

IN THE HIGH COURT OF DELHI AT NEW DELHI

CM No. 15895/2005 in W.P. (C) 17682/2005

Date of decision: 11th February, 2009

VIMAL BHAI & ORS.

..... Petitioners
Through: Mr. Rahul Choudhary with
Mr. Ritwick Dutta, Advocates.

versus

UNION OF INDIA & ORS

.....Respondents
Through Mr. P.P. Malhotra,
Addl. Solicitor General of India
with Ms. Monika Garg,
Advocate.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE DR. JUSTICE S. MURALIDHAR

JUDGMENT

Dr. S.Muralidhar. J.

1. This is an application filed by the petitioners in W. P. (C) No. 17682 of 2005, seeking a direction to the respondents to implement the order dated 29th September 2005 passed by this court disposing of the said writ petition. By the said order dated 29th September 2005, this court had directed the respondents, “to take requisite steps for clearing the proposals” related to the appointment of the Chairman and other Members of the National Environment Appellate Authority (NEAA)

constituted under the National Environment Appellate Authority Act, 1997 ('NEAA Act').

Background

2. The aforementioned writ petition was filed in this Court by social activists engaged in the field of environment. Initially, the petitioner approached this Court questioning a decision dated 20th May 2005 of the NEAA dismissing their appeal on account of delay. In the said appeal, the petitioners had challenged the environment clearance granted by the Government of India on 8th February 2005 for setting up of the Loharinag-Pala Hydroelectric Power Project (600 MW) in Uttarkashi, District of Uttaranchal. The appeal was to be filed within thirty days thereafter but was filed on 1st April 2005. This court by its order dated 29th September 2005, held that the NEAA had adopted "a very hyper technical approach in rejecting the petitioners' application for condonation of 23 days delay instead of dealing with this plea on merit". It accordingly set aside the NEAA's order dated 20th May 2005 and remanded the case to the NEAA for a decision on merits in accordance with law.

3. This Court was, in the course of the hearing of the above writ petition, informed that the NEAA was first constituted on 9th April 1997 with the following persons:
 1. Shri. Justice N. Venkatachala (foremer judge of the Supreme Court)- Chairperson.
 2. Smt. Nirmala Buch (former Secretary to the Government of India)- Vice- Chairperson

3. Shri. Mohinder Singh (former Principal Secretary to the State Govt. of Uttar Pradesh) – Member.
4. Shri. Ejaj A. Malik (former Principal Chief Conservator of Forests, Jammu and Kashmir) – Member.

Justice N. Venkatachala, Nirmala Buch, Mohinder Singh, Ejaj A. Malik demitted office with effect from 2nd July 2000, 13th July 2000, 7th March 2000 and 13th July 2003 respectively. The office of the Chairperson remained vacant since 2nd July 2000. The post of the Vice- Chairperson was filled up by the appointment of Shri Vishwanath Anand and with effect from 1st February 2002. His term was extended for a period of six months with effect from 1st February 2005 till 31st July 2005. He demitted office on 31st July 2005.

4. Taking note of the fact that the posts of chairperson and Vice-Chairperson of the NEAA were vacant this Court, while disposing of the writ petition on 29th September 2005, observed:

“While considering this matter it was noticed by this Court that the Union of India has failed to constitute the National Environment Authority under the Act of 1997 and on the contrary allowed this Authority to become a one-man show when the statute prescribed its composition which requires a Chairman, Vice Chairman and three Technical Members. By Court order dated 12th September, 2005 the Union of India was, accordingly, directed to file an affidavit indicating therein the steps taken by it for composition of the Appellate Authority. This affidavit has been filed and it is stated that steps were taken from time to time for reconstitution of this

Authority. It is explained that a retired Judge of the Supreme Court has now been nominated but some modalities about the perks and salary of the Chairman are being processed in the Finance Ministry.

Given regard to the importance of the Authority created under the National Environment Authority Act, it is appropriate to direct the Union of India and all its concerned functionaries to take requisite steps for clearing the proposals related to the appointment of the Chairman of the Appellate Authority and other Technical Members and reconstitute the Authority within 45 days. The Registrar to fax this order to Secretary Ministry of Finance and Secretary, Ministry of Environment and Forest for compliance.

