal finally disallowed the Application for taking action under Sections 26 and 28 of the National Green Tribunal Act, 2010, as prayed for. It made it explicit that necessary action will be taken in case of non-compliance of the directions stated below.

It directed the Maharashtra Pollution Control Board (MPCB), to prescribe noise standards for use of sirens and multi-toned horns, in consultation with the Central Pollution Control Board (CPCB). The prescribed standards are to be so fixed on the basis of area-wise requirement and time-wise use of the sirens. The minimum level of noise required is fixed only with a view to give alarm to the vehicles and public members on the road and to avoid any annoyance, due to excessive noise, which may unnecessarily cause nuisance to the residents of the residential buildings/colonies, situated on either side of the road. This entire exercise shall be completed in four (4) months. If required, the MoEF may take appropriate steps for fixing of such standards for all the States.

It directed that the prescribed standards so fixed by the MPCB, in consultation with the CPCB, shall be communicated to the Transport Commissioner, State of Maharashtra and with the approval of competent Authority (Transport Commissioner), the same shall be communicated to all the Sirens and Multi-toned Horns Manufacturing Authorities and the 'Registering Authority' in the State of Maharashtra, and to all the concerned Authorities, who are required to implement the Law such as, Police Authorities at each place, through the Director General of Police. This exercise shall be completed within a period of four (4) months.
The Police Authorities as well as the Regional Transport Officers (RTOs), shall ensure due compliance of the use of sirens and multi-toned horns, which shall be so used, as per the prescribed standards. The Tribunal further directed that use of the Government vehicles installed with sirens and multi-toned horns, shall not be allowed to use such equipments during night period between night and early morning i.e. between 10.00 p.m. till 6.00 a.m., in any locality, unless there is extreme public emergency situation, though it may be so allowed on the public roads outside the limits of city/town.

The Police Commissioner, shall promulgate the sound standards allowed to be used for sirens and multi-toned horns, on the particular type of vehicles, having regard to the nature of use, utility and the manner of such use. The ambulances which are fitted with such sirens/multi-toned horns, shall be given appropriate stickers by the Regional Transport Offices, and the ambulances, be not allowed to use said sirens/multi-toned horns, without entry in the concerned hospital about specific requisition made by any patient, or his relatives for emergency purpose, or by any medical practitioner for the purpose of carrying of the patient, who may be in need of emergency treatment.

The Tribunal further directed that responsibility is fixed on the MPCB and CPCB, for compliance of fixing of standards, within a period of four (4) months and thereafter the same shall be immediately communicated to the Transport Commissioner and the Director General of Police, State of Maharashtra, without any delay. The Latter Authorities shall comply with the directions stated above, within a period of four (4) months from the receipt of communication pertaining to the standards fixed and approved by the Transport Commissioner. It made it further clear that in case of non-compliance of the above directions, the Tribunal, may take appropriate steps either to hold the Authority in contempt or to prosecute them, as may be found necessary under the provisions of Law. The Application was accordingly disposed of in above terms, with liberty to the Applicant to move an Application for implementation of above directions, if there is non-compliance. No costs

Suresh
V
State of Maharashtra Anr

Application No. 136(THC)/2013

Judicial and Expert Members: Mr. Justice V.R. Kingaonkar, Dr. Ajay. A. Deshpande

Keywords: Tendu leaves, Forest fire, Bidis, Environment damage, Maharashtra Forest Rules, 1982, Amicus Curie

Application partly allowed

Dated: 19th October, 2013

In this Application, the Applicant alleged certain violations of the provisions of the Forests (Conservation) Act, resulting in damage to Forests properties and environment.

His main grievance was that Tendu leaves are unavailable before they dry up during Summer season. The process of natural drying of Tendu leaves takes time. The Tendu leaves are used for manufacturing of Bidis. The Forests department calls for tenders and give contracts for collection of Tendu leaves from the forests. The contractors in connivance of the Forests officers, set fire to dry leaves at the boundary of the Forests. The result of such artificial fire which spreads throughout the Forests, is such that it causes drying of Tendu leaves due to burning of the surrounding plants. The foliage, small birds, insects, reptiles and wild animals, are the victims of such artificial fire caused and spread in the Forests. The frequent incidents of such fire cause heavy damage to the ecology and environment. The activities of Tendu contractors are required to be controlled with heavy hand and, therefore, the Applicant moved the Authorities in the Government, but it was of no avail. Consequently, he filed an Application, which was treated as Suo Moto Writ Petition.

For determination of the Application, points are formulated as follows:-

1. Whether the measures taken by the Respondents for the purpose of Disaster Management on account of incidents of fire in the forests are adequate?

2. Whether it is necessary to give certain directions to make Disaster Management Plan more effective, in order to control repetitive occurrence of incidents of fire in the Forests?

The Maharashtra Forests (Protection of Forests from Fire) Rules, 1982, have been specifically framed, in order to deal with the problem of such incidents of fire in the Forests. The fact that problem exists is undisputed. The written submissions of Amicus Curie, go to show that incidents of fire had taken place in Forests of Melghat, village Dhakana (Tal. Dharni) and other places within the Forests area of Amravati district. The written submissions further show that it took considerable time to reach the spot of such places after the incident, because the same are located in the range of rocky hills. Some of the places are inaccessible by villagers.

The Tribunal is of the opinion that the Application will have to be partly allowed in order to protect Environment and ecology, as well as the Forests area. Consequently, the Tribunal partly allowed the Application and give following directions:

1. The Respondents shall make available the required funds for rehabilitation of affected villagers/Tribals for relocation to the new habitats, without any delay, and in any case, they shall

be provided with new accommodation with the required facilities, within a period of six (6) months hereafter.

2. The Respondents shall prepare a Disaster Management Plan (DMP) for protection of Forests and shall make available more number of G.P.S, fire beaters, fire brooms, fire rakes, Motor vehicle sets, Watch Towers by evolving particular standards based on scientific study and data collected, in accordance with the area of the Forests. So also, the Respondents shall provide Forests Guards, if necessary, on ad hoc basis by way of stop gap arrangement by giving seasonal appointments, as part of Disaster Management Plan, to protect the Forests from untoward incidents of artificial fire caused by mischief mongers or due to accidents, particularly between onset of summer season and commencement of rainy season.
3. The Respondents may fix liability on the Licensees of Tendu leaves under the Public Liability Insurance Act,1991, at the time of giving licence while accepting licence fee.
4. The Respondents shall increasingly adopt advance remote Surveillance Techniques like satellite based web applications for identifying the fires, among various Forest Management aspects.

In addition to above measures, the Respondents may take any other steps, which are found necessary to conserve and protect the Forests in the State of Maharashtra.

The Respondent Nos. 1 and 2 shall display the complete information about, the number of incidents of fires in the Forest areas, area of Forest affected by such fires and any other related information in respect of the entire state, on the Department's website, which shall be updated on quarterly basis.

The Application is accordingly disposed of.

J. Mehta
V
Union of India

Application No. 507/2013 Application No. 595/2013 Application No. 644/2013 Application No. 649/2013
Judicial and Expert Members: Mr. Justice Swatanter Kumar, Mr. Justice U.D. Salvi, Dr. D.K. Agrawal, Prof. (Dr.) P.C. Mishra, Dr. R.C.Trivedi

Keywords: EIA, Ambience Developers, Violation, Environment clearance, parking.

Application allowed partially

Dated: 24th October, 2013

The applicant is a resident of Delhi and claims that he has a serious interest in environmental issues. Being affected by the flagrant violations of the laws/EC by Respondent No.9 (Ambience Developers (P) Ltd.), the applicant has been compelled to approach the Tribunal.

As per the EIA Report, Occupancy Certificate, Completion Drawing Site Plan and the Area Details, clearly shows that these documents do not contemplate lower ground floor, ground floor and upper ground floor. In the project, only ground floor has been projected. According to the applicant, the comparison of actual usage against the building plan and occupancy certificate is significant i.e. nearly 24,691.974 sq.m. is being illegally misused by Respondent No.9. Respondent No.9 is stated to have set up 9 shops in the basements and multi-level blocks meant for parking. The construction has been changed and it has been shown as lower ground floor, upper ground floor, ground floor, etc., which is not so prescribed either in the plans or the occupancy certificate. As per the 'Mall Information' available on the website of Respondent No.9, the area is shown to have been divided into LG, UG, FF, SF, and TF. This is a clever attempt to hide the fact inasmuch as Basement-1 and Multi-level Block (2P) are being used for commercial operations as against the building plan sanctioned for parking.

According to the applicant, there is a clear violation of the EC, Master Plan of Delhi (MPD) Regulations, Environment Act and Rules made there under, Environmental Clearance Regulations, 2006 (for short the 'Notification of 2006'), Water Cess Act, 1977, Water Act, Air (Prevention and Control of Pollution) Act, 1981 (for short the 'Air Act') and Rules made there under, and Municipal Solid Waste (Management and Handling) Rules, 2000.

After the Tribunal cleared the case on the ground of Limitation and Cause of Action, the most important question that arose was whether the breach of conditions of EC is likely to cause environmental and health hazards or not. The Tribunal has already held that Respondent No.9 has not only violated the specific terms and conditions of the EC dated 27th November, 2006 but has also miserably failed to

submit an application for reappraisal of the project. Furthermore, the said Respondent No.9 has committed breach of the bye laws, fire safety measures, Corporation laws, etc. All the public authorities have specifically taken the stand that at no point of time, did they accord any permission or sanction for conversion of the parking area for commercial purposes and its misuse or unauthorized construction. In fact, according to them, they have taken appropriate steps against Respondent No.9 in accordance with law. This Tribunal is not concerned with the violations and breaches committed by Respondent No.9 with regard to other laws in force but only for environmental laws in terms of Schedule I to the NGT Act and its adverse impact on environment and public health.

It has come on record that approximately 59% of commercial area has been increased by such unauthorized conversion and misuse. The terms and conditions of the EC have specifically provided that in the event of any change in the scope of the project, Respondent No.9 was expected to take steps for reappraisal of the project and take fresh EC, which admittedly, has not been done by Respondent No.9 despite lapse of considerable time. These violations would consequently have a direct impact on traffic congestion, ambient air quality, contamination of underground water, sewage disposal and municipal solid waste disposal besides other adverse impact on population density in the area. With the significant change of commercial area by 59%, the EC itself would be substantially affected and it would be for the authorities concerned to examine whether the EC can be continued or requires to be recalled. The EIA Report submitted by Respondent No.9 itself shows that these are the various aspects, the variation of which is bound to alter the entire basis for grant of the EC. For instance, the parking for 1772 cars was to be provided in the project in terms of 56EIA report. For this purpose, the basement, lower ground floor in one block and the multi-level car parking in the Block 2P had been provided. Major part of this area had been converted and used by Respondent No.9 and other private respondents for commercial purposes. It is not even the case of Respondent No.9 that the required number of cars can be parked in that building. The cars which could have been parked in the building now would have to be parked on the public roads/places leading to lowering the road capacity resulting in lowering the average speed of the vehicle, consequently increasing the air pollution. It is noteworthy that the DPCC, in furtherance to the orders of the Tribunal, had conducted an inspection on 22nd April, 2013, as afore-referred, wherein in addition to misuse, it had also noticed the deficiencies pertaining to the functioning of the STP and re-use of the treated water.

The apparent and obvious environmental consequences of such substantial change by the project proponent in the scope of the project are with regard to the increased inflow of people, its impact on sewage, air and water parameters and collection and disposal of municipal wastes. Violation in the prescribed parameters, as noticed above, is bound to have adverse impact on environment and public health. This is bound to cause hazardous problems in relation to the public health amongst others in relation to breeding of flies and other vectors. The STPs would be unable to take such increased load and there will be a material change in the parameters under the Water and Air Act. This would be substantial disturbed. All this certainly amounts to change in the scope of the project and would require reappraisal of the project itself. Permitting such continued violation would seriously jeopardise the environment, public health and even the larger public interest. The Tribunal, while drawing a balance, would hardly be impressed by the continuation of that injunctive order, which would also jeopardise the financial interest of project proponent. Financial burden on Respondent No.9 cannot be the consideration for compromising the environmental and public health interests. Individual interest must give way to larger public health and environmental interest. The conduct of Respondent No.9 in entering into agreements with various

other private respondents and converting the parking areas for commercial use without approval/consent/permission of the competent authorities and making money and hugely gaining monetarily in this context would, in any case, disentitle him from even raising the contention of financial constraints or difficulties at this stage now.

Ergo, for the reasons recorded above, the Tribunal gave the following orders:

(a) Accept the application filed by the applicant partially;

(b) Prohibit the use of the basement (including Upper Basement, Lower 1 Basement and Lower 2 Basement) and the Ground Floor and First Floor of the multi-level car parking for any commercial use or other uses except for parking and services, as provided under the EIA Report and in the EC dated 27th November, 2006;

(c) Direct the MoEF to examine the case of the project proponent (Respondent No.9) for continuation or otherwise of the EC in accordance with law and in the light of this judgment;

(d) Direct the DPCC also to examine the case of the project proponent for grant/continuation or otherwise of its consents under the provisions of the Air Act and the Water Act in accordance with law and the contents of this judgment;

(e) Direct the MoEF and the DPCC to conduct periodical inspections to ensure compliance of conditions subject to which clearance/consent will be granted; and

(g) Grant liberty to Respondent No.9 to apply for reappraisal of the EIA Report and the EC dated 27th November, 2006. If such an application is moved, the competent authorities shall consider the same in accordance with law and with due regard and care for improvement of environment and public health. However, there shall be no order as to cost.

Invertis University
V
Union of India and Ors.

Application No. 185/2013

and

Jyoti Mishra and Ors.

V
MoEF Ors.
Application No. 187/2013

and

Rayons Enlightening Humanity and Anr.

V
MoEF Ors.

Application No. 186/2013

Judicial and Experts members: Mr. Justice Swatanter Kumar, Mr. Justice U.D. Salvi, Dr. D.K. Agrawal, Prof. (Dr.) P.C. Mishra, Dr. R.C.Trivedi

Keywords: Municipal Solid Waste, Violation, Environment Clearance, CPC, Bareilly.

Application disposed of

Dated: 24th October, 2013

Applications No. 86/2013, 99/2013 and 100/2013 were filed by Rayons-Enlighting Humanity (a Society registered under the Society Registration Act, 1860), & Anr., Invertis University and Jyoti Mishra & Ors. (a group of residents of Village Razau Paraspur, Bareilly), respectively, challenging the establishment and operation of a Municipal Solid Waste Management Plant (for short the 'MSWM' Plant), a project of Nagar Nigam, Bareilly, at Village Razau Paraspur, Bareilly. In these applications, it had been stated that operation of the plant was illegal, being in violation of the EIA Notification, 2006 (for short the 'Notification'), and the applicants had prayed for quashing of the Circular dated 15th January, 2008, of the Ministry of Environment & Forests, which permitted the establishment and operation of the plant; awarding compensation due to health hazards suffered by various persons, including the applicants; directing restoration of the site to its original state; and shifting of the MSWM plant to a duly recognised site. The challenge had been raised on the ground that it was being established at a site which was not approved and that the NOC dated 3rd January 6, 2005 was illegal and not in accordance with law. It was mandatory for Respondent No.4 to obtain environmental clearance (for short the 'EC') from the

competent authority in terms of the Notification and that the MSWM plant would have had adverse effects on public health and environment as it is in the midst of educational institutions, hospitals and village community.

The Tribunal passed a final order on 28th May, 2013 closing the MSW Management plant at Razau Paraspur, Bareilly and giving other prohibitory orders. (Read the final order here: http://www.greentribunal.gov.in/judgment/992013(App)_18July2013_final_order.pdf)

Now, after the pronouncement of the final judgment on 18th July, 2013, the applicants have filed three different applications. The Averments filed are, despite the final order the Corporation persisted with dumping of solid waste at the site in question at Village Razau Paraspur, Bareilly, in violation of the order of the Tribunal. Thus, it was prayed that suitable action in accordance with law be taken against Respondents No. 4 and 5 (Municipal Corporation, Bareilly and Dr. I.S. Tomar, Mayor respectively) for violating the orders dated 28th May, 2013 and the judgment dated 18th July, 2013. Along with these applications, various photographs have been filed showing that on different dates, even on 20th July, 2013, the Corporation was bringing municipal solid waste and dumping the same indiscriminately at the site in question and in the open area. Respondent 5 has also called the final order biased in an interview to a newspaper.

The applicants in this application also aver that with the intention to harass the residents in the vicinity of the impugned MSWM plant, the Corporation has resorted to dumping the municipal solid waste on the open land around NH-24 adjoining the Villages Razau Paraspur, Padarathpur, Bhindaulia, etc.

According to a report submitted by the local commissioner appointed by the Tribunal, and various photographs that have been annexed show indiscriminate dumping of municipal solid waste at the site in question as well as on NH-24 and huge heaps of municipal solid waste lying both inside and outside the sheds at the site. They also show newly dug pits at the site in question, carcasses lying at the dumping site and municipal solid waste lying all along the small road in huge heaps. The Local Commissioner placed on record the municipal solid waste Register maintained by Respondent No.4 at the site in question. The report also exposes a complete violation of Municipal Solid Wastes Rules as well as unscientific handling of municipal solid waste.

It has been stated at the Bar during the course of arguments upon instructions from the officers that nearly 280 tons of municipal solid waste is collected every day in Bareilly. If that be so, it shows that the Corporation is capable of collecting 280 tons of municipal solid waste and bringing it to the site. In that case, there should be no reason as to why they could not remove the entire waste or at least a major part in a period of four weeks. It is obviously lack of intent on the part of the Respondents No.4 and 5 to carry out the orders of the judgment of the Tribunal dated 18th July, 2013.

Thus, there is direct and unquestionable evidence to show that the order of the Tribunal dated 28th May, 2013 and the judgment dated 18th July, 2013 have been violated, that too intentionally and with full knowledge, by Respondents No.4 and 5. This evidence is in the form of newspaper clippings, photographs, report of the Local Commissioner, affidavits of the applicants and the letters exchanged between the District Magistrate's office and the Commissioner, Municipal Corporation, Bareilly.

The Tribunal has no hesitation in holding that both the Respondents No. 4 and 5 have violated the orders of the Tribunal and thus have committed offence which would invite the rigours of Section 26 of the NGT Act read with Order XXXIX, Rule 2-A of the CPC. The violation of the orders of the Tribunal has resulted in environmental degradation, health hazards and prejudice to the public health at large. Another very important aspect of this case is the restitution of environment at the site in question and its surroundings.

The following orders and directions are passed by the Tribunal:

(i) The Tribunal accepts the unconditional apology tendered by the Respondent No.5 for making such undesirable remarks in his Press interview and therefore decline to initiate criminal or other proceedings against him for bringing disrepute to the Tribunal and committing contempt of the Tribunal. The notice issued and the proceedings against him to that extent are hereby dropped.

(ii) For intentionally violating the orders dated 28th May, 2013 and 18th July, 2013, Dr. I.S. Tomar, Mayor and Sh. Umesh Pratap Singh, Commissioner, Municipal Corporation, Bareilly, are punished with civil imprisonment till rising of the court and payment of five lakh Rupees each.

(iii) For causing degradation to environment and injury to public health for the period from 28th May, 2013 to 27th July, 2013, the Municipal Corporation of Bareilly shall pay a sum of one lakh Rupees per day.

(iv) The Tribunal directs that all amounts payable by the respondents under this order would be deposited with the Deputy. Commissioner, Bareilly, as Chairperson of the Committee constituted under this order and all these amounts shall be utilised for complying with the directions contained in this order and if any amount still remains unspent, the same shall be used for setting up of an STP at an approved site in accordance with law.

(v) The Tribunal constitutes a Committee consisting of the following:-

a. Deputy Commissioner, Bareilly- Chairperson

b. Member Secretary, U.P. Pollution Control Board45

c. Director (Public Health), Government of U.P.

d. One representative of the Ministry of Environment and Forests (MoEF), being an Expert to be nominated by the Secretary, MoEF.

(vi) Respondents No.4 and 5 shall remove the entire municipal solid waste from the site in question within four weeks from the date of passing of this order and restore the site and environment to its original condition (as it existed prior to the establishment and operation of the MSWM plant).

(vii) The Tribunal also directs again, that no municipal solid waste shall be dumped at the site in question so as to prevent environmental pollution, contamination of underground water and injury to the public health. The said respondents shall dump the municipal solid waste only at the site which has been so approved and earmarked under the Master Plan of Bareilly, 2021, that too in a most scientific manner, and at no other place.

(viii) The pits that are dug at the newly designated site for dumping of municipal solid waste shall be prepared in accordance with the MSW Rules and with all scientific measures including lying of impermeable membrane lining.

With the above orders, all the three applications (O.A. No. 185/2013, 186/2013 and 187/2013), as well as the application for extension of time (M.A. No. 704/13) and application for directions (M.A. No. 710/13) stand disposed of.

Sri Balamurugan Modern Rice Mill
V
The Chairman Tamil Nadu Pollution Control Board Chennai and others

Application No. 179/2013(SZ)

Judicial and Expert Members: Shri Justice M. Chockalingam, Prof. Dr. R. Nagendran

Keywords: Rice Mill, Tamil Nadu Pollution Control Board.

Application is disposed of with directions

Dated: 24th October, 2013

This application challenges an order of closure made by the proceedings of the respondents on 19.07.2013 and also seeks to restore the power supply given to the rice mill of the applicant. The pleaded case of the applicant is that the applicant is running a modern rice mill in the name and style of M/s Balamurugan Modern Rice Mill situate at 55/68,A, Tirukovilur Main Road, Devapandalam Post in Villupuram District which is indulging in hulling of paddy, boiling, drying, shelling, polishing operations etc. The Wife of the applicant is also running another rice mill in the name and style of M/s Selva Murugan Modern Rice Mill in the same compound in which the applicant's rice mill is run. Both the rice mills of the applicant and his wife have the same electric service connection. Following an inspection made by the officials of the 2nd respondent Board, a show cause notice was issued to the applicant on 17.5.2012, whereby it was stated that the rice mill of the applicant is run without any consent and action was initiated. Not satisfied with the reply of the applicant the 2nd respondent Board issued a closure order on 19.07.2013 which is the subject matter of challenge in this application.

The Tribunal heard the counsel for the Board and the above factual position is admitted by the Board. It is also brought to the notice of the Tribunal that in so far as the rice mill being run by the wife of the applicant, the Unit is carrying on its operation with due consent issued by the 2nd respondent Board and the same is also being operated by taking the electrical energy from the only one service connection available within the compound for both the rice mills. Hence the counsel for the applicant made a request that the electrical service connection now available with M/s Selva Murugan Modern Rice Mill should not be disturbed and a suitable direction in this connection has also to be given. Admittedly, both the rice mills run by the applicant and the other run by the wife of the applicant are situated in the same compound. It is also admitted by the Board that the rice mill being run by the applicant's wife in the name and style of Selva Murugan Modern Rice Mill is being run with proper consent from the Board and the electrical service connection available in the compound is common for both the units.

As could be seen above, the closure order was issued by the Board in respect of the applicant's rice mill following a show cause notice and also reply placed by the applicant. It is quite clear that the applicant was carrying on the activities in the rice mill without the consent of the Board which the applicant should have obtained. Though the applicant had challenged the order, in view of the above circumstances he is not pressing for the relief. But, it is submitted by the counsel that an application for consent to operate was placed before the Board, the 2nd respondent and the same has got to be considered.

Without going into the merits or otherwise all the application, it would suffice to issue a direction to 2nd respondent to consider the application of the applicant for running his Balamurugan Modern Rice Mill on merits and in accordance with law.

Accordingly, a direction is issued to the respondents to consider the application for running the rice mill of the applicant on merits and in accordance with law and pass order within a period of one month here from. The application is disposed of with the above direction.

No cost

Filomeno Vincente Gregorio Tomaturga Rodrigues
V
State of Goa Anr.

Appeal No. 74/2013
Judicial and Expert Members: Shri Justice V.R. Kingaonkar, Dr. Ajay A. Deshpande

Keywords: Show cause notice, Goa Coastal Zone Management Authority (GCZMA), High Tide land, No Development Zone

Appeal disposed of

Dated: 26th October, 2013

The present appeal is being disposed of at the stage of admission itself in view of the peculiar facts and circumstances.

3 This appeal is directed against a Show Cause Notice issued to the Appellant by the Respondent No.2 (GCZM Authority). The Show Cause Notice dated 8th April 2013 (Annexure ''A'') is issued for calling upon the Appellant's say as to why certain directions as per Rule No.4 of the Environmental (Protection) Rules 1986 if no satisfactory explanation is given by the Appellant be issued. The Appellant was called upon to give explanation regarding legality of construction indicated in the Show Cause Notice.

Perusal of the Show Cause Notice reveals that seven constructions were shown to be existing in Survey No.53/6 of village Torada, within 100 metre from High Tide Land (HTL) of the river/Sea. It is the case of the Respondent that the said construction falls within No Development Zone NDZ. The Tribunal does not think it proper to give any finding on merits of the case, because it may prejudice either of the party while deciding the facts by the Respondent No.2-Authority after collecting due evidence. The Counsel for Respondents states that small Committees are being now formulated, as per directions of this Tribunal. He further submits that without prejudice to the present Appeal, the reply of the Appellant will be considered on merits, independently, and hearing will be given to the appellant. We, clarify that in the previous order, which was passed by consent of the parties on 13th March 2013, in Appeal No.59 of 2012, no finding on merits was recorded in respect of any of the property shown in the Show Cause Notice and the Tribunal had never concluded that those constructions violate CRZ Notification. That issue was completely left to the inquiry to be conducted and the finding of the Respondent No.2-Authority. The Respondent No.2 was, therefore, required to make due inquiry in this behalf and give fact finding, after issuing the Show Cause Notice. Since the Appeal is only against the Show Cause Notice, the Tribunal does not find it to be maintainable, because the appellant has legal right to representation through reply. The Appellant shall be given due hearing by the Respondent No.2-Authority before recording the finding and passing of the final order. The Appellant, however, shall remain present before the Authority after receipt of the Notice on the date of hearing and failure of the Appellant on two occasions to appear may entail forfeiture of his right, in case, the Authority does not deem it proper to grant any further time. However, sufficient time of not less than three weeks shall be granted by the Authority to the Appellant for the purpose of hearing. The appeal is accordingly disposed of. No costs.

Vajubhai Arsibhai Dodiya Ors.

V
Gujarat PCB Ors.

Application No. 64/2012

Judicial and Expert Members: Shri Justice V.R. Kingaonkar, Dr. Ajay A. Deshpande

Keywords: Gujarat Ambuja Cements Ltd., Section 14, 15, Poisonous dust, Pollution, GPCB, compensation.

Application is disposed of

Dated: 31st October, 2013

The Applicants have filed this application under Section 14 and 15 of NGT Act 2010 against the Respondent No 5 i.e. the Cement Plant of M/s Gujarat Ambuja Cements Ltd., alleging that it is being operated in contraventions of the provisions of the Environment (Protection) Act 1986, Air (Prevention and control of Pollution) Act 1981 and Water (Prevention and control of Pollution) Act 1974. The Applicants claim to be agriculturists and have their own lands near Respondent No.5 Company. It is the case of the applicants that Respondent No 5 has not provided proper facilities for disposal of liquid and solid wastes, proper drainage system for disposal of poisonous chemical and water dust/ powder containment System in its cement plant and repeatedly, it is noticed that the pollution is spread away in the nearby areas of the cement company which has destroyed valuable crops, trees, vegetables, wells and agriculture lands of the agriculturists.

The applicants submit that on the night of 1st May, 2011, an accident took place in the cement plant of Respondent No 5 Company due to which poisonous dust and powder spread over the nearby areas. The said accident was so severe that poisonous gas, cement dust had spread over the nearby area and destroyed all the agricultural products grown in the nearby vicinity of the cement company.

The Respondent Company submitted details about their corporate philosophy of environmental protection and sustainability in detail. The Respondent Company further submit that it has installed latest available equipment for controlling pollution and emission measurement devices for continuous source emission monitoring as well as continuous Ambient Air Quality Monitoring. The Respondent No.5 further submitted that vide their letter dated 07/05/2011, they had informed the Regional Officer of GPCB (Gujarat Pollution Control Board), Respondent No 1 herein, about the technical fault occurred on account of damage caused to clinker crusher shaft in its plant on 28/04/2011. The said technical problem was rectified and plant was restarted on 30/04/2011 at 7:15 PM. However, on restarting the plant, it was noticed that there was operational problem at the pre heater of the plant, resulting in material getting jammed and consequent filling up of cyclones in the plant.

The Tribunal dealt with the following issues for decision in this matter.

1) What is the nature and quantum of the impact of the excessive air emissions in the accidents dated 1st May, 2011 and 13th July, 2011?

2) a) Whether the agricultural crops of the Applicants are damaged and if yes, then to what extent?

b) Whether the Applicants are entitled to any compensation / damages?

3) Whether the response of the industry was adequate and as per the provisions of law?

4) Whether the Respondent Board has erred in directing the Industry to settle the claims by the mutual understanding?

It is an admitted fact that there was an accidental release of excessive air pollution from the cement plant of Respondent No 5 Company on 1st May 2011 due to which, certain quantity of industrial waste dust was dispersed around nearby areas of the Respondent No 5 Company. It is admitted fact that such accidental release happened from a height of about 100 metres and therefore, the area of dispersion of the dust need to be considered in view of such a height and also the prevailing wind tunnel and other Meteorological conditions. It is submitted by the Respondent No 5 Company that the said dust was of the chemicals containing CaCO3 (Calcium carbonate) and therefore, it is a non-hazardous material.

Though the Tribunal would have reservations on such low reported values which needs to be reviewed for the analyser installation, analyser calibration and also the data sanctity aspects, yet the GPCB is directed as follows :-

1. To investigate why detailed response has not been filed in the Tribunal along with all the technical information and take necessary action, if required, against concerned officials.

2. Carry out investigations to assess the compliance status of industry, adequacy of the air pollution control systems, more particularly in view of use of AFR and chemical gypsum and its impact of chemical composition of the dust emissions.

3. Review the efficacy and accuracy of the continuous emission and ambient air monitoring systems at the industry.

The Member Secretary of the GPCB is directed to submit the compliance report on above aspects in next three months. The Tribunal has duly considered written statement received by post, sent on behalf of the Applicants. However, once it is found that there is no tangible material to hold that the crops of the Applicants were impacted due to accidents in question, it is difficult to consider the arguments, particularly based upon environmental principles enumerated in the submission. However, this will not come in the way of the Collector or any other authority to consider claims of the applicants, if any, in case the independent enquiry substantiates any part of the claim on the basis of the proof given by them or as a result of the enquiry made by the authority. It is an admitted fact that the Respondent 5 industry had formed a Committee of experts to assist the damages due to emission of the dust during the incident occurred on 1st May 2011 and accordingly identified the agriculturists, where damage of agriculture has been reported. Further the industry has predicted the impacts zone based on the emission data as well as meteorological data which is extended up to 3 kilometres from the industry in the down wind direction. The Tribunal therefore, deems it proper to direct the Collector and District Magistrate to verify whether all the agriculturists in the said impact zone have been duly compensated as per the formula derived by the Expert Committee formed by the Respondent No 5 industry. In case, he observes that some farmers have not been compensated he shall ensure that the appropriate compensation is released by the industry

and received by the respective farmers. A compliance report in this behalf shall be submitted within three months. In view of the above, the above application stands disposed off. The Tribunal deems it proper to impose exemplary cost of Rs. 1 lakh on Respondent Nos.1 and 2 together for non-filing of adequate response and not assisting the Tribunal for proper and effective adjudication of the matter and also, of Rs. (five) 5 lakhs on Respondent no 5 for not immediately informing about the accident and also, the release of pollutants, to the concerned regulators including the GPCB and District Administration. In case of default of payment of the said costs, in the manner stated above, the Tribunal will be constrained to direct attachment of the constructed building of the Respondents concerned and may issue further directions for suitable legal action as per NGT Act, 2010.