The petition is disposed of.”

5. When no effective steps were taken by the Respondents to reconstitute the NEAA within forty-five days thereafter, the petitioners filed the present application, CM No. 15895 of 2005. On 7th February 2007, a statement was made to this Court by the Respondents that a Bill to set up Central and Regional Environmental Tribunals to replace the NEAA was being introduced in the budget session of the parliament, Although two further adjournments were granted on 4th April 2007 and 16th May 2007 on this ground, nothing appears to have been happened.

6. On 6th August 2008, the following order was passed by this Court:

“By order dated 29th September, 2005, the Division Bench of this court directed the Union of India and all its concerned functionaries

to take requisite steps for clearing the proposals related to the appointment of the Chairman of the Appellate Authority under the National Environment Appellate Authority Act 1997 and other technical members and reconstitute the Authority within 45 days. The said directions have not yet been fully complied with. The post of Chairman still remains vacant. The Vice Chairman retired some time in June 2006 and no person has been appointed to that post yet. Thus both the posts of Chairman and Vice Chairman are vacant as of now. The learned counsel appearing for the respondent states that they have taken all possible steps to fill up the said vacancies. However, this court is not satisfied that any serious effort has been made to comply with the directions of this court. The respondents are directed to produce the original files relating to the appointment to the posts of Chairman and Vice Chairman of the Appellate Authority before this court on 13th August, 2008. A copy of this order be given dasti under the signature of court master.”

7. Despite the above order, the Respondents did precious little to make appointments to the vacant posts of Chairperson and Vice-Chairperson of the NEAA. This led this Court to pass the following order on 15th October 2008:

“Learned counsel appearing for the respondents stated that the only progress made from 3.9.2008 till date is that the Registrar (Admn.), Supreme Court of India has been requested to give the addresses and contact numbers of the retired Judges of the Supreme Court of India. It appears that the respondents are not serious about fulfilling their such statutory obligation of

appointing the Chairperson and Vice Chairperson of the National Environment Appellate Authority (NEAA). The post of Chairperson has remained vacant since July 2000. The Vice Chairperson's post fell vacant in July 2005. Both posts remain vacant till date. It is now submitted by the respondents that keeping in view the work load of the NEAA in terms of number of appeals received and disposed during the last few years, and also keeping in view that three Members of the NEAA are already in position, the filling up of the post of Vice Chairperson is not required. We find this explanation given by the respondents to be unsatisfactory. We direct the Secretary, Ministry of Environment and Forests, Government of India to remain present before this court on 20th October, 2008 at 2.00 pm with the relevant files relating to the appointments of Chairperson and Vice Chairperson of the NEAA. Copy of this order be given dasti to counsel for the respondent under the signature of Court Master."

8. Thereafter the Secretary, Environment appeared before the Court and assured that letters of offers would be written to certain retired judges of the Supreme Court to ascertain their consent. However, at the subsequent hearings this Court was informed that the learned retired judges to whom such letters had been written, had declined the offer. One of them had pointed out that the terms and conditions being offered were substantially different from what was being offered to the Chairpersons of certain other statutory tribunals.

9. At the hearing on 3rd December 2008 this Court Mr. Rahul Choudhary, the learned counsel appearing for the petitioners, pointed out that given the fact that the salary offered to both the Chairperson and Vice-Chairperson of the NEAA being equal to that of a Secretary to the Government of India, it was not surprising that no retired Judge of the Supreme Court or retired Chief Justice of a High Court was inclined to accept the post. He further submitted that the three technical members presently at the NEAA comprised two former members of the Indian Forest Service and one former member of the IAS. He pointed out that the MoEF has two separate wings: the Environment Wing and the Forest Wing. The Forest Service Officers were not expected to have expertise in the area of environment. Therefore, the qualifications of these Members did not satisfy the requirement of the provisions of the NEAA Act.