Sandeep Lahariya
V
State of M.P. and Ors.

Application No. 04/2013(CZ)

Juducial and Expert Members: Mr. Justice Dalip Singh, Mr. P.S.Rao

Keywords: Plastic Waste, Management, Health hazard, Littering, Gwalior, Compliance, Interim order

Application disposed of

Date: 11th November, 2013

This is a case filed as PIL in Writ Petition No.1042/2012 in the High Court of Madhya Pradesh Bench at Gwalior by one, Mr. Sandeep Lahariya with a prayer to direct the respondents to ensure compliance of the Plastic Waste (Management and Handling) Rules, 2011 in letter and spirit and to stop use, sale and storage of plastic carry bags and packaging alleging that the standards of manufacture and disposal of polythene are not being followed leading to littering on the roads, clogging of drains and health hazard to human beings and cattle.

The petitioner claiming to be a spirited citizen of Gwalior city, averred that he is aggrieved by the indifferent attitude of the respondents who are not taking any action to ensure compliance of Plastic Waste (Management and Handling) Rules, 2011 (for short, 'Rules of 2011' framed by the Government of India, Ministry of Environment and Forests under Environment (Protection) Act, 1986. Under these 'Rules' the use of coloured plastics has been banned in food items, and the use of plastic carry bags made of virgin, recycled or compostable plastic less than 40 microns in thickness is absolutely banned. Even manufacture, distribution, storing, selling etc. of polythene less than 40 microns is banned throughout the country. He further contended that plastic carry bags less than 40 microns in thickness are being used indiscriminately creating severe environmental hazard. The petitioner also highlighted the menace of huge quantity of plastic waste being generated because of the indiscriminate use and littering of plastic carry bags not only in the city of Gwalior but all other parts of the State of Madhya Pradesh causing havoc to the environment and creating health hazard to the human beings and cattle. It is the case of the

petitioner that the authorities concerned which are vested with the powers to implement the 'Rules of 2011' in the interest of protection of environment, utterly failed in performance of their duties.

Certain traders who claimed that they are in the business of production of plastic carry bags have filed a Miscellaneous Application seeking certain clarifications on the interim orders of the Tribunal and the same was admitted and the applicants in the Misc. Application have been permitted to intervene and were impleaded as respondent no. 6. Later on, considering the gravity of the case, the highest authorities in the State vested with administrative powers to supervise the implementation of the 'Rules of 2011' have also been impleaded as respondentsmaking Principal Secretary, Urban Administration & Development Department as respondent no. 7, the Commissioner, Urban Development as respondent no. 8, the Commissioner, Bhopal Municipal Corporation (BMC) as respondent no.9.

There can be no denying the fact that as a result of indiscriminate use of plastic / polythene carry bags and its un-regulated discarding has resulted in pollution of the environment and is affecting not only human beings but other living beings for which stringent steps for enforcement of the laws and regulations in force are required to be implemented. Not only that, in many countries and some of states in India it is being considered that there must be now a total ban on the manufacture, sale, distribution and use of poly / plastic carry bags.

What Makes Plastic Bags harmful to the Environment?

Plastic bags are made of various chemicals such as xylene, ethylene oxide and benzene which are mainly toxic. Traditional plastic bags are usually made from polyethylene, which consists of long chains of ethylene monomers. Ethylene is derived from natural gas and petroleum. The polyethylene used in most plastic carry bags is either low-density or more often, high-density. Color concentrates and other additives are often used to add tint to the plastic. Plastic carry bags are commonly manufactured by blown film extrusion. The process of manufacturing the plastic involves various chemical processes and utilization of variety of chemical compounds and additives including phenols, amines and esters, antioxidants, UV and light stability improvers, antistatic agents, and heat stabilizers, which impart the finished product specific characteristics for its intended use. Consequently, these additives along with the polymeric material have potential to be released into the environment as a result of chemical reactions in the process of its degradation and the degraded products on release cause significant health and environmental hazards.

'Website Material on Plastic Waste Management' prepared by the Central Pollution Control Board in June 2013 lists the following environmental issues on indiscriminate littering of unskilled recycling/reprocessing and non-biodegradability of plastic waste:

i. During polymerization process fugitive emissions are released.

ii. During product manufacturing various types of gases are released.

iii. Indiscriminate dumping of plastic waste on land makes the land infertile due to its barrier properties.

iv. Burning of plastics generates toxic emissions such as Carbon Monoxide, Chlorine, Hydrochloric Acid, Dioxin, Furans, Amines, Nitrides, Styrene, Benzene, 1, 3-butadiene, CCl4, and Acetaldehyde.

v. Lead and Cadmium pigments, commonly used in LDPE(Low Density Poly / Ethylene, HDPE (High Density Poly / Ethylene) and PP (Poly Prophylene) as additives are toxic and are known to leach out.

vi. Non-recyclable plastic wastes such as multilayer, metalized pouches and other thermo set plastic poses disposal problems.

vii. Sub-standard plastic carry bags, packaging films (<40μ) etc. pose problem in collection and recycling.

viii. Littered plastics give un-aesthetic look in the city, choke the drain that may cause floods during monsoon.

ix. Garbage mixed with plastics interferes in waste processing facilities and also cause problems in landfill operations.

x. Recycling industries operating in non-conforming areas are posing threat to environment to unsound recycling practices.

These apart it is reported that they end up the solid waste disposal sites and burnt. In many cities it is reported that these fires never die down. The emissions as a result of this unlawful activity are polluting the air by releasing toxic fumes in the atmosphere, as opposed to following the incineration norms in accordance with the Municipal Solid Wastes (Management and Handling) Rules of 2000.

- **Use of biodegradable and eco-friendly substitutes to Plastic carry bags**

Besides creating awareness among the general public on the ill effects of indiscriminate use of plastic carry bags, the authorities should strictly implement the 'Rules of 2011' and encourage manufacture and use of qualified substitutes to plastic carry bags by way of granting subsidy to the manufacturers at least to begin with. Evolving a tax preferential policy to manufacturer of biodegradable plastic bags and substitutes to plastic carry bags may also be explored. The totally biodegradable plastic bag is less competitive than the non-biodegradable or partially biodegradable ones for its high-tech, high production cost and small scale. Therefore the government may consider evolving a policy to encourage production of totally biodegradable plastic bags.

- **Creating more awareness among the general public on the ill effects of indiscriminate use of plastic carry bags and encourage them to go for alternatives**

The efforts made by the respondents by making a good beginning in creating awareness among the general public in the state of Madhya Pradesh on the harmful effects of plastic carry bags, are appreciated. Nevertheless, there still leaves much to be desired. Public awareness on environmental protection by using alternatives to plastic carry bags has to be enhanced and efforts have to be sustained. Apprising children in schools and colleges, general people by way of documentary on television & radio, talks in Gram Sabhas of Panchayats and through banners and hoardings in towns among others.

- **Imposition of ban on the manufacture and use of plastic carry bags**

Some of the countries in the world and some States and Union Territories in India have completely banned the manufacture and use of plastic carry bags. Governments around the world are dealing with the plastic bag menace in different ways. Bangladesh imposed an outright ban on all polyethylene bags in the capital, Dhaka. Bangladesh was the first country to ban plastic bags in 2002 amid worries that they were blocking drains during the monsoon.

Under rule 9 of the 'Rules of 2011', every manufacturer of plastic carry bags, multilayer plastic pouches, sachets needs to be registered with the Pollution Control Board by submitting the information as per Form-I. Under clause (c) of rule 9 no manufacturer can carry out the activity without prior registration and that requires compliance of the Air and Water Acts of 1981 (Act 14 of 1981) and 1974 (Act 6 of 1974) and the rules made there under Rule 10 of the rules mandates that no carry bags shall be made available free of cost by retailers to consumers. It is the duty of the Municipal Authority to determine and notify the minimum price of the carry bags depending on their size and quality which also inter alia covers the taking into consideration of the "waste management costs".

The Tribunal does not find that sufficient compliance of these provisions has been made. In case the cost or price of the carry bag is fixed also taking into account the cost of waste management and particularly collection by the authorities and is made prohibitive it may discourage the consumers from asking for the supply of carry bags which are in practice given free of cost. The amount which would include the cost of waste management and collection in particular should necessarily reach the Municipal Authorities for being utilized for this purpose.

Thus the State Government, the Pollution Control Boards and the Local Municipal Authorities should work out a mechanism for recovering this cost for waste management and is included in the price at the initial stage of the manufacture itself. This would be simpler as after leaving the place of manufacturer the plastic carry bags would have changed several hands.

Considering all the above and the directions already issued by the concerned authorities of the state of Madhya Pradesh and the initiatives which have been taken by the MP Pollution Control Board have been conveyed to all the concerned parties and the District Administration of all the districts in the state and as they require some time for full implementation of the 'Rules of 2011', the Tribunal disposes this petition at this stage.

However, it is considered appropriate to direct the Secretaries, Urban Development and Administration Department and Pollution Control Boards of all the three States i.e. Madhya Pradesh, Chhattisgarh and Rajasthan to closely monitor the implementation of 'Rules of 2011' in their respective states and shall file affidavit separately on the progress made in this regard on strict implementation by way of quarterly reports beginning with quarter ending with 31st March, 2014 and ending with 31st December, 2015 for the next two (2) years hereinafter, in the Registry of National Green Tribunal, Central Zone Bench at Bhopal along with copy of report sent to the Central Pollution Control Board under rule 12.

The applicant as well as the intervener Respondent no. 10 are at liberty to approach this Tribunal as and when they have sufficient evidencea to prove that the respondent authorities have shown indifference in implementing the 'Rules of 2011' and breached the orders of this Tribunal. Liberty is also given to the State Governments and Pollution Control Boards of Rajasthan and Chhattisgarh States to approach this Tribunal in case they deem it necessary to seek any clarification or intervention.

The Application stands disposed of.

The Gram Panchayat Tiroda Anr.

Vs

The MoEF and Ors.

Appeal No. 2/2013(WZ)

Judicial and Expert Members: Mr. Justice V.R. Kingaonkar, Dr. Ajay A. Deshpande

Keywords: Limitation, Tiroda, Section 16, Environmental Clearance, Communication, Sindhudurg.

Application disposed of

Dated: 25th November, 2013

The Appellants have filed this Appeal under Section 18(1),14,15,16,17 of the National Green Tribunal Act, 2010, against the order of Respondent No.1, issued vide letter bearing No. No.J-11015/1026/2007-IA, II(M), dated 27.5.2013 and received by the Appellants on 12/8/2013, whereby the Ministry of Environment and Forests(MoEF) Respondent No.1, herein, revived the Environment Clearance (EC) dated 31.12.2008 (No.J-1105/1026/2007-IA. II(M), for the project Tiroda iron Ore Mine (ML area 34.4812 ha and production capacity 0.40 MPTA) at village Tiroda, in Sawantwadi Taluka, in Sindhudurg district in Maharashtra in favour of M/s Gogte Minerals, Respondent No.5, herein, by which the said company was granted EC for mining in the aforesaid area. The Appeal falls in fact, only under Section 16 of the National Green Tribunal Act, 2010.

An earlier appeal against EC granted to M/s Gogte Minerals, Respondent No.5, had been disposed of by the Tribunal with directions to keep it in abeyance and seek fresh clearance on the basis of a new EIA.

Now, the Appellants have sought to set aside the revival or order dated 27.5.2013, reviving EC dated 31.12.2008, claiming that despite the specific directions of the Tribunal in the above Judgment and also specific order, the Respondent No.1, has been casual in analyzing the impact of the proposed mine and also, cumulative impacts of various activities, including the mining in the project area.

The Counsel for the Respondent No.5 raised preliminary issue of limitation and submitted that the present revival of EC is dated 27.5.2013. He further submits that as per para (13) of the MoEF affidavit, this EC has been uploaded on MoEF website on 29.5.2013, whereas, the present Appeal has been filed on 31.8.2013. He, therefore, submits that there is delay beyond 90 days in filing of the Appeal from the date of uploading of the EC on the MoEF website, which cannot be condoned by the Tribunal, as per the provisions of National Green Tribunal Act and also, as per earlier Judgment of the Tribunal in this regard. The Counsel for Respondent No.5, heavily relied on the Judgment in Appeal No.1 of 2013, which is of five (5) Member Bench headed by the Chairperson of the NGT (PB). He submits that as per view taken in this Judgment, "the discharge of one of set of obligation in its entirety by any stakeholder would trigger the period of limitation, which then would not stop running and equally, cannot be frustrated by mere non-compliance of its obligation to communicate or place the order in public domain by other stakeholders". He also referred to para (17) of this Judgment, where it is mentioned that the period of limitation beyond 90 days is non condonable and the Tribunal is not vested with jurisdiction to condone the delay beyond 90 days. He, therefore, vehemently argued that as the Appeal has been filed beyond period of 90 days, the Tribunal has no jurisdiction to condone the delay and therefore, the Appeal be

disposed of on this ground itself.

The Counsel for Appellants submit that even the Judgment of the Principal Bench in Appeal No.1 of 2003 which has been extensively referred by the Counsel for the (wz) Respondent relied upon, defines the word "communication" in para 16 as follows: 'A communication will be complete once the order of granting Environmental Clearance is placed in public domain by all the modes referred to by all or any of the stakeholders. The Legislature in its wisdom has, under the provisions of the Act or in the Notification of 2006, has not provided any indicator or language that could be precept for the Tribunal to take any other view'. He, therefore, contends that as per the Notification of 2006, there are multiple modes of placing the Environmental Clearance in public domain namely website, paper advertisement, notice board displays by MoEF at its Head Quarter and also Regional Office and notice board displays by other public authorities including SPCB, Gram Panchyat etc. He, further states that there are three stakeholders namely MoEF, Project Proponent and other public authorities, who have been assigned the responsibility of putting the Environmental Clearance in public domain by one or more modes described earlier. He, further argued that the Legislature has given utmost importance to ascertain the views of the people about the proposed development as stipulated the EIA Notification 2006, and have therefore, incorporated detailed process of public hearing and consultation in the entire decision making process. At the same time, the Legislature has given equal importance on putting the information regarding the Environmental Clearance into the public domain to provide this information to the concerned local people and therefore, the intent to the Legislature is very clear that the information about the Environmental Clearance and the conditions stipulated therein should reach to the common people who many times do not have access to higher communication technology like websites and depends on print media and also, the information from the Government offices. He, therefore, strongly argued that as held by the National Green Tribunal, (Principal Bench), the communication can be complete only when the information about the EC is placed in public domain by the all modes referred in the Notification, including website, print media and notice board display. He further pointed out that the EC Notification of 2006 clearly stipulates that apart from hosting Environmental Clearance on MoEF website, the Project Proponent shall give an advertisement in the local newspapers about the Environmental Clearance along with important condition therein.

In view of above facts and circumstances, it is necessary to deal with following issues while deciding the question of limitation in the present appeal.

a) Whether the 'communication' as envisaged in the EIA notification 2009 and further elaborated in judgment of National Green Tribunal, Principal Bench in Appeal No.1/2013 is complete?

b) If so, what is the date of communication, which will trigger the limitation as provided in National Green Tribunal Act, 2010?

According to the Appellant, the publication of the EC on the website mandates that the same should be communicated to the Village Panchayat, Local NGO from whom the suggestion/representation had been received while processing the proposal. In the written submission such contention is raised by the Appellant. It is further submitted that the communication was never received by the Appellant. It is pointed out that the Clause (xv) of the EC letter dated 31st December 2008 has not been complied with. It is contended that the Respondent No.5 has wilfully disobeyed the conditions stipulated in the EC letter dated 31st December 2008 and as such the Respondent No.5 cannot be permitted to raise the plea of limitation. The Counsel for the Appellant contended that the Principal Bench of the National Green Tribunal in its Judgment dated 11th July 2013 in Appeal No.1/2013 (Medha Patkar Vrs. MoEF) interpreted the word "communication" as enumerated Section 16 of the National Green Tribunal Act as an act of putting in public domain and completing the acts as contemplated in MoEF Notification 2006, read with conditions of the EC. He, therefore, argued that mere information uploaded on the website of the MoEF cannot be treated as "communication" of the EC in question.

In other words, it is his contention that the limitation will not start running w.e.f. 29th May 2013 and therefore, the Appeal cannot be held as barred by limitation.

If the argument of Counsel for the Appellants is accepted and the commencement of the limitation period is held to be connected with compliances to be made by the Project Proponent and/or other public authorities, notwithstanding the uploading of EC letter on the website of the MoEF, then probably, the Appeal may not be within the stipulated period of limitation. For, the Project Proponent did not publish the EC letter in local newspapers.

Though there was such obligation under the conditions statutorily imposed. The other statutory bodies also did not place the information on the Notice Board. So, if such defaults are interlinked, excluding the date of the uploading of the information on the website of the MoEF, then perhaps the things would be different. The Tribunal has to, however, say nothing more in this context. It is bound by the view expressed by the Principal Bench in its judgment in Appeal No.1/2013 in case of "Medha Patkar" (Supra). The Principal Bench held that the first mode amongst the three (3) modes of publication will trigger the limitation. Obviously, it will have to be taken as the starting point of limitation.

It is well settled that once the limitation has started running, then it cannot be arrested. But for view expressed by the Principal Bench in the above matter, probably the Tribunal had some scope to consider the contentions of the Counsel for the Appellant.

The Tribunal wishes they could help the Appellants to wriggle out of the procedural difficulty. This is particularly so when the delay is marginal, unintentional and otherwise could be condoned in case legal provision like Section 5 of the Limitation Act is made applicable.

Moreover, the Tribunal finds that the project proponent is at fault since the EC letter was not placed in public domain by way of newspaper publication which was mandatory condition to be complied with by him. The Appellants require help to get out of such procedural default. There appears no way out for them despite the Tribunal's empathy tilted on their side. It cannot disregard the Judicial Dicta of the five (5) Members Bench in "Medha Patkar's case" (Supra) by which its hands are tied. Taking a stock of foregoing discussion, the Tribunal deems it proper to uphold the legal objection and conclude that the appeal is barred by limitation. Hence, it is dismissed. No costs.

Andhra Pradesh Pollution Control Board
V
M/s. Visakha Industries Ltd and another

Application No. 16/2012(SZ)(THC)

Judicial and Expert Members: Mr. Justice M. Chockalingam, Prof. Dr. R. Nagendran

Keywords: Asbestos Cement, Industry, Pollution, 10 km radius, lakes, Red category, appeal

Application Dismissed

Dated: 26th November, 2013

This application challenges an order of the Appellate Authority whereby an order of the Andhra Pradesh Pollution Control Board (for short 'Board') the 1st Applicant herein to stop all activities in the premises of first respondent/industry by 31.07.2011 and shift to an alternate place, was set aside.

The brief facts of appeal grounds can be stated thus:

M/s. Visakha Industries Limited, the first respondent in this appeal is an Asbestos Cement Product Manufacturing Unit established in the year 1985 in 3 Yelumala Village, R.C. Puram Mandal, Medak District, Andhra Pradesh. The industry is located within 10 km radius of Osman Sagar and Himayat Sagar lakes (hereinafter called 'the lakes'). The first respondent's industry is a Red Category industry as per the classification in the Notification dated 20.12.1999 issued by the Ministry of Environment and Forests (for short 'MoEF') and the said industry is also recognised in the list of polluting industry as per G.O.Ms. No. 2, Environment, Science and Technology (Environment) Department dated 23.01.1995 of the Government of Andhra Pradesh.

In view of the Government policy to shift industries located within 10 km radius of the lakes, the Apex Court and other courts, and with reference to the Government order dated 08.03.1996 various industries located within 10 km radius of the said lakes were identified and orders were passed for their relocation. The Government of Andhra Pradesh had also directed the Andhra Pradesh Industrial Infrastructure Corporation to allot lands to the industries to enable them to shift and relocate the industries.

The 1st respondent/industry was being reviewed for its performance periodically and in the meeting held on 18.11.2010 of the Task Force Committee, the performance of the 1st respondent/s industry was again reviewed and directions were issued to the 1st respondent/industry to stop all activities in the present premises by 31.07.2011 and shift to the alternate site provided by the Andhra Pradesh Industrial Infrastructure Corporation or any other place and to furnish a bank guarantee for Rs. 10,00, 000/- (Rupees ten lakh) only. The 1st respondent/industry approached the Appellate Authority in Appeal No. 6 of 2011 and the Appellate Authority passed an order on 25.03.2011 in the above appeal setting aside the order of the Board. It is 4the said order which has been impugned against which this appeal has been preferred by the Applicant/Andhra Pradesh Pollution Control Board.

The Appellate Authority had set aside the order of the Board directing the 1st respondent/industry to stop all activities in the present premises by 31.07.2011 based on the report of the 1st respondent/industry filed before the Supreme Court of India in February 2002 as well as the latest status report dated 04.03.2011 filed by the Board. The Appellate Authority took into consideration of the report of the Board filed before the Apex Court wherein it was stated that there was no water pollution from the 1st respondent/industry and that there were no boilers or furnaces except diesel generator sets which were occasionally used during power cut. There was no release of SO2/NOx emissions from the process of the 1st respondent/industry which is water polluting.

The only point for determination in the appeal is whether the order of the Appellate Authority made in Appeal No. 6/2010 dated 25.03.23011 has to be set aside for all or any of the reasons putforth by the appellant and the order of the 1strespondent/Board in the appeal before the Appellate Authority dated 02.12.2011 has to be restored.

Thus, it could be seen from the averments made that the 1st respondent/industry is neither a water polluting industry nor a pollution potential industry. The contentions put forth on the side of the applicant/Board that the directions to stop the activities and for shifting was issued to the 1st respondent/industry only in view of the adherence to the order of Supreme Court cannot be countenanced. The Apex Court has issued a direction to find out and file a report in respect of all the industries situated within 10 km radius of the lakes, but directed the State/Board not to permit any polluting industries within 10 km radius. Hence, to sustain the above direction to stop and shift the 1st respondent/industry the applicant/Board must be able to show that the 1st respondent/industry is a polluting or pollution potential industry. In the instant case, the 1st respondent/industry is shown to be situated within 10 km radius, but not as an industry polluting or with pollution potential. The Appellate Authority has correctly pointed out that the 1st respondent/industry is not at all a polluting industry to which the directions issued by the Supreme Court with regard to the relocation of industries can be applied. The Appellate Authority has also pointed out the 1st respondent/industry listed as Sl. No. 75 in the report though shown as falling under, red hazardous and 30 category, there was no water pollution from the industry, there was no emission of SO4 or NOX emission from the process, that there was no boiler or furnaces except diesel generator set which was occasionally used during power cut, that the industry is meeting the standards of pollution control norms. The contentions put forth by the 1st respondent/industry that the asbestos industry is kept under red category mainly due to the potential for occupational health hazards to those working in the industry and hence, the industry is to be exempted from the list of industries which are possible source of pollution threat to both the lakes has to be accepted. The 1st respondent industry which came into existence in the year 1999 and operational all along was in the list for careful monitoring of its operations from the year 2002 onwards. But, no action was taken all along these years cannot but be due to the meeting and maintaining of the prescribed standards all these years. As stated above, even the latest status report dated 04.03.2011 stood in support of the case of the 1st respondent/industry that the emission levels were within the prescribed levels and does not support the case of the applicant directing the 1st respondent/industry to stop its activities and shift to alternate place. Thus, the Tribunal is unable to find any reason or circumstances to interfere with the reasoned judgment of the Appellate Authority made in Appeal No. 6/2010.

Hence, the application is dismissed

National Green Tribunal Bar Association
V
Ministry of Environment Forests and Ors.

Application No. 708/2013

And

Application No. 685/2013

Judicial and Expert Members: Mr. Justice Swatanter Kumar, Mr. Justice U.D. Salvi, Dr. D.K. Agrawal, Mr. B.S. Sajwan, Dr. R.C.Trivedi

Keywords: Sand Mining, Madhya Pradesh, Environmental clearance, Ban, SEIAA, NGT Act Application dismissed

Dated: 28th November, 2013

Miscellaneous Application No.708 of 2013 has been filed by the M.P. State Mining Corporation Ltd., Government of Madhya Pradesh, praying for intervention and for being heard in Misc. Application No.685 of 2013 filed by the Department of Mineral Resources, Government of Madhya Pradesh. This Corporation was permitted to intervene and was heard by the Tribunal at length during the course of hearing of MA No.685 of 2013. This application stands allowed.

In M.A. No.685 of 2013, filed in the Registry of the Tribunal on 13th August, 2013, the applicant-State of Madhya Pradesh is praying for modification of the orders of the Tribunal dated 5th August, 2013 and 6th August, 2013.

It was further contended by the applicant herein that an application has been filed before the Tribunal with regard to the State of Uttar Pradesh where large scale illegal mining without prior environmental clearance was being carried out.

It is the case of the applicant-State that as a result of the above orders, even legal mining activity which has all the necessary approvals as per the applicable statutory provisions, is required to be shut down if it does not have approval of MoEF or State Environment Impact Assessment Authority (for short 'SEIAA'). The Environment Clearance (EC) has to be given by the District Level Environmental Committee as per the State law and because of the directions of the Tribunal, the mining activity has been adversely affected and is causing grave economic and developmental crisis. The State of Madhya Pradesh has thus, filed an appeal in the Supreme Court in terms of Section 22 of the NGT Act. It is contended that the District Level Environment Committee is competent to give environmental clearance for carrying on of mining activity in areas less than five hectares and therefore, the order should be modified to include the District Level Environment Committee in addition to MoEF and SEIAA as competent authorities to grant EC. This is precisely the prayer of the applicant-State of Madhya Pradesh in this application. The application has been opposed on behalf of MoEF as well as some other parties.

The pertinent questions in this case were:

1. Whether in face of the Notification of 2006 and the law of the land, stated in the Deepak's Kumar's case (supra), the State Government was competent in enacting a law in constituting and empowering District Level Environmental Committee to grant EC for carrying on mining of

minerals and sand in less than 5 ha. of area?

2. To answer this question, the legislative scheme behind both the Environmental (Protection) Act 1986 (for short the 'Act of 1986') and the Act of 1957 must be examined

The applicants in the main application while avoiding to comply with the restrictions of environmental laws were adopting unfair methods for carrying on the activities of extraction of minor minerals, particularly sand. Such applicants used to carry out this activity in various separate, yet adjacent blocks of less than 5 hectares thus eventually totalling up to a much larger area than 5 ha. This was being done to carry on mining activity on a large scale but by getting licence/lease deeds executed for the areas less than 5 hectares. Thus, while they were complying with the provisions of the Act of 1957, they were patently violating the provisions of the Act of 1986 and the Notification of 2006. This resulted in intervention by the highest court of the land in the case of Deepak Kumar (supra), wherein the Supreme Court, by a detailed judgment, put a check on continuation of such unfair and unjust practices. This practice was not only environmentally injurious but was even causing financial loss to the States concerned or the Centre.

The SC held *"We, therefore, direct to all the States, Union Territories, MoEF and the Ministry of Mines to give effect to the recommendations made by MoEF in its report of March 2010 and the model guidelines framed by the Ministry of Mines, within a period of six months from today and submit their compliance reports... in the meanwhile, order that leases of minor mineral including their renewal for an area of less than five hectares be granted by the States/Union Territories only after getting environmental clearance from the MoEF.*

Now, any person wanting to carry on the activities of mining in respect of non-coal mines irrespective of the area of the mining lease was required to take environmental clearance from the authority concerned i.e.MoEF at the central level or SEIAA at the State level.

The Supreme Court also considered the matter in terms of protection of environment and control of pollution with regard to mining of minor minerals, in the case of *Deepak Kumar* (supra), wherein the Court specifically held that lease in relation to mining of minor minerals even in regard to areas less than 5 hectares, should be granted by the State only after getting clearance from MoEF. In paragraph 22 of this judgment, the Supreme Court noticed the instructions issued by MoEF in the form of recommendations for their incorporation in the Rules framed under Section 15 of the Act of 1957. All these instructions/ recommendations primarily related to the size of the mining lease and the requirements for carrying the mining activity, however, environmental issues were also touched upon in that paragraph. These model Rules of 2010 were considered vital by the Supreme Court from environmental, ecological and biological points of view. All these recommendations were stated to be relevant for the purposes of framing Rules under Section 15 of the 1957 Act and to achieve the objective of that Act. Despite all these directions, the Supreme Court culled out a specific order in relation to obtaining environmental clearance for such projects in paragraph 29 of the judgment. It may be useful to notice here that the Model Rules of 2010 did not deal with the grant of environmental clearance.

However, it did contemplate preparation of a regional environmental assessment and regional environmental management plan for the purposes of environmental clearance. These Rules also specifically provided for restoration, reclamation and rehabilitation in clusters.

The Supreme Court's direction for preparation of environmental plans has to be construed as a plan which would be in consonance with the existing law. Such plan cannot run contra to or be in conflict with the Central law. The contention of the State that in view of Rules 42 to 49 and 68 of the Rules of 2013, the environmental clearance would be granted by the District Level Committee is unsustainable. The environmental clearance under the Central law can only be granted by the MoEF or SEIAA, depending

upon the category of the project that comes up for consideration of these authorities. The State is vested with no power to change the system with regard to the grant of environmental clearance under law. The consideration and grant of environmental clearance is statutorily regulated by the Notification of 2006.
The State Government would not be competent to alter or completely give a go-by to the said statutory procedure and methodology and assume to itself any authority appointed by it to grant environmental clearance. The environmental clearance has to be granted by the authority specified under the Central law.

There have been a large number of cases of illegal mining in the State and huge amounts have to be recovered on account of penalty, charges etc. This itself shows that by the grant of mining leases/licences under its regulations, there has been huge illegal mining with great revenue loss to the State. The argument advanced by the State is self-destructive. Stringent regulation of mining of minerals is required. Due care, caution and prevention should be taken to ensure that no degradation of environment takes place. The objection that there being stagnation as well as delay in grant of EC is a mere administrative issue. Inconvenience is normally never a ground for changing the interpretation of law or reading words into a statute. The administrative difficulty can be resolved by MoEF in consultation with the State by creating larger number of committees (SEIAA) at the State level to ensure that applications for environmental clearance for mining of minerals are dealt with expeditiously and no stagnation on any front takes place as a result thereof.

In view of the above discussion, particularly the judgment of the Supreme Court in Deepak Kumar's case (supra) and the notification of 2013, the Tribunal finds no merits in this application. The same is dismissed in the facts and circumstances of the case. However, the parties bear their own cost

Medha Patkar Ors.

V
MoEF Ors

Review Application No. 9/2013

Judicial and Expert Members: Mr. Justice Swatanter Kumar, Mr. Justice U.D. Salvi, Dr. D.K. Agrawal, Dr.G.K. Pandey, Prof. A.R. Yousuf

Keywords: Review application, Limitation, Section 16, Environmental Clearance, MoEF, website

Application dismissed

Date: 28th, November, 2013

By this application the applicant-respondent, the project proponent in the main appeal seeks the review of our order dated 11th July, 2013 vide which the Tribunal had come to the conclusion that the above appeal had been filed within the period of limitation and was not barred by time and the objection taken by the applicant in regard to the appeal being barred by time was without substance and, thus, permitted the appeal to be heard on merits. The applicant seeks review of that order inter alia but primarily on the following grounds: -

a. The applicant has now produced on record, evidence by way of letters dated 19th July, 2013 written by the applicant to the Public Information Officer, National Informatics Centre, New Delhi and reply thereto dated 1st August, 2013, which evidence the applicant could not produce despite due diligence. This documentary evidence shows that the order granting Environmental Clearance (EC) dated 16th October, 2012 was uploaded on the website on 17th October, 2012 and the same was accessible to the public after uploading. Thus, the findings recorded in the judgment that the EC order could not be downloaded immediately after 17th October, 2012 is an error on the face of the record.

b. What has been recorded by the Tribunal in paragraphs 8, 9, 20 and 21 of the impugned order stated the case of the appellant which, in fact, was not even pleaded by the appellant. Furthermore, the judgment does not record the 'starting point' of the limitation and therefore, the judgment is liable to the reviewed by the Tribunal.It is the case of the Respondent that since no fault has been attributed to the Ministry of Environment and Forests (MoEF), therefore, the judgment is liable to be reviewed.