Position under the NEAA Rules regarding the service conditions of Chairperson of the NEAA

10. At the hearing on 3rd December 2008 this Court examined in detail the relevant provisions of the NEAA Act and the Rules. Under Section 22 NEAA Act, the Central Government can by notification, make rules for carrying out the provisions of the Act. This power includes under Section 22(2) (b) to make rules in respect of the salaries and allowances payable to and other terms and conditions of service of the Chairperson, the Vice-Chairperson and the Member under Section 9 of the Act. Pursuant thereto, the Central Government has made the National Environment Appellate Authority (Salary,

Allowances and Conditions of Service of Chairperson and Vice-Chairperson) Rules, 1998 ('NEAA Rules').

11. Under Rule 4 the Chairperson shall be entitled to the pay scale of Secretary to the Government of India, i.e., Rs. 26,000/- (fixed). It is stated "the pay shall be fixed in accordance with prevailing orders i.e. pay minus pension." Rule 4 reads as under:

"Pay of Chairperson

4. A Chairperson shall be entitled to the pay scale of Secretary to the Government of India, i.e. Rs. 26,000/(fixed). The pay shall be fixed in accordance with prevailing orders i.e. pay minus pension.

(i) The Chairperson shall be entitled to dearness allowances and city compensatory allowance at the rates admissible to a Secretary to the Government of India.

(ii) Leave Travel Concession (LTC), Traveling Allowances and Daily Allowance on tour, shall be paid to the Chairperson as applicable to a Secretary to the Government of India. He will also be entitled to facility of temporary Government accommodation in guest house/inspection bungalow run by the Central Government, wherever applicable, on payment of normal rent at outstation, of the class to which a Secretary to the Government of India eligible.

(iii) Official visits abroad by a Chairperson shall be undertaken only in accordance with Government orders as applicable to officers of equal grade in the Government of India. For domestic tours, the Chairperson would keep the Secretary of the administrative Ministry/Department informed.

(iv) A Chairperson shall be entitled to medical treatment and hospital facilities as provided in the Central Government Health Scheme (CGHS) as applicable to a retired Government Servant. At places where the CGHS scheme is not in operation, he shall be entitled to reimbursement facilities provided under the Central Services (Medical Attendance) Rules."

12. Rules 9 and 10, which are also relevant read as under:

"9. Accommodation:

A Chairperson is entitled for House Rent Allowance at the rate of 30% of the basic pay drawn, if he stays in Delhi. Outside Delhi, he shall be entitled to rented unfurnished accommodation with built up area measuring around 350 sq. meters in the National Capital Region (NCR) with suitable open land area appurtenant as permissible under the regulation of the concerned municipal bodies.

10. Special Provisions relating to existing Chairperson
Notwithstanding anything contained in these rules,

salary, allowances and conditions of service of the Chairperson appointed before and holding office on, the commencement of these rules shall be, at par with a sitting Judge of the Supreme Court of India;
Provided that the salary being pay of a sitting judge of the Supreme Court minus pension (before commutation) fixed in his case."

13. Rule 10 therefore extends the salary, allowances and conditions of a sitting judge of the Supreme Court only to an 'existing Chairperson', i.e. a person who has been appointed before and is holding office on the commencement of the Rules. This therefore applied only to the first Chairperson, Justice Venkatachala. For the succeeding Chairperson Rule 4 would apply which meant that the pay is the same as that of a Secretary to the Government of India. The Vice-Chairperson too is entitled in terms of Rule 12 "to the pay scale of Secretary to the Government of India, i.e., Rs. 26,000 (fixed)". There appears to be no rational explanation for the obvious irrationality of the government policy in this regard. While Justice Venkatachala the first Chairperson was given the pay, allowances and conditions of service admissible to a sitting Judge of the Supreme Court, his successor in office, who too would be either a sitting or a retired Judge of the Supreme Court, is not extended the same terms. It is a further anomaly that the pay, allowances and conditions of service of the Chairperson of the NEAA is no different from that of the Vice-Chairperson and a Secretary to the Government of India. This is not the position in many other Tribunals and quasi judicial bodies headed

by former judges of the Supreme Court. No surprisingly therefore no retired judge of the Supreme Court or retired Chief Justice of a High Court was willing to accept the offer of the post of Chairperson NEAA