The facts of the case are:

The EC was granted by the MoEF to the project proponent on 16th October, 2012 and it is claimed that it was uploaded on the website on 17th October, 2012. The appeal had been filed on 30th January, 2013. The case of the appellant/non applicant, as pleaded even earlier, was that it is mandatory for the project proponent, SEIAA or the MoEF, as the case may be, to upload a copy of the EC on their respective websites. The project proponent or the MPPCB did not upload a copy of the order on their websites. The appellant could download the EC order from the website of the MoEF only in the second week of January, 2013. Also no copy of the EC was made available to the affected villagers and the stakeholders either by communication or through newspaper publication. The project proponent had violated the conditions of the order of the EC and such violation gave a continuous cause of action in favour of the appellant and there was no delay at all in filing of the appeal. The appellant had moved an application on 4th– 5th December, 2012 seeking a copy of the EIA Report and other documents, including the order of

EC. This letter was responded to by the MoEF in the second week of January, 2013 stating that information would be provided after digitization. However, it was only with the assistance of a lawyer that subsequently they could download the EC from the website of the MoEF and file the appeal. The applicant also pleads that the order of EC was not published in the local newspapers nor communicated to the local Government officers. Thus, according to the applicant, the limitation would start running only from the second week of January, 2013, thus, and the appeal was filed on 30th January, 2013 within the period of limitation. The project proponent has not discharged its obligations and in fact, is in complete breach of the terms and conditions of the order of EC as well as that of the Environmental Clearance Notification of 2006. This is not disputed even at this stage.

In terms of Section 16 of the NGT Act, an appeal could be filed within 30 days plus further period of 60 days upon showing a sufficient cause. Review is a wide power vested in the Courts or Tribunals. It is intended to correct the error or a mistake apparent on the face of the record but for which the Court would not have passed the order. If such error is persisted with or its perpetration shall result in miscarriage of justice then alone the courts would interfere in the matter of review. The Court has to take care of ensuring it is founded on the desire prevailing to prevent irretrievable injustice being done by a Court. In other words, it is primarily to prevent miscarriage of justice or injustice being done but at the same time the Courts or Tribunals have to ensure that equally no injustice is done to either side. (Refer: Lily Thomas vs. Union of India, (2000) 6 SCC 224). The documents which are sought to be produced now, firstly do not show that the conclusion drawn by the Tribunal is based on incorrect facts. Secondly, even the letter dated 1st August, 2013 of Mr. Swarup Dutta, CPIO (RTI) & Scientist 'D, NIC Hq. states as under:

"As per the data available in the database, the mentioned EC letter was uploaded on 17.10.2012. Since, the site is hosted in the Data Centre, it is available for public access and the permitted contents are available for download after uploading the same."

This is merely a statement and does not show in definite terms that the order dated 16th October, 2012 was downloadable after 17th October, 2012 from the website of the MoEF which, as afore noticed, was not entirely functional.The heavy reliance placed by the Ld. Counsel appearing for the review applicant upon the letter dated 1st August 2013 is misplaced. This letter re-affirms what has been averred by the applicant at the time of hearing of the application for condonation of delay. It does not create any new case or a case which has beenmade out upon discovery of new evidence which the applicant could not produce on the earlier occasion despite exercise of due diligence. Even if this document was there before us at the time of hearing of the application, in all probability the applicant herein would not have been able to persuade us to necessarily take a view different than the one we have already taken by condoning the delay. The Supreme Court in the case of Lily Thomas (supra) had clearly enunciated this principle that a review application cannot be considered favourably merely on the ground that a different view was probable and could have been taken by the Court or Tribunal.It further stated that the power of review can be exercised for correction of mistake and not to substitute a view.

Furthermore the letter dated 1st August, 2013 does not place the case of the review applicant on a better footing than what has been projected before us on the earlier occasion. In accordance with the language of 'Regulation 10' of the Notification of 2006 it is not merely the intimation of EC or any specific part thereof which 12has to be put on the website of the MoEF and/or the project proponent but the same should essentially be uploaded with all 'environmental conditions and safeguards' on the website.Placement of this information in its entirety in the public domain is mandatory and not optional at the desire of the project proponent. Mandatory conditions cannot be construed as directory and they must be applied with its rigors under the law.

The letter dated 1st August, 2013 besides being vague and uncertain, also restricts the downloading of the order dated 16thOctober, 2012. It does say that the letter is available for public access but could be downloaded only to the extent of permitted contents and after the same was uploaded. The expression 'permitted contents' clearly violates the spirit of 'Regulation 10' of the Notification of 2006. As aforenoted, an order of EC has to be uploaded with all the environmental conditions and safeguards and not to a limited extent and the same should be downloadable instantly. This obligation is placed both upon the project proponent and the MoEF. From the records before us, it is clear that both of them have failed to discharge their onus as required. It may also be noticed here that the adverse inference that the Tribunal had drawnin the main judgment was with reference to the affidavit filed on behalf of the MoEF and the letter dated 26th October, 2012 authored by the same officer of the MoEF. MoEF has not filed any review application, in fact on the contrary they are not even present despite service at the time of hearing of this application. It is not for the review applicant to justify or clarify the acts and deeds of 13MoEF. Even for these reasons we are unable to persuade ourselves to accept the contention of the review applicant.

The matters in issue in the present appeal raisesubstantial questions relating to environment and they require to be examined on merits. All that the Tribunal has done is to hold that the appeal is within time and should be heard on merits. The objections raised by the applicant in its review petition are void of any substance and merit and, therefore, deserve to be rejected.

Consequently, we dismiss the review application, however, leaving the parties to bear their own costs.

M/s. Divya Granites and Ors

Appeal No. 98-101 of 2013(SZ)
Appeal No. 105-113 of 2013(SZ)
Appeal No. 156-158 of 2013(SZ)

Vs.

The Karnataka State Pollution Control Board

Judicial and Expert Members: Shri Justice M. Chockalingam and Prof. Dr. R. Nagendran.

Keywords: Granite, Akravathi, Consent, Closure, Pollution Control Board, Water Act, Notification.

Dated: 16 December 2013

Appellants (Granite cutting Companies) have filed these appeals challenging the order passed by Karnataka State Pollution Control Board dated 29-7-2013, directing the closure of appellants' units which are engaged in granite cutting and polishing activities in Byndahalli and Kadabagare villages in North Bangalore under section 33 (A) of Water (Prevention and control of Pollution) Act, 1974 and rule 34 of Karnataka State Board for the Prevention and Control of Pollution (Procedure for Transaction Business) Rules and the Water (Prevention and Control of Pollution) Rules, 1976.

The appellants are engaged in cutting large blocks of granite stones into thin slabs and then polishing them. They have obtained necessary permission and general license from Dasanapuram Gram Panchayat and also obtained Value Added Tax Certificate from Department of Commercial Tax. The Bangalore Electric Supply Company Ltd. (BESCOM) has provided the electric power supply connection to the units of the appellants to operate the unit. They contended that the said process does not involve any air pollution and water pollution. Moreover the appellants' units are located at a distance of 1 km from the Arkavathi river bank. Appellants were granted consent by the respondent for operation under The Water (Prevention and Control of Pollution) Act, 1974 as per the order dated 23.03.2013. The consent for discharge of effluents was granted on 23.03.2013 which was valid till 30.09.2013 subject to conditions in respect of appellants in Appeal Nos. 98-101 of 2013.

It is further contended by the appellants that they have set up water recycling unit and also the effluent so discharged is disposed off as specified by the respondent. They have not violated any conditions imposed by the board. Moreover no allegations have been made by the public and no inspection is caused by the board alleging the pollution caused by the appellants.

The closure directions issued by the respondent (Board) are based on the Government Notification No. FEE 215 ENV 2000 dated 18.11.2003 and the Government order dated 12.01.2004 issued under Section 18(1) (b) of the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 of the Government of Karnataka, on the ground that appellants' industries are located within 1 km from Akravathi river bank i.e. Zone 3 as per the above said Government Notification, where no industrial activity is permitted.

The pertinent questions in this case are:

1. Whether the appellants' industries are located in Zone 3?And even if some of the industries are located beyond 1 km of the Akravathi river bank,can such granite cutting units be allowed to

operate in Zone 4?

2. Was it mandatory to obtain consent to establish and operate the industry under The Water Act ?
3. Whether opportunity of being heard and inspection by the Board are necessary before issuing directions for closure of industries?

Answering the first question The Tribunal held that the respondent Board was correct in holding that the land on which the industries were located, falls in Zone 3 and the contentions of the appellants that the industries are located beyond 1 km from the Akravathi river bank is factually not correct. Even though if it is assumed that some of the industries of the appellants are located beyond 1 km of the Akravathi river bank, these granite cutting units cannot be allowed to operate in Zone 4, since such industries are classified under Orange Category and only Green Categorised industries can be permitted in Zone 4, not Orange Category.

Further on the question of obtaining the consent of the State Board under The Water Act to establish and operate such industries the Court has relied on the earlier decision of the Apex Court in Andhra Pradesh Pollution Control Board Vs. B.V. Naidu, wherein it was held that the consent of the Pollution Control Board of the State is a condition precedent for establishment of an industry or for taking any steps for establishment. Thus, in the instant case all the appellants were carrying on their units illegally, without the consent of the Board. Further the contention of the appellants' that they have obtained necessary license from the local panchayat authorities cannot in any way confer any right on the appellants either to establish or operate their units in the absence of requisite consent under the Water Act.

Section 25 of the Water Act makes obtaining the consent for operation of industries discharging sewage or trade effluents into a stream or well or sewer or on land mandatory.

Even though 3 industries had obtained the consent, their consent was only valid till 30-09-2013 and such consent was not renewed.

So far the contention that before passing the impugned orders neither any inspection was made nor any opportunity of being heard was given, the drastic orders of closure of the units along with the direction to the BESCOM to severe electric connections, the Court held that as the appellants were carrying on the operations in the units without consent to establish or consent to operate, therefore their activities are illegal.

Moreover the closure directions were issued under rule 34 of Karnataka State Board for the Prevention and Control of Pollution (Procedure for Transaction of Business) and the Water (Prevention and Control of Pollution) Rules, 1976. The sub rule (6) of Rule 34 of the Karnataka State Board for the Prevention and Control of Pollution states that:

"In a case where the State Board is of the opinion that in view of the likelihood of grave injury to the environment, it is not expedient to prove an opportunity to file objections against the proposed direction, it may, for the reasons to be recorded in writing, issue directions without providing such an opportunity."

The respondent/Board has relied on the Government Notification No. FEE 215 ENV 2000 dated 18.11.2003 and Government Order dated 12.01.2004 issued under section 18(1)(b) of the Water Act and Air Act, respectively on the ground that the industries of the appellants are located within 1 km radius from the banks of the confluence of Rivers
Arkavathi and Kumudhavathi in which Tippagondahalli Reservoir (for short ‘ TGR) has been built which has been the source of drinking water to the city of Bangalore and surrounding areas since 1930 which is shown as Zone-3 as per the Government Notification dated 18.11.2003, where industrial activities are prohibited.
In the instant case, the appellants who have been carrying on their units in violation of law without consent to establish or consent to operate cannot be allowed to state that they were not given opportunity of being heard before the issuance of closure notice, in view of the larger interest of the society who are dependent for the drinking water from the Tippagondahalli Reservoir and the injury likely to be caused by the industries of the appellants. All the appellants by operating their industries illegally were causing water pollution in the Tippagondahalli Reservoir which had a direct impact on larger population of Bangalore.

Thus all the contentions put forth by the appellants were liable to be rejected and accordingly rejected. The Tribunal is unable to notice any infirmity in the impugned directions issued by the respondent/Board for the closure of the appellants' units.

Mohd.Mubeen
V
Anees Ahmed Ors.

Application No. 33/2013(CZ)

Judicial and Expert Members: Mr. Justice Dalip Singh and Mr. P.S.Rao.

Keywords: NGT Act, Ghana Jungle, Bhopal, Deforestation, Produce Sale.

Disposed of with directions.

Dated: 6th December, 2013

This application has been filed by Mohd. Mubeen (Applicant) under Section 18 of the National Green Tribunal Act, 2010 aggrieved with the action of the respondents 1 and 2 (a), (b)& (c) who are alleged to have indulged in deforestation of private land, in the limits of Gram Chandanpura, District Bhopal and against the inaction on the part of the respondents no. 3 and against the respondents no. 1 and 2 for their illegal activity.

The applicant has submitted that the said lands in Khasra No. 13 & 72 are recorded as "Ghana Jungle" in revenue record and also as verified in the field, the area harbours dense forest having big trees. Further the applicant alleges that respondent no. 1 and respondent no. 2 (a), (b) &(c) are resorting to deforestation in the said lands by cutting the trees and selling the produce.

He also averred that despite his earlier complaints to respondent no. 3 District Collector, Bhopal and respondent no. 4 Forest Department, State of Madhya Pradesh no action has been taken yet against the respondent no. 1 & 2. If such deforestation and cutting of trees is continues to be allowed there will be damage to the environment.

He further contended that by undertaking deforestation and by cutting the trees the respondents are violating the provisions of Forest Act, Environment Act and MP Land Revenue Code 1959. And given his contentions he has prayed d that the respondent no. 1, 2 (a), (b) & (c) be directed not to cut the trees over the said land, not to take up any deforestation activity or similar to it and direct the respondent no. 3 & 4 to prosecute the respondent no.1, 2(a), (b) & (c) for their aforesaid illegal act.

The respondent contested the said application, stating that the applicant has no *locus standi* to file the present application and is hence liable to be dismissed.

Respondent no. 2 (a), (b) & (c) have further stated that they purchased the land from the respondent no. 1 to an extent of 4.259 hectare (10 acres) in Khasra no. 13/1 on 18.01.2012 with a sale consideration of Rs. 3 ,90,00,000 and that the land in question is not a forest land as per the entries made in the revenue records right from the year 1921 and in any event the respondent has not felled any trees standing on the said land as alleged by the applicant. The respondent no. 2 (a), (b) & (c) also contended that their firm M/s JVK Infra who purchased the land in Khasra No. 13/1 has nothing to do with the applicant and the applicant does not have any *locus standi* to file this application.

The respondent No. 2 (a), (b) & (c) have further denied the fact of the entry "Ghana Jungle" in the revenue record pertaining to Khasra no. 23 as dense forest.

With regard to the above contention the Tribunal has relied on the earlier judgment in *T.N. Godavarman Thirumulpad v. Union of India*, (1997) 2 SCC 267 and held that the above disputed area as "Ghana

Jungle", as once the area is recorded as forest in the government record irrespective of its ownership it attracts the Forest (Conservation) Act, 1980. And as per all the records it is evident that the said area harbours naturally occurring tree growth of almost 0.4 density and qualifies to be categorised as Dry deciduous forest. It requires to be retained to maintain greenery in the urban limits of Bhopal city which is fast expanding and becoming a concrete jungle. The records clearly reveal that there is a good growth of forest consisting naturally grown trees in the said land and the respondents are restrained from taking up any non forest activities in contravention of Forest (Conservation) Act.

The tribunal also directed the respondent Collector and respondent no. 4 Forest Department shall keep a strict vigil and not to allow cutting of trees and any non-forest activity.

S. Uma Maheswari NarammalpuramTirunelveli District.
Vs
The Tamil Nadu Pollution Control Board Chennai and 3 others.

Judicial and Expert Members: Justice Shri M. Chockalingam and Prof. Dr. R. Nagendran.

Keywords: Representation, Noise, TN Pollution Board

Application Disposed of.

Dated: 11th December, 2013.

This application has been filed by the applicant with regard to the representation dated 09.04.2012 for the grievance ventilated about extreme sound, noise and unbearable vibrations experienced by the people, especially women, children and elders of the villages and other residential areas due to the operation of power plant installed by the 2nd respondent in the premises of the factory situating S. Nos. 385/A, 386/A, 385/A1, 386/A1, 413 and 414 of Naranammalpuram town Panchayat, which was made to the respondent no.2/Board has not yet been considered by the respondent no.1/Board.