14. In the above context, this Court passed the following order on 3rd December 2008:

"We find that the terms and conditions offered to the Chairperson, National Environment Appellate Authority ('NEAA') are substantially different from those offered to former Judges who have been appointed as Chairperson/Members of other Authorities/Bodies. It seems all of them have been offered terms and conditions similar to sitting Judges of the Supreme Court, if not identical. We are also informed that the existing members of NEAA are all former bureaucrats having no technical expertise. The Secretary, Ministry of Environment and Forests is directed to file an affidavit within one week explaining why the terms and conditions offered to the Chairperson NEAA is different from those offered to retired judges of the Supreme Court and who have been appointed as Chairperson of other authorities and why persons having the necessary technical expertise have not been appointed as members of NEAA.

List on 17th December, 2008 as Item No.1. Dasti."

15. Pursuant to the above order Shri Rajneesh Dubey, Joint Secretary in the Ministry of Environment & Forest (MoEF) filed an affidavit dated 10th December 2008 stating as under:

*"That subsequently, Hon'ble Justice P.V. Reddi agreed to accept the post of Chairperson on two conditions that (1) his emoluments should be same as that of the sitting Judge of the Supreme Court and (ii) he should be allotted residential accommodation. The matter in this regard was taken up with the Ministry of Finance for amending the NEAA (Salary, Allowances and Conditions of Service of Chairperson and Vice-Chairperson) Rules, 1998 to make the terms and conditions of Chairperson, NEAA at par with the sitting Judge of Supreme Court. **The Ministry of Finance has not agreed to the terms and conditions of a sitting judge to Hon'ble Justice Reddi.***

As regards the residential accommodation, the Ministry of Urban Development informed that the Chairperson would only be allotted an entitled type of Bungalow as soon as available, as there was no accommodation already earmarked to Chairperson NEAA."

(emphasis supplied)

16.As regards the technical expertise of the serving members of the NEAA, it was stated in the same affidavit as under:

"That three members are presently in position namely, (i) Shri Kaushalendra Prasad who is a retired Indian Forest Service (IFS) Officer and has previously held the post of Principal Chief Conservator of Forests (PCCF) of Uttar Pradesh, (ii) Shri J. C. Kala who is a retired I.F.S. Officer and previously held the post of Director General of Forests and Special Secretary in the Ministry of Environment & Forests, Government of India and (iii) Dr. LV. Manivannan who is a retired IAS. Officer and has held the post of Secretary, Department of Environment & Forests, Government of Tamil Nadu. That all the three members are qualified for appointment as Member in terms of eligibility as per Section 5(3) of the above said Act, by virtue of their professional knowledge or practical experience in the areas pertaining to conservation and environment management."

17.At the subsequent hearing it was submitted by Mr. Choudhary, learned counsel for the petitioners that with the Finance Ministry unwilling to consider granting the Chairperson NEAA, the salary, allowances, terms and conditions of a sitting Judge of the Supreme Court, the post of Chairperson NEAA was unlikely to be filled up. He submitted that by keeping the post of Chairperson vacant for over eight years and that of the Vice-Chairperson vacant since 1st August

2005, the government had rendered the NEAA non-functional. He placed on record the complete list of cases which have been disposed of and are pending before the NEAA since 1998.

18. Mr. P.P. Malhotra, the learned Additional Solicitor General of India, reiterated what has been stated in the affidavit dated 10th December 2008 of Mr. Rajneesh Dubey. He submitted that the terms and conditions of service of the Chairperson and Vice-Chairperson have probably been fixed in light of the Notification issued by the Central Government on 29th January 1998 announcing the policy concerning the Chairperson and Members of regulatory authorities. He submits that there are only ten pending matters before the NEAA and therefore, the Ministry of Finance has taken the stand that it cannot agree to the proposal for extending to the Chairperson the same terms and conditions of service as are applicable to a sitting Judge of the Supreme Court.

19. More than three years after its mandatory order dated 29th September 2005, this Court is faced with a situation where the Respondent Union of India has not only not obeyed the mandamus issued to it by this Court but continues to defy it by refusing to correct what appear to be obvious, anomalies in the NEAA Rules. Normally, this Court would, in the exercise of its extraordinary jurisdiction under Article 226, exercise restraint in issuing directions concerning the rules governing the service conditions of the Chairperson of a statutory Tribunal. However, the present case tests the limits of the scope of this Court's powers in exercise of its extraordinary jurisdiction under Article 226

of the Constitution. The Court cannot be expected to remain a mute witness to the unfortunate rendering of a statutory body ineffective by an unwilling executive. This application raises issues of considerable importance concerning the answerability of the executive government to carry forth the legislative mandate.

The rationale behind the setting up of the NEAA

20. The issues raised can be better appreciated when the rationale behind the creation of the NEAA is examined. The Environment (Protection) Act, 1986 (EPA) was enacted to implement the decisions taken at the United Nations Conference on the Human Environment held at Stockholm in June 1972, in which the Government of India participated. However, the EPA did not itself set up a special adjudicatory mechanism to decide cases involving environmental pollution. The need for environmental courts to adjudicate issues concerning environmental pollution was first emphasized by the Supreme Court of India in *M.C. Mehta v. Union of India* 1986 (2) see 176. In para 22 of the judgment the Court suggest to the Government of India that:

"..... since cases involving issues of environmental pollution, ecological destruction and conflicts over national resources are increasingly coming up for adjudication and these cases involve assessment and evolution of scientific and technical data, it might be desirable to set up environment courts on the regional basis with one professional Judge and two experts drawn from the Ecological Sciences Research Group keeping in view the nature of the case and the expertise required for its adjudication. There would of course be a right of

appeal to this Court from the decision of the environment court."

21. The experience over the years has been that the matters concerning the environment are invariably brought before the Supreme Court of India and the High Courts by way of public interest litigation (PIL) petitions. There has been an explosion of PIL petitions in the area of environment alone. The nature of these matters is such that they require constant monitoring of the directions issued by the courts by way of "continuing mandamus." The general growing arrears of cases at all levels of the courts has placed a greater pressure on the constitutional courts to allocate adequate time for environment cases. The Supreme Court in *M.C. Mehta* anticipated this problem and therefore suggested the creation of an exclusive alternative forum for environment cases thus easing at least the initial burden on High Courts and the Supreme Court.

22. With the increased emphasis on planning and implementation of large projects impacting on the environment in general, the issue concerning grant of environmental clearance for such projects has assumed significance. The decision to grant environmental clearance is invariably that of the State and Central Governments. A need was felt to create a forum for questioning these decisions. In the environment impact assessment (EIA) notification issued under the EPA a detailed procedure has been outlined whereby public hearings are expected to be conducted for addressing the objections that may be raised by communities and individuals to the grant of

environmental clearance to a project. Till the NEAA Act came into being there was no forum other than the High Court or the Supreme Court where such EIA clearance could be challenged. It is in the above background that the NEAA Act was enacted.

23. In the scheme of the Statement of Objects and Reasons to the NEAA Act appended to the Bill, it is stated as under:

"Clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 empowers the Central Government to impose restrictions in the areas in which any industries, operations or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards. In view of recent pronouncements by the Supreme Court in certain public interest litigation cases involving environmental issues, it was considered necessary to set up an independent body for quick redressal of public grievances. Consequently, an Ordinance was promulgated providing for the establishment of a National Environment Appellate Authority to deal with writ petitions, complaints, representations or appeals against the grant of environmental clearance to projects."

24. The NEAA Act received the assent of the President and was notified on 26th March 1997. The long title to the Act states that it is "an Act to provide for the establishment of a National Environment Appellate

Authority to hear appeals with respect to restriction of areas in which any industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986 and for matters connected therewith or incidental thereto."