The Tribunal recorded the dissatisfaction of the conduct of the Tamil Nadu Pollution Control Board, and issued direction to the Board to consider the representation of the applicant and make necessary enquiry thereon and to pass suitable orders as required by law within 1 month.Thus the application was disposed of with the above directions.

Shri M. Selvaraj
v.
The Chairman, Tamil Nadu Pollution Control Board, Chennai

APPLICATION No. 324 of 2013 (SZ)

Coram: Justice Shri M. Chockalingam, Prof. Dr. R. Nagendran

Keywords: packaged drinking water unit, electric service connection Application Disposed of.

Date: December 11, 2013

JUDGMENT

The present application challenged the order of the respondent Board dated 10.05.2013 directing the closure of the applicant's unit and also the direction issued to the 5th respondent (The Tamil Nadu Electricity Board), to disconnect the electric service connection.

The applicant stated that it had stopped manufacturing of packaged drinking water and, the unit was not in operation. As part of the directions of the Board, the 5th respondent had also disconnected the electric service connection. TNPCB had sealed the premises where the manufacturing of mineral water was carried on and all the machinery, apparatus and materials belonging to the applicant were locked inside the premises. Since the applicant did not intend to carry on the manufacturing of mineral water, he ought to be permitted to take out all his belongings from the premises for which purpose a direction was required to the Board to keep the premises open.

The premises belonged to respondent Nos. 7 to 9, who were brothers (landlords), to whom the applicant had given Rs.1, 00,000/- (Rupees one lakh) only as advance at the time of entering into the lease.agreement. When the demand was made for the return of the advance, the respondents required reconnection of the electric service connection, which stood in their name. Under such circumstances, a direction was required to be issued to the 5th respondent, the Tamil Nadu Electricity Board, for reconnection of the service

connection to Door No. 40, Mathur Village, Madhavaram, Chennai-600 068.

After consideration, the Tribunal held that, it was necessary to issue a direction to the District Environmental Engineer, Tamil Nadu Pollution Control Board, Ambattur, Chennai-600 053 to keep the premises open by removing the seal and to enable the applicant to remove all the movable properties belonging to him along with machinery and also with a further direction to the Assistant Engineer, TANGENDCO (TNEB), Mathur Post, Madhavaram Post and Taluk, Madhavaram Milk Colony, Tiruvallur District, to cause reconnection of the electric service connection in the above said premises forthwith. With the above directions, the application is disposed of.

Lokmangal Sanstha
Vs
Sanjay Wadettiwar

Application No. 22/2013(WZ

Judicial and Expert Members: Mr. Justice V.R. Kingaonkar and Dr. Ajay A. Deshpande.

Keywords: Lokmangal Sanstha, Rice Mill, Husk, Noise Pollution, Air Pollution.

Application Disposed of.

Dated: 11th December, 2013

This application was filed by the applicant against the permission granted in favor of respondents no. 1 and 4 for the construction of Sai Rice Mill in the proximity of Lokmangal Sanstha, being illegal and void-ab-initio. The Lokmangal Sansthan (applicant) has also prayed for permanent prohibitory injunction restraining the said Respondents from operating Sai Rice Mill or alternatively to take preventive measures to stop the nuisance caused by the air and noise pollution created due to running of the Rice Mill.

The applicant is a registered institution dedicated towards the upliftment of women in general and for their financial empowerment in particular located at village Ghot, Tq. Chamorshi, District Gadchiroli. The Applicant runs a Training Institute which caters vocational programmes such as Typing skills, sewing, bamboo handicrafts, and preparation of herbal medicines, literacy classes, so on and so forth. The training institute is being run on land bearing old Survey No.396/2 and 396/3 (now S.No.8 and 9) which were originally owned by one Dilasagram Society. The Dilasagram Society gave that land on lease to applicant for a period of 30 years in 1997. Applicant thereafter constructed building for the training institute as well as staff quarters on the said land. There is also a well on the said land which is used by the inmates of the institution and the staff members for drawing potable water.

The applicant has contended that respondents 1 to 4 have made certain encroachments over agricultural lands bearing S. No. 6 and 7 and have constructed Sai Rice Mill at a short distance of about 10 ft from the residential quarters. The said Mill is constructed in close proximity of the premises of vocational classes of the training institute.

The permission to construct the mill was granted by the respondent no.2 Gram Panchayat without calling of objections and without following the relevant rules.

The Rice Mill is being constantly run for 24 hours and the constant pounding sound and banging sound emanating from the Rice Mill causes serious sound pollution, which creates disturbance in the work of the training institute. Moreover the husk emanating from the Rice Mill flies everywhere. It floats in the nearby area and ultimately gets deposited in the kitchen and other parts of the institution as well as into the well which provides drinking water to the inmates. The frequent flow of solid particles of chaff/husk also causes health hazard to the trainees, staff members, and others who are required to be in the premises of the applicant.

Respondent No. 1 filed the written statement/reply- affidavit and resisted the application denying all the material averments made by the applicant. His contention being that the application was barred by limitation and that the Tribunal should not entertain the same.

In respond to all the above allegations the respondents said that inside the Rice Mill, pipes are fixed for emitting of the husk which is collected near inner wall of the Rice Mill. The husk is useful for power generation plant as a fuel and hence it is immediately disposed of and there is no possibility that this husk would fly in the air, and will get deposited in the premises of applicant. There is also no harsh sound created due to running of the Rice Mill and therefore, there is no substance in the allegation that there is noise pollution because due to running of the Rice Mill. Altogether the respondents contended that the Rice Mill does not cause any actionable nuisance or environmental harm for which the applicant has files the present application, thus further prayed dismissal of the application.

The relevant questions arising in this case are:

1. Whether the application is barred by limitation and liable to be dismissed?

2. Whether the applicant has made out a case with regard to substantial environmental dispute and existence of actionable nuisance of air pollution or noise pollution on account of running of the Sai Rice Mill?

3. Whether the applicant is entitled to claim relief of declaration and injunction or any other relief and what?

On the question of Limitation, the Tribunal ruled out the said allegation stating that the Rice Mill continued during the relevant period. The nuisance was of a recurring nature. Such continuity of the nuisance and air pollution as well as sound pollution amounts to a continuing cause of action and thus the suit cannot be barred by limitation.

Central Pollution Control Board has laid down certain guidelines to deal with the environmental issues arising of the installation of the Rice Mill and every State Pollution Control Board is required to follow these guidelines. The handling, storage and transport of the rice husk are the subject matter of mandatory guidelines issued by the CPCB which has to be implemented through the consent mechanism. One of the recommendation states that there shall be a close enclosure for blowing of rice husk. It is a mill type enclosure which shall be closed from all sides and have an access for loading and handling of the rice husk. No activity regarding blowing and storage of rice husk shall be carried out, outside the said enclosure. Other important points in these guidelines are as follows:

Rice husk is the largest byproduct of Rice Milling Industry which amounts to 22-24 per cent of the total paddy. The unit needs to handle large quantity of husk and store them within the unit premises till husk is used or sold. During the Milling of the paddy, rice husk is mechanically separated out in the de-husker machine and husk is conveyed to the storage yard through the husk conveyance system. This conveyance system varies based on the size of the Rice Mill. CPCB has categorized the rice mills with the capacity less than three tons per hour as small mills, 3 to 15 tons per hour capacity as Medium and greater than 15 tons per capacity at large. In most of the small mills, husk from the de-husker is simple blown to the storage yard with the help of blowers. In Medium and large mills, the husk is extracted from the de-husking machines and taken through the conveyance system to the cyclone where fine dust is separated

out. The environmental issues in the Rice Mills are mainly related to the Management of the rice husk and the noise pollution due to the operation of the mechanical equipment. Central Pollution Control Board has already published guide-lines for: i.) Site of rice Sheller's/Mills, ii.) Handling and storage of rice husk, iii.) Handling storage and disposal of husk generated in boiler using rice husk as fuel in 2012.

The Rice Mill employs mechanical equipment for cleaning and milling activities for de-husking of the paddy. These equipments can cause noise pollution. Central Pollution Control Board has carried out study and various noise pollution prevention measures have been recommended.

Considering the facts, it is important to note that the Training Institute of the applicant was already being run much prior to installation of the Rice Mill of the respondents. It was being run 10 years prior to installation of the Rice Mill. Moreover the consent to establish the Rice Mill was granted by the MPCB on 8-12-2003 till December 2005. One of the conditions imposed on the respondents no. 1 and 4 was that they shall take adequate measures for control of air pollution so as not to cause nuisance to surrounding area arising from bad smell, gaseous or particulate emission.

Also there is an elaborate affidavit of Miss Annies Pappu Parapilly, a social worker in support of the application, which states that the Rice Mill emits huks which causes water pollution due to its falling in the adjoining well of the Training institute and also the continuous running of the mill causes noise pollution. The husk blows out of the Industrial unit and causes health hazard to the staff members and inmates of the Training institute, which in result leads to nuisance to the Training institute.

Also it is an admitted fact that the Rice Mill is situated hardly at a distance of 10 ft. from the near wall of the Training Institute run by Applicant. The above fact has been proved by the Status Report dated 28th October 2013.

It cannot be overlooked that due to proximity of the premises of the Rice Mill, there is more possibility that the husk separated from the grains after process of the paddy may flow away towards premises of the training institute run by the applicant. Also the running of the Rice Mill causes constant pounding sound which also amounts to nuisance. Thus the applicant has made out a case of actionable nuisance.

Regarding the relief to be granted the Tribunal passed the order wherein the respondent no. 1 and 4 had to pay Rs. 25000/- each to the applicant. Also the respondent no. 1 and 4(a) to 4(e) (Legal Representatives of deceased respondent no. 4) shall pay compensation of Rs. 50000/- to the applicant for causing noise pollution and air pollution during the period for which the Rice Mill was being operated.

Also MPCB was directed not to renew the consent to operate the Rice Mill run by the respondent no. 1 and 4(a) to 4(e) unless it is duly satisfied that adequate measures are taken by them to install modern equipment in order to control the noise pollution by way of proper insulation of the unit and to ensure that the husk will not flow outside the unit's premises. In case a Rice Mill is found running without consent to operate or any breach of conditions envisaged in the consent to operate is noted action under Section 31-A of the Air (Prevention & Pollution Control) Act 1981 may be taken by the MPCB against Proprietor.

Thus with the above directions the application is disposed of.

Satish Kumar
V
Union of India & Ors.

Application No. 56(THC) of 2013 Original Application No. 57/2013(THC) and Misc Application No. 561/2013

Judicial and Expert Members: Shri Justice Swatanter Kumar, Shri Justice U.D. Salvi, Dr. D.K. Agrawal, Shri P. S. Rao, Shri Ranjan Chatterjee.

Keywords: Writ Petition, Village Mundka, Burning, Plastic Waste, PWD Association.

Applications disposed of with Original application pending for deciding quantum of damages.

Dated: 12th December, 2013.

These Applications arise from the Writ Petitions filed in the High Court of Delhi, at New Delhi by Mr. Satish Kumar , resident of village Mundka, New Delhi (Writ Petition No. 3013/2010 and Mr. Mahavir Singh, resident of village Neelwal, Tikri-Kalan, New Delhi (Writ Petition No. 7302/2009). The said applications were filed for Environmental pollution caused by burning of plastic, leather, rubber, motor engine oil and such other waste materials and continuous operation of illegal industrial units dealing with such articles on agricultural lands in village Mundka and curbing menace of pollution caused by the illegal and unauthorized industrial activities of shredding, cleaning, recycling, burning of plastic, rubber articles or such other waste materials in the villages of Nangloi, Ghewara, Neelwal, Mundka, Kamruddin Nagar, Tikri-Kalan, Ranhaula etc. spread over a stretch of land along the Delhi-Haryana border.

Applications were filed to stop the operation of illegal industrial units on the said agriculture lands and for restoration of Environment along with grant of compensation to affected residents of the concerned areas.

Despite the various orders of the High Court passed in the Writ Petition (Civil) No. 7302/2009 some people continued to brazenly engage in industrial activities involving burning of plastic and rubber.

On 22nd February, 2011, an order was passed by the High Court to curb the menace of causing pollution wherein the Court directed the Government of NCT of Delhi or appropriate authority to proceed against the industrial unit owners/certain person who are still carrying out the industrial activities which cause pollution under the appropriate enactment by not only launching criminal prosecution but also by taking such action as is permissible in law so that the structures may be sealed or even brought down/demolished/repossessed. The State has the statutory power to stop such an activity.

Upon transferring of these petitions to the Tribunal, notices were issued to the parties at oral request of the Learned Counsel appearing for the Applicant in Application No. 56 of 2013. The Municipal Corporation of Delhi (North) was directed to be impleaded as Respondent in the said Application vide order dated 3rd April, 2013.

As per the submissions made on behalf of the applicant despite the order of the Court, some units still carried on the activities of burning plastic and leather. Police Commissioner, NCT, Delhi was directed that no leather and plastic burning was to be allowed in the area of Mundka and Tikri- Kalan and a status report in respect of the same was called for. The status report clearly revealed that plastic waste was being

taken to the places at Mundka and Nangloi villages. Photographs were also placed on record which showed burning of plastic as well as marks of its burning left on the ground. This showed the failure of police despite the directions of the Hon'ble High Court. Then later on the soil samples from the aforesaid location where burnt marks were noticed were collected and duly sent to Forensic science Laboratory for forensic investigation.

On 29th April, 2013, an association of about six hundred dealers of PVC and plastic waste registered as "PVC Plastic Waste Dealers Association" under the societies Registration Act, 1860 was ordered to be joined as a party Respondent in Application No. 57 of 2013 -vide order passed in M.A. No. 205/2013.

Learned Counsel appearing for the Applicant brought to the notice of the Tribunal that new technology is available for use of plastic waste in road construction. At the oral request the Central Road Research Institute, New Delhi and Central Institute of Plastic Engineering and Technology, Chennai was requested to be impleaded as party Respondents in order to get from them an authoritative comment on the use of plastic waste in road construction.

PVC and Plastic Waste Dealers Association(for short referred to as "PWD Association") contended that about fifty thousand people were engaged in the activity of segregation of plastic waste directly or indirectly and made their living there from, and the plastic waste so segregated by them was sent for recycling. According to them none of the plastic waste remained at this site and all was transported to the recyclers. None of the parties disputed the environmental damage caused by unregulated crude burning of plastic, rubber and such other articles. PWD Association distanced itself from the burning activities except to the extent of their involvement in the business of segregating plastic waste in Village Mundka and surrounding areas.

The Report/Test Certificate of the analysis of the samples collected from the places at village Mundka dated 24th June, 2013, provided an unquestionable evidence of the fact of burning of plastic waste and the related scraps at the locations.

Status Report dated 18th May, 2013 filed by the Learned Court commissioner, Mr. Sudeep Dey, Advocate along with the photographs annexed thereto, corroborates the grievances made by the applicants and brings to light un-regulated activities of the plastic waste dealers. Large amount of black smoke billowing out of the fire seen in the photographs bears out the fact that substantial quantity of waste was being burnt at the places seen in the photographs. It certainly does not look like traditional burning of soil done by the farmers. Nobody is expected to indulge in such activities unless he has specific intention of destroying/disposing of the waste material. The only plausible reason for such menace to persist is unregulated activity of segregation and burning of plastic waste in and around the villages Nangloi and Mundka.

Pertinent questions arising in this case are:

1. Whether the Petitioner has a *locus-standi* to file the status report in the present case?

2. Whether the contention of the dealers of plastic waste that they are forced to settle on the land occupied by them on account of lack of allotment of alternative premises as promised?

Answering the first question the Tribunal held that the Petitioner, Mr. Satish Kumar continues to be affected by the ill effects of pollution caused at village Mundka and as such he is the person aggrieved within the meaning of Section 18(2) (e) of the NGT Act.