The Scheme of the NEAA Act

25. The statutory scheme of the NEAA Act indicates that the NEAA is intended to be independent authority presided over by senior functionary of the judiciary with substantial judicial experience. The Chairperson is supported by members with experience in technical matters. Since the appeals before the NEAA are against the decisions of either the Central Government or the State Government, the NEAA is expected to function in an impartial and independent manner. If indeed the object was, as indicated by the Supreme Court, "to set up an independent body for a quick redressal of public grievances", then it is obvious that the Parliament intended that the NEAA should be an effective body functioning on a day-to-day basis.

26. Under Section 3 of the NEAA Act, the NEAA has been constituted by the Central Government with its head office in Delhi. Section 4 requires that the NEAA shall consist of a Chairperson, a Vice-Chairperson and such other Members not exceeding three, as the Central Government may deem fit. Under Section 5(1) a person shall be qualified for being appointed as a Chairperson unless he has been a Judge of the Supreme Court or a Chief Justice of a High Court. Under Section 5(2) a person shall not be qualified for appointment as a Vice-

Chairperson unless he has "for at least two years held the post of a Secretary to the Government of India or any other post under the Central or State Government carrying a scale of pay which is not less than that of a Secretary to the Government of India; and expertise or experience in administrative, legal, managerial or technical aspects of problems relating to environment," Under Section 5(3) a person shall not be qualified for appointment as Member unless "he has professional knowledge or practical experience in the areas pertaining to conservation, environmental management, law or planning and development."

27. While Section 6 states that in the absence of the Chairperson, the functions of such Chairperson shall be discharged by the Vice-Chairperson, Section 10 of the Act states that no act or proceedings of the NEAA shall be questioned or shall be invalid merely on the ground of existence of any vacancy or defect in the establishment of the Authority. The Chairperson, Vice-Chairperson or Member shall hold office in terms of Section of 7 of the Act, for a term of three years from the date on which such person enters office. However, they shall be eligible for reappointment for another term of three years provided that no Chairperson shall hold office after he has attained seventy years of age and no Vice-Chairperson or a Member shall hold office after attaining the sixty-five years of age. The removal of the Chairperson or Vice-Chairperson or the Member can only be on the ground of proved misbehavior or incapacity after an inquiry made by a Judge of the Supreme Court and by an order made by the President.

28. The jurisdiction of the NEAA is specified in Section 11(1) which reads as under:

"(1) Any person aggrieved by an order granting environmental clearance in the areas in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards may, within thirty days from the date of such order, prefer an appeal to the Authority in such form as may be prescribed."

29. Under Section 12, the NEAA has been given the power of the Civil Court while trying a suit. Under Section 15, with effect from the date of the establishment of the NEAA "no civil court or other authority shall have jurisdiction to entertain any appeal in respect of any matter with which the Authority is so empowered by under this Act." The failure to comply with an order made by the NEAA under Section 19 shall be punishable with imprisonment for a term which may extend to seven years, or with fine which may extend to one lakh rupees, or with both.

30. An overview of the provisions of the NEAA Act show that the NEAA was intended by Parliament to be an effective independent judicial authority which would review the EIA decisions of the state and central governments.

How the NEAA Act has been rendered ineffective

31. However, as the present petition indicates, the Government of India has by its unwillingness to take effective steps, rendered the NEAA an ineffective body, thus defeating the very purpose of the NEAA Act. The NEAA Act came into force on 26th March 1997 and its first Chairperson was Justice N.Venkatachala, a retired Judge of the Supreme Court. There was hardly any awareness in the initial years of the constitution of the NEAA and appeals were seldom filed. In fact, the only significant case that was referred to it was by the Supreme Court in ***A.P. Pollution Control Board v. Prof. M. V. Nayudu (1999) 2 SCC 718.***

32. Since 2nd July 2000 the office of the Chairperson NEAA has remained vacant. The office of the Vice-Chairperson has remained vacant since 1st August 2005. The reason for the posts have remaining vacant have been noticed earlier. They leave this Court in no doubt that the Union of India is not at all serious about having an effective functioning NEAA. That the government has been lackadaisical is obvious. This Court finds the failure of the government to appoint a Chairperson for over eight years inexcusable. A headless NEAA has thus been rendered and ineffective by the act of omission of the government. The intention of Parliament in requiring the government to constitute an independent body for quick redressal of public grievances in relation to grant of environmental clearances has thus been defeated.