Dealing with the other question the Tribunal very clearly held that such contention does not give right to

anyone of such dealers to indulge in any illegality leading to environmental damage. The issue raised on this count is misplaced as the only concern of this Tribunal is to deal with the issue relating to environmental protection and enforcement of any legal right relating to environment and to give relief and compensation to person and property and for matters connected therewith or incidental thereto.

The fact is that there has been pollution caused due to unregulated handling of plastic waste and its burning in the said villages/areas and it has damaged the environment. Certainly the plastic waste dealers are the source of this pollution and as a polluter they are required to bear the burden of restoring the environment.

M.A. No. 205/2013 and 561/2013 stand disposed of accordingly.

The original applications remained pending for assessment of damages and passing of incidental orders in that regard on the basis of the following particulars which will decide the quantity of damage caused due to unregulated handling of plastic waste and it's burning in the said villages:

1. The extent of area in use and occupation of each plastic waste dealer.

2. Amount of plastic waste handled by each of the plastic waste dealer over the years since the occupation of the area for their business.

3. Amount of plastic waste not fit for recycling.

4. Any other data relevant for the purposes of the quantification of the damages caused.

Bharat kumar K. Patel
V
Ministry of Environment & Forests and Ors.

APPLICATION No. 55/2013(WZ)

Judicial and Expert Members: Mr. Justice V.R. Kingaonkar and Dr. Ajay A.Deshpande.

Keywords: SEZ, Terms of Reference(ToR), MoEF, Limitation. CRZ Notification

Dated: 13th December, 2013

This application has been filed by the aggrieved person, being interested in the protection of environment and ecology, under Section 14 read with Section 18 of the National Green Tribunal Act 2010.

This application is regarding the proposed development of 5000 Hectare port based multi-product SEZ in Kandla and Tuna area of Gandhidham, Bhuj, Gujrat. As per the CRZ Notification 2011 has declared the entire Gulf of Kutch as "Critical Vulnerable Coastal Area" due to its ecologically sensitive nature and as a result, any industrial development in the said area is prohibited. The Applicant alleges that the proposed development is in violation of CRZ Notification 2011, Environment (Protection) Act, 1986 as well as other environmental norms.

The Applicant has further submitted that the non obstante Clause as provided in Section 51 of SEZ Act, creates a separate class or area within the country itself, excluding application of all other Acts. The Applicants submit that despite the fact that due to prohibition under the CRZ Notification 2011, port based SEZ cannot be set up at the proposed location, the Ministry of Environment and Forest (MoEF), Government of India, vide communication file No.11-83:2011-IA-III dated 17th February 2011, has issued Terms of Reference (ToR) of the proposed SEZ which is in clear violation of the CRZ notification 2011 read with provisions of the Environment (Protection) Act 1986.

In reply to the said application all the respondents have opposed the application on the ground of it being barred by Limitation as the impugned ToR was issued by the MoEF on 17thFebruary 2012 and the Application has been filed on 21stFebruary 2013.

MoEF has also contended that the present application is premature as the final clearance has not been granted to the project and ToR dated 17th February 2012 issued by the MoEF does not in any way imply that the project has been approved.

Regarding the question that the application is barred by Limitation the Tribunal has affirmed the respondents' contention and thus dismissed the application under Section 14 of NGT Act 2010.

Observing that the points raised by the applicant are important and shall be duly addressed by MoEF and others authorized in the further stages of EC appraisal process. The Applicant shall be granted an opportunity to present his views in the public hearing which has been mandated in the ToR underreference. The applicant also has the liberty to represent his case by way of filing application to MoEF for due consideration in the further appraisal process.

Thus with the above observations the application is disposed of.

Samata & Ors.
Vs.
The Union of India & Ors.

Appeal No. 9/2011

Judicial and Expert Members: Justice Shri M. Chockalingam and Prof. Dr. R. Nagendran.

Keywords: Environmental Clearance, Environment Impact Assessment, Locus Standi, Public Hearing.

Application Disposed of.

Dated: 13th December, 2013

The present appeal has been filed by a registered NGO, being respondent No.1, who is working for the rights of Tribal and Adivasis and for preservation of natural resources and ecology of Eastern Ghats since 1990, and the appellant No.2 is a social and environmental group with the objective of working for the welfare of the local communities and creating awareness on environmental issues. Appeal was files seeking to quash the Environmental Clearance (EC) granted by the Ministry of Environment and Forest (MoEF) , the respondent No. 1 to M/s Alfa Infraprop Private Limited (for short company) Respondent No. 3 for coal based Thermal Power Plant near Komarada village in Vizianagaram District, Andhra Pradesh.

The MoEF granted EC subject to the compliance of the conditions attached to the EC to the project under the provisions of EIA Notification 2006, vide its letter dated 15.3.2010.

But the above EC was assailed on the ground that it did not include the crucial information on the project site and provided false information. The appellant has contended that the EIA report by the project proponent contains false information and also concealed the crucial information and hence the Environmental Clearance granted to the project proponent should be revoked on that ground.

(1) Whether the appeal is not maintainable since the appellants are neither persons aggrieved nor do they have locus standi to prefer the appeal and also on the ground that the appeal is barred by time?

(2) Whether the impugned EC dated 10.03.2010 granted by the respondent No.1/MoEF in favour of the 3rd respondent is liable to be set aside since the public hearing was not conducted as per the mandatory provisions of the EIA Notification, 2006?

(3) Whether the impugned EC is liable to be set aside on the ground of non-application of mind on the part of the MoEF in making approval?

(4) To what relief the appellants are entitled to?

Answering the first question the Appellants have contended that, the first appellant is a registered NGO working for the rights of the tribal activities of the Andhra Pradesh and the same has been working for the protection of natural resources and ecology of the Eastern Ghats from 1990 onwards. The 2nd appellant is a social and environmental group with the objective of working for the welfare of the local communities and creating awareness on environmental issues and the contention that the appellants are residents of Visakahapatnam which is situate at a distance of 170 km from the project site has to be rejected.

Both under Section 11 of the NEAA Act,.1997 and Section 18 of the NGT Act, 2010 any person

aggrieved by the grant of EC as shown above can maintain an appeal. The 'aggrieved person' as contemplated in the Act came up for interpretation before the Tribunal in a number of cases. An aggrieved person contemplated in the above provisions would refer to the substantial grievance as to denial of some personal, pecuniary or property right or imposing an obligation on a person. The grievance so ventilated should not be either fanciful or sentimental, but must be substantial. A person calling himself as an 'aggrieved' must have suffered a legal grievance that he has been wrongfully deprived of something or refused wrongfully. The aggrieved person can either be aggrieved either directly or indirectly. In so far as the environmental matters are concerned, it cannot be stated that the person really aggrieved should alone be permitted to initiate an action. If the appellants come forward with a case apprehending damage and danger to environment and ecology of the project in question was not properly envisaged and did not satisfy the Principles of Sustainable Development and Precautionary Principles, they can maintain the appeal and be allowed to agitate as to the correctness of the study made in respect of ecology and environment. In the instant case, nothing substantial has been demonstrated in order to doubt the credentials of the appellants. The first appellant being the registered Non- Governmental Organisation working in the field of Environment and the 2nd appellant being a social and environmental group with the objective of working for the welfare of the local communities and creating awareness on environmental issues and they have filed the letter of authorisation to initiate proceedings.

Hence, they are to be termed as 'aggrieved persons' as envisaged under the above provisions, who can maintain the appeal and thus, this question is answered in favour of the appellants. The counsel for the 3rd respondent would submit that a comprehensive assessment was done of the possible impacts on environment due to the setting up of the project and the draft EIA and its executive summary were circulated in English and in local language to the concerned authorities. Public notices were also issued in newspapers 'The Hindu' and 'Enadu' for the public hearing which took place on 4.12.2009. The public hearing was held at the project site as per the requirement of the notification. Large number of people participated in the public hearing. After hearing the concerns and objections raised in the public hearing, the 3rd respondent suitably addressed the same. The issue raised by the appellants is that the entire EIA report ought to have been made available in Telugu language. But the EIA notification dealing with public consultation only provides that the concerned Pollution Control Board should invite responses from the concerned persons by placing on their website the summary EIA report prepared in the format given in the Appendix within 7 days from the receipt of the written request for arranging the public hearing. The EIA notification does not provide for EIA report in the local language.

In so far as the contention put forth by the appellants as to the public hearing should have been held in the State of Odisha which situates within 10 km of the project site, the same has to be rejected, since it is contrary to the notification itself. Para 2.1 of the Appendix IV of the EIA Notification provides that the applicant should make a request through a simple letter to the Member Secretary of the SPCB or Union Territory Pollution Committee in whose jurisdiction the project is located and in case the project site is extending in a State of Union of Territory, the public hearing is mandated in each State or in Union Territory in which the project is sited. Hence, it is clear from the mandate of the EIA Notification, in the present case the public hearing should be held entirely within Andhra Pradesh where the project is sited and thus there is no legal requirement to hold public hearing in Odisha.

Hence, the contention put forth by the appellants' side that the public hearing was not conducted as contemplated under EIA Notification, 2006 is without force and has to be rejected.

On the question of setting aside of EC on the ground of non-application of mind by the MoEF, after making a careful scrutiny of the entire materials available and following anxious consideration on the elaborate deliberations made by the learned counsel on either side, the Tribunal is satisfied that all the procedural formalities as required by the EIA Notification, 2006 have been followed at all stages except

at the crucial stage of ‘appraisal’ by the EAC before making its recommendations to the regulatory authority.

Keeping in mind the Precautionary Principle and Principle of Sustainable Development as envisaged under Section 20 of the NGT Act, 2010, in the given circumstances the Tribunal is of the considered opinion that instead of scrapping the EC granted by the MoEF in respect of the thermal power plant in question, it would be suffice to keep the EC under suspension for a period of six months with the following directions to carry out the re-exercise of ‘appraisal’ within the said period, by calling for response from the Project Proponent in respect of all concerns and objections even if they are minor in nature and consider the objections and concerns along with the response given by the Project Proponent at the time of meeting to be convened and conducted for the said purpose, after giving an opportunity to the Project Proponent to be present at the time of that meeting.

The Tribunal has directed the EAC to consider each and every issue separately and independently and record the reasons either for rejecting or accepting the concerns and objections and also the response by the Project Proponent thereon enabling thereby to understand both the Project Proponent and Objectors, ensuring transparency in the process of recommending either for acceptance or for rejection of the EC by the regulatory authority, namely the MoEF.

Thus with the above directions the appeal was disposed of.

M/s P Kantarao Pynampuram village & Ors.
Vs.
The Secretary to Government Ministry of Environment and Forest New Delhi & Ors.

Appeal No. 49/2013(SZ)

Judicial and Expert Members: Shri Justice Dr. P. Jyothimani and Prof. Dr. R. Nagendran.

Keywords: MoEF, Pollution, EIA Notification, Environment Clearance, Public Hearing, Tank Poromboke.

Appeal dismissed.

Dated: 17th December, 2013

This appeal has been made against communications of the Respondent No.1 , the Ministry of Environment and Forests(MoEF), Government of India and the order of consent given by the Andhra Pradesh Pollution Control Board(APPCB), Respondent no. 3 in favour of Andhra Pradesh Power Development Company Ltd.(Respondent No. 6) and for further direction to conduct a fresh Environmental Impact Assessment in the respect of the Thermal Power Project proposed by Respondent No.6 strictly in accordance with the Environmental Impact Assessment(EIA) notification 2006.

This appeal has challenged the impugned order of the respondents No.1 & 3 permitting the respondent No.6 for change of location of the ash pond, against which the public has raised objections. Such order granting permission to respondent No. 6 is arbitrary and illegal, being in violation of EIA Notification, 2006.

Lands categorized as water bodies if being illegally permitted to be used as ash pond results in damaging the water body and proposal for relocation of the ash pond to a different area a fresh Environmental Clearance(EC) by MoEF which is only possible if EIA Notification 2006 is followed by conducting a fresh public hearing for such relocation. A fresh EIA is necessary for bringing out such change.

The land to be used by the Respondent no. 6 is shown as “Tank Poromboke” where relocation of ash pond is against law. Also there the agricultural activities, ecology, water bodies, sea and health of people are endangered by the impugned order.

The respondent No. 3 has contended that the Notification makes it clear that fresh EC is required only in the event of expansion or modernization of the existing projects or activities listed in the schedule to the notification with additional capacity beyond the limits specified and in the event of any change in the product mix in the existing manufacturing unit and therefore the area approved for relocation does not require a fresh EC and it does not require any further public hearing.

Tribunal also affirmed the contention of the respondent stating that the said relocation of the ash pond cannot be treated as modernization or expansion beyond the original capacity and therefore, it does not require a fresh EC from the Ministry and there is no obligation for fresh public hearing.

Also on the contention of the area being referred to as “Tank Poromboke” and not to be used for relocation of ash pond, the Tribunal has declared the above contention negative andconfirmed the impugned order as valid in law, thereby dismissing the present appeal.

Dr. Subhash C. Pandey
V
State of M.P. and Ors

Application **No. 58/2013(CZ)**

Judicial and Expert Members: Mr. Justice Dalip Singh and Mr. P.S.Rao.

Keywords: Water Pollution, State Pollution Control Board, Idols, Immersion.

Application Disposed of.

Dated: December 19th, 2013

This application has been filed by the applicant against the State Governments of Madhya Pradesh, Chhattisgarh & Rajasthan and their respective Pollution Control Boards for not taking effective steps for preventive pollution of the water bodies caused due to the immersion of idols during festivals. Also that the idols of Gods and Goddesses are made with Plaster of Paris (PoP) instead of eco-friendly clay. Moreover Hazardous chemicals, paints and colours are used in decorating the idols during the festivals and no concrete action is being taken by the respondents to prevent immersion of such idols in the water bodies. Metals, ornaments, oily substances, synthetic colours and chemicals are used to make polish and decorate idols for worship and when these idols are immersed in the water bodies aquatic and surrounding environment gets severally affected.
The local administration and the Pollution Control Boards have failed to regulate and control immersion of such idols and Taziyas in the water bodies. Specific places are designated/ notified for immersion of idols and Taziyas. Even those places are highly inadequate and no large scale publicity has been done in this regard and the citizens are not educated and persuaded to immerse the idols and Taziyas in these designated areas in an orderly manner resulting in pollution of water bodies with non- biodegradable material and toxic chemicals, among which some are drinking water sources. The situation has gone up to dangerous levels and may create very serious health hazard if such polluted water is used for drinking purpose and if firm action is not taken by the concerned authorities in protecting the water bodies from getting polluted, the situation may deteriorate further. Immersion of such idols not only pollutes the water bodies but leads to deposition of the material reducing their water holding capacity particularly in case of lakes & ponds.

The applicant has further contended that none of the above three states have notified the designated places near the water bodies for immersion of idols and Taziyas and have not displayed such sites on their official website. Respondents have also failed to educate the people in making the idols and Tazias with eco-friendly, biodegradable substances and no awareness programmes are being conducted and before immersion of idols and Tazias in the water bodies decorating material made up of plastic and paper as well as clothes and flowers and garlands used for worshiping the idols and Taziyas, are not removed and not segregated causing more pollution. The respondents were also not collecting and analyzing the water samples regularly before, during and after the immersion takes place and not taking up the pre and post immersion precautions suggested by the Central Pollution Control Board.

After going through the issues raised by the applicant, notices were issued to the State Governments and Pollution Control Boards of all the three States on 22-08-2012.

Applicant has prayed that the debris that is left in the water bodies which becomes a source of water pollution should be collected by the local authorities, within a reasonable time and the water bodies be accordingly cleared. It has also been prayed that the respondents be directed to conduct mass awareness programs.

On 06.09.2013, the action taken report of the three States was placed before the Tribunal along with media reports, complying with the guidelines issued by the CPCB in the year 2010. It was found from the said report that efforts were made on behalf of the respondents to create awareness in this behalf among the general public and it was brought to our notice that the local people cooperated with the local Administration to a large extent. At many places people agreed not to use the idols made with PoP and instead there was a good demand for the idols made out of clay.