33. The seemingly simplistic explanation offered by the government that it is "doing its best" and that it has repeatedly been making offers to retired Judges of the Supreme Court and retired Chief Justices of the High Court does not impress this court. Nor does the submission of Mr. Malhotra that a person offered the post of Chairperson NEAA would have to be provided accommodation on par with a Supreme Court Judge and since there is a shortage of official accommodation, there would be a further difficulty in filling up the post.

34. As already noticed, Rule 10 of the NEAA Rules extended the terms and conditions of a sitting Judge of the Supreme Court only to the first Chairperson and not to the successors. If the Government was serious that the NEAA should be an effective body functioning on a day-to-day basis, and if the experience of the last eight years shows that the post of Chairperson has not been able to be filled because of the patently unfair terms of service as contained in Rules 4 and 10 of the NEAA Rules, the logical step for the government would have been to amend the NEAA Rules to extend to the Chairperson NEAA the terms applicable to a sitting Supreme Court Judge. Given the number of Tribunals that have been created by the Union of India even subsequent to the NEAA Act, and given the fact that the Chairpersons of many such Tribunals have been extended the terms applicable to a sitting Supreme Court Judge which includes providing the appropriate official accommodation, the excuse of shortage of accommodation only for the Chairperson of the NEAA is a red herring.

35. This omission of the government has a wider ramification in terms of the protection of the environment. We have been shown a list of river valley and hydro-electric projects which have been granted environment clearance since the EIA Notifications issued on 14th September 2006. In 2006 itself three such projects were given clearance. In the year 2007, 25 such projects and in the year 2008 11 such projects have been granted clearance. Likewise, between 2006 and 2008 there have been as many as 252 projects stated to have been granted environment clearances which fall in the category of Non-Coal Mining projects. These are in States other than Andhra Pradesh (AP), Chhattisgarh, Goa, Karnataka, Kerala, Maharashtra and Tamil Nadu. As regards the remaining States as many as 335 projects have been granted environment clearance from September 2006 till August 2008. Compared with this the total number of appeals filed thus far before the NEAA is only 50. Given the large number of projects, it is clear that in the absence of a properly constituted NEAA, persons aggrieved by the grant of EIA clearances do not perceive it to be an effective mechanism. It places an unreasonable burden on the High Courts and Supreme Court to effectively or efficiently deal with all the possible PILs that such EIAs may generate. When Parliament has provided an alternative judicial forum for such cases, there is no reason why such body should not be made effective by the government. By rendering such forum ineffective, the Union of India is contributing the arrears and delays in the expeditious disposal of the cases pending before the courts.

36. Ironically, in PILs challenging grant of EIA clearance, the Union of India invariably raises a preliminary objection that there is an alternative remedy available to the petitioner before the NEAA. However, as the present case shows, that remedy is being rendered nugatory by the Union of India itself by not appointing a Chairperson for over eight years and a Vice-Chairperson for over three years. The list produced by the petitioners of appeals before the NEAA shows that most of the appeals disposed of thus far have in fact been dismissed, comprised as it is of retired bureaucrats, minus the Chairperson and Vice Chairperson. The NEAA is, therefore, at present neither an effective nor an independent mechanism for redressing the grievances of the public in relation to the environment clearances granted both either the State or the Central Government.

37. We are also not happy with the manner of appointment of Members of the NEAA. The present incumbents cannot be stated to be persons satisfying the requirements of possessing technical expertise in terms of Section 5(2) of the NEAA Act. Nevertheless we do not wish to disturb the tenure of the present incumbents since we are informed that they are likely to demit office sometime in March 2009. However, we direct that hereafter the Union of India shall appoint as Members of the NEAA only persons with special technical knowledge in the area concerning the environment as required by Section 5(2) NEAA Act. The appointment of retired bureaucrats of the MoEF, who do not satisfy this requirement, as Members of the NEAA will be contrary to the spirit of the Section 5 (2) NEAA Act and ought not to be countenanced.