During the pendency of the said application two Misc. Applications were filed by the Akhada Tajiya Committee, Jhabua District, Madhya Pradesh with the prayer that the site chosen by the local authorities for immersion of the Taziyas in Jhabua town may be ordered to be altered as the aforesaid site may result in contamination of the water in the river Anas and instead the original site at Bahadur Sagar Talab (Tank) of Jhabua town may be permitted to be used for the aforesaid purpose. This was prayed on the ground that the river Anas is the only source of drinking water for Jhabua town and the immersion of Taziyas and idols in the river is liable to pollute the water body.

The Tribunal has appreciated the decision of the Taziya Committee to maintain and prepare the Taziyas only out of bio-degradable material and keep them environment friendly by using paper, *lae* (paste of wheat flour and water), bamboo to be tied with the help of string made of San (a type of grass) which is also a natural material.

The Tribunal has directed the authorities to encourage people to go for smaller size idols as it would be easy to immerse and less amount of solid waste will be accumulated. Also the public place communities should be allowed to erect the pandals only with the permission of the local authorities and municipalities and according to the guidelines of the CPCB.

The above application was disposed of by directing the State Pollution Control Boards which are the watch dogs under various Environment Acts for ensuring the standards and quality of water, air, etc. They shall take samples at regular intervals and analyze them and place the same in public domain and further try to find out the cause for the particular polluting material so that the concerned authorities to whom such recommendations can be made to prevent such pollution, can take effective measures to remedy and curb the same.

Mrs. M. Saraswathi Proprietor Ohm Sakthi Blue Metals
V
The District Environment Engineer Tamil Nadu Pollution Control Board Perundurai & Ors.

Appeal No. 17/2013(SZ)

Judicial and Expert Members: Justice Shri M. Chockalingam and Prof. Dr. R. Nagendran.

Keywords: Pollution Control Board, Application for Consent, Stone Crushing Unit, Water Act, Air Act.

Appeal Dismissed.

Dated: 19th December 2013

The present appeal challenges the a common order dated 29.01.2013 of the Appellate Authority, Tamil Nadu Pollution Control made in Appeal Nos. 14 and 15 of 2012 whereby an order of the Tamil Nadu Pollution Control Board (for short 'Board') rejecting the application for consent made by the appellant under Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 for operation of the stone crushing unit namely, M/s. Ohm Sakthi Blue Metals situate at S.F. No. 1284/2,3,4 Sivamalai Village, Kangeyam Taluk of Tiruppur District owned by the appellant.

The admitted facts in the above appeal are, The appellant obtained permission for starting a stone quarry in her patta land in S.F. No. 1284/2,3,4 of Sivamalai Village, Kangeyam Taluk of Tiruppur District from the District Collector, Tiruppur for a period of 5 years from 12.12.2005 and the same was extended for another 5 years. The crusher unit of the appellant was continuously functioning from August 2006. The appellant applied for consent to establish a stone crushing unit on 17.05.2006 before the Board, but the same was neither considered nor ordered. One Mr. Karthikeyan filed a writ petition in W.P.No.81 of 2011 before the High Court, Madras complaining of pollution caused by the appellant's unit from both quarry and crushing unit. The High Court, Madras by an order dated 04.01.2011 directed the officers of the Board and the District Collector, Tiruppur to consider the representation and pass appropriate orders on merit and in accordance with law within a period of 4 weeks there from. An inspection of the appellant's unit was made by the authorities of the Board on 13.01.2011 when it was noticed that the stone crushing unit and the quarry were being operated without obtaining consent of the board under Water Act and Air Act. A show cause notice was issued on 18.01.2011 by the Board and the same was replied by the appellant on 05.02.2011. A personal hearing was fixed on 07.03.2011 at the District Environmental Engineer's office at Perundurai which was not attended by the appellant. An order for closure was passed by the Board on 27.07.2011 on the reasons that the unit was not having consent to establish or operate. The appellant made an application on 16.08.2011 for consent which was rejected on 19.08.2011.

As per the mandatory provisions for obtaining consent under Section 25 of the Water Act, 1974 the consent of the Pollution Control Board of the State is a condition precedent for establishment of an industry or for taking any steps for establishment.And in the present case, it is very clear as could be seen from the averments made by the appellant and also from the inspection report by the authorities of the Board that a stone quarry and stone crusher were being operated without getting consent of the Board as required under the mandatory provisions of the enactments.

The contentions put forth by the appellant's side that she was granted permission for starting a stone quarry by the District Collector for a period of 5 years and the same was extended by another 5 years and

she also obtained electric supply connection, in no way conferred any right on the appellant either to establish or operate the units, in the absence of requisite consent under the Water and Air Acts.

Hence the Tribunal held that the Board was perfectly right in passing the closure orders in respect of the units of the appellant, since the units were carrying on illegally and it is unable to notice any reason to interfere with the reasoned order of the Appellate Authority and the appeals are liable to be dismissed and is accordingly dismissed.

Mr.Vitthal Gopichand Bhungase
V
The Ganga Sugar Energy Ltd. Ors

Misc. Application No. 37/2013

Judicial and Expert Members: Shri Justice V.R. Kingaonkar and Dr. Ajay A.Deshpande.

Keywords: Mannath Lake, NGT Act, Society, Locus Standi, Limitation, Compensation.

Dated: December 20, 2013

The present application has been filed under Section 14, 15 and 17 of NGT Act 2010. Applicant has claimed that the Mannath Lake was leased to its society for fishing rights. According to him the repondent no. 1(Ganga Sugar Energy Ltd) is continuously discharging toxic effluents in the lake which has caused damage to the environment and ecology, loss of aquatic life and also dead fishes were found floating on the surface of lakes waters. Many complaints were made by the applicants still Respondent No.1 did not stop releasing of industrial waste, molasses and chemicals as a result of which water has been polluted and also affected the health of the villagers.

The respondent No. 1 in his reply has filed an application with respect to the maintainability of the application by the applicant. He stated that the present application is barred by limitation as the same was not filed within six months as required under Section 14(3) of the NGT Act and further that the Tribunal has no power to condone delay beyond 60 days. Secondly that the original application is in respect of a civil dispute relating to a legal right, in which implementation of enactments specified in schedule 1, as enumerated in 14(1) of NGT Act is required to be dealt with and therefore the application cannot be segregated for reliefs under Section 15 and 17.

The next objection by the respondent is that the applicant No. 1, Cooperative society does not exist, because an administrator has been appointed to manage the affairs. Thus legal entity of Magusvargiya Matsya Vyavasayi Sahakari Sanstha Maryadit, is no more in existence.

The respondents have contended that the cooperative society has no locus Standi to file the application. So, the application filed by the original applicant is not maintainable as he is not the chairman of the said society and has no individual right to file such application.

Arguments on behalf of learned counsel for respondents is that the application is liable to be dismissed as it has been filed by an incompetent person, that the application is barred by limitation and further more that the application by the original applicant will not change the fact situation of absence of legal entity of the society to file such application.

The counsel for the applicant submitted that the applicant is entitled to invoke the jurisdiction of this tribunal when there exists a reasonable case to infer pollution caused on account of effluents discharged by the distillery unit of the Respondent factory, in the water body of Mannath Lake.Further the applicant has also sought compensation for and on behalf of the fishermen, as well as restitution of environment. Therefore he contends that the application may be entertained under Section 15 and 17 of NGT Act 2010, even if it is barred by limitation under section 14(3).

He further submitted that the issues of Environmental damage and pollution caused to water of Mannath lake could be brought to the notice of the Tribunal by an aggrieved person notwithstanding the fact that such person may not be the affected one. He submits that such a person may be aggrieved by loss caused

to the environment. Therefore he sought a dismissal of the application filed by the respondent.

The Tribunal reproduced rule 14 of NGT (Practices and Procedures) Rules, 2011 making it clear that filing of a composite application seeking more than one relief is permissible notwithstanding the fact that the cause of action for such remedies may be the same one. Further the limitation period will cover the application for such plural remedies. Issue regarding limitation has to be examined in particular facts and circumstances. According to the applicant the pollution caused by the respondent is continuous and therefore the cause of action is recurring. Secondly the application is also for relief of compensation and therefore can be filed within a period of 5 years as stated in section 15(3) further the Court examined the scope of section 19(2) of NGT Act which categorically states that the Tribunal shall have power to regulate its own procedure. In other words Respondent cannot insist that without framing such preliminary issues, the main application could not be proceeded with. It is the discretion of the Tribunal either to frame preliminary issues or to call upon the parties to proceed with the trial. Therefore the Respondents were called upon to file their detailed affidavit.

On the second question, the Tribunal held that locus of a person is in the environment dispute is not according to his legal rights. Such a person may not have any personal interest or may not be a stakeholder yet he may be competent to file the application.

Thus the application of respondent filed in response of applicant's application was dismissed for framing of preliminary issues. According to the records and reports prima facie revealed that aquatic life in the Mannath Lake was being lost due to the contamination of water.

Therefore the respondent No. 1 & 2 were directed to deposit an amount of Rs. 50,00,000/- within 4 weeks having regard to the fact that the loss of stock of fish was already noticed & to some extent quantified by the concerned authorities.

Final hearing on 6th January, 2014.

ParyavaranMitra (JANVIKAS) and Ors.
Vs.
Gujarat State Pollution Control Board Ors.

APPLICATION No. 131/2013

Judicial and Expert Members: Shri Justice V.R. Kingaonkar and Dr. Ajay A. Deshpande.

Keywords: Pollution, GPCB, Rajkot Municipal Corporation (RMC), HBEPL, MSW Rules, Limitation, Closure, Landfilling, CPCB.

Application Disposed of.

Dated: December 20, 2013

This application has been filed by the applicants against the respondents alleging the air pollution and water pollution caused by the Rajkot Municipal Solid Waste disposal and landfill management site at village Nakravadi, managed by Rajkot Municipal Corporation and M/s Hanjer Biotech Energies Pvt Ltd, the Respondent Nos. 3 and 4, respectively.

Rajkot Municipal Corporation has received authorization from the GPCB (Respondent No.1),under the Municipal Solid Waste (Management and Handling) Rules, 2000 (for short, "MSW Rules") on 31-12-2003, for setting up and operating of waste processing/disposal facility at Survey No.222/P, Village Nakravadi, (District Rajkot) on 30 Acres of land. In pursuance to the Authorization received from the GPCB, Rajkot Municipal Corporation (For short, "RMC") entered into contract with M/s Hanjer Biotech Energies Pvt Ltd, (For short "HBEPL") on 20th June, 2003, for the purpose of erecting and commissioning of the waste conservation plant and adequate service facility to treat the waste material. Under the agreement, the HBEPL, was duty bound to maintain Municipal solid waste site in hygienic manner as required under the Municipal Solid Waste (MSW) Rules.

The applicants have contended that the RMC and State of Gujrat, later on, granted various concessions for the treatment of Municipal solid waste on the grazing lands used by the villagers of Nakravadi. Some parts of the said lands are adversely affected by the dispersion of the MSW, resulting into degradation of environment. As a result of mismanagement of the Project, several hundreds of rural population is facing problems due to contamination of groundwater, degradation of quality of the farm lands and adverse impact of the ill-treated or untreated dispersion of the MSW in the nearby area. The landfill site has been poorly maintained by the HBEPL.

Various show cause notices were issued to RMC and HBEPL by the GPCB, but that was of no avail.

They have submitted that it is essential to close down the landfill site and restitute the land in question. The Applicants have further alleged that selection of MSW site is against the Rules. They sought closure of Rajkot MSW disposal (MSW) and landfill management site, situated at village Nakravadi, assessment of damage caused to livestock, health, village common lands and sources of water etc., and direction against polluters to pay the compensation for such losses.

Respondent No. 1 filed a reply affidavit in support of the present case submitted that necessary action was taken against RMC whenever complaints were received in the context of violations of the MSW Rules. Despite various notices served on RMC and HBEPL it was observed that RMC has failed to ensure the compliance of the said Rules.

CPCB (Respondent No. 2) contended that it has no role to play in the matter as the CPCB has no responsibility to exercise control over the Municipal affairs pertaining to observance of the MSW Rules, 2000 and that the Authorization was issued by GPCB to RMC. According to CPCB, in view of the Rule-6, of the MSW Rules, 2000, GPCB, is responsible for monitoring compliances of the standards regarding groundwater, ambient air, leachate and the composite quality, including incinerator standards as specified in the Schedule II, III and V. For such reasons, the CPCB, declined to resist the Application.

In its contention RMC resisted the application on various grounds. One such ground being that the application is barred by limitation because the MSW is being disposed of at the land allotted by the State Government since 2002 and 2004 and that The Applicants have filed the Application without any foundation and after more than five years period of the commencement of the activity of the MSW disposal.

Later on, RMC entered into another contract with HBEPL, for setting up landfill site for disposal of the MSW that remained after recycling in the processing plant.

Applicants have prayed that RMC solid waste disposal (MSW) and the landfill management site should be directed to be closed and consequential relief of compensation and restoration of the land.

Questions arising in the present case are:

1. Whether the application of the applicant is barred by Limitation?
2. Whether because of the environmental pollution caused, the landfill management site should be directed to be closed?
3. Does CPCB play any role in this whole matter?

On the first question the of application being barred by limitation, the contention of the applicants has been affirmed by the Tribunal that after the complaint dated 17.12.2012, made by applicant no. 1, no action was taken by GPCB and thus it gave rise to the cause of action. Also the letter dated 24.12.2012, from GPCB stating such inaction has triggered the limitation. According to the above facts it has been held that the application is within the period of limitation as per Section 14(3) and Section 15(4) of the National Green Tribunal Act, 2010.

Applicants have placed on record various complaints made by the villagers, regarding the foul smell emanating from the landfill site. Land filling has been defined to mean, disposal of residual solid wastes on land in a facility designed with protective measures against pollution of groundwater, surface water and air fugitive dust, wind-blown litter, bad odour, fire hazard, bird menace, pests or rodents, greenhouse gas emissions, slope instability and erosion. Here the problem is that the landfill site No. 1, is filled up to its full capacity and therefore during rainy season the disposal of residual solid wastes becomes unmanageable. This residual waste is mixed up with the rain water and flows along with surface water, due to slope instability. Thus the real problem is not of selection of landfill site as such, but that of mismanagement of the MSW disposal by the contractor (HBEPL, Respondent No. 1).The contention of RMC, is that the plant is carrying out processing of about 400- 450 MT of MSW every day and if such processing plant is closed down, it would not be only dangerous to the environment, but would also result into spreading of epidemic diseases.

Deciding upon the above facts, prayer to close the landfill site was dismissed and order was made to ensure due compliance of the conditions and directions for preventing any mishandling and thereby causing any disturbance to the ecology and the people of that area.

Thus the Tribunal has held that the location of the landfill site is not illegal and improper, but here the "Polluter Pay's Principle" has to be applied. Also the villagers who are having agricultural lands or residences in the proximity of 500 mtrs near the Cell No.I and falls within suvh distance from epicenter of the present site from villages Nakravadi, Pipaliya, Nagalpar, Khijadiya, Rajgadh, Sokhda and Hadmatiyaetc may be identified and paid the compensation of Rs. 20000/- each by effecting recovery of such amount from HBEPL.

On the contention of CPCB that it does not have any role in this matter, it is observed that as per MoEF Notification No.SO.730 (e) dated 10th July, 2002, Central Govt. has delegated powers of issuance of directions under Section 5 of Environment (Protection) Act, 1986 to the Chairman, CPCB, to issue directions to any Industry or any local or other authority for violation of the standards and Rules relating to hazardous wastes, bio medical wastes, hazardous chemicals, industrial solid wastes, Municipal solid wastes, including plastic wastes, notified in the Environment (Protection) Act, 1986. It is also observed that the CPCB has issued directions under Section 18(2) of Water Act, 1974 to SPCB's vide letter No.B29012/1/2012/ESS dated 4-6-2012, to consider the MSW facilities as red category of activity under the provisions of Water Act, 1974 and Air Act, 1981. These provisions clearly demonstrate that CPCB cannot abdicate or be oblivious to its role and responsibility in such issues, though we agree that the primary role is of SPCB's.

The application was accordingly disposed of by directing the respondents to pay together costs of Rs. 1,00,000 /- to the applicants.