Scope of the powers of this Court

38. The numerous orders passed by this Court in the past three years reflect both the concern of the Court and the considerable restraint exercised by it in refraining from proceeding against the concerned officials for disobeying its binding orders. However, the government has failed to take satisfactory steps to address the concern expressed by this Court. It has failed to comply with the Court's orders and has left it with no choice but to issue further mandatory directions to ensure that the legislative mandate contained in the NEAA Act is not frustrated by executive apathy. The government has to be made accountable in law for its disobedience of the court's orders.

39. The issue may also be viewed from the point of view of access to justice. The NEAA Act is an enactment intended to provide an effective and efficacious remedy for citizens aggrieved by what they perceive to be adverse decisions of the government granting EIA clearance for various projects. The challenge to such decisions would invariably be on the ground that it would adversely affect the right to clean environment and health, which are but facets of the right to life itself. The NEAA Act was intended to ease the burden of the High Courts and the Supreme Court thus enabling them to take up other equally important issues affecting the lives of citizens.

40. By rendering the NEAA ineffective, the government has denied the citizens the right of access to effective and efficacious justice in matters concerning the environment. This Court, being a

constitutional court charged with the responsibility of protecting and enforcing fundamental rights cannot be expected to be a mute spectator and permit the continued apathy of the government. The plenitude of its powers under Article 226 of the Constitution require it to issue mandatory directions by way of corrective measures to prevent the continued denial of the right of access to effective justice in matters concerning the environment. This Court would, by issuing further mandatory directions, be ensuring the protection and enforcement of the fundamental rights of persons of access to justice guaranteed under Articles 14 and 21 of the Constitution.

Reinterpreting Rules 4 and 10

41. The above discussion shows that one major factor that has hindered the appointment of a Chairperson of the NEAA has been the present Rule 4 of the NEAA Rules which offers to the Chairperson only the salary of a Secretary to the Government of India while it expects the qualification of such person to be that of a retired Judge of the Supreme Court or a retired Chief Justice of the High Court. Rule 10 grants the salary of a sitting Judge of the Supreme Court only to the first Chairperson and not the successor in that office. As already noticed, the government has, without amending Rules 4 and 10, undertaken a pointless exercise of trying to persuade retired judges of the Supreme Court or retired Chief Justices of the High Courts to accept the post of Chairperson.

42. Strangely, the stand of the government, and in particular the Ministry of Finance, as regards on the pay and conditions of service of the

Chairperson, seems peculiar to the NEAA. When it comes to other tribunals, the policy of the government has been different. The current practice followed by it in regard to the National Consumer Disputes Redressal Commission, the Telecom Disputes Settlement Appellate Tribunal and the Electricity Appellate Tribunal shows that the Chairpersons of such Tribunals have been granted the salary and terms and conditions as are applicable to a sitting Judge of the Supreme Court. Clearly in relation to such tribunals the government has given up its policy as contained in the Notification dated 29th January 1998. This Court therefore finds no rational basis for denying to the Chairperson, NEAA the terms offered to the Chairperson of any of the above tribunals. After making this Court wait for a considerable period the NEAA Rules to be amended, the Union of India has washed its hands off thus compelling the Court to issue the above directions to preserve and operationalise the mandate of the NEAA Act. The refusal of the Finance Ministry to do so is inexplicable. It has resulted in an avoidable impasse with the NEAA continuing to remain headless for eight long years thus frustrating the legislative mandate of the NEAA.

43. In the circumstances, this Court is thus left with no option but to exercise its extraordinary jurisdiction under Article 226 to direct that in relation to the appointment hereafter of the Chairperson of the NEAA the Respondent Union of India will offer the salary, allowances and other conditions of service as applicable to a sitting Judge of the Supreme Court. In other words the benefit of Rule 10 of the NEAA Rules will be extended to every Chairperson of the NEAA

and not just the first one. Effectively therefore, in relation to the Chairperson NEAA hereafter appointed, the word "existing" before the word "Chairperson" in the heading of Rule 10 and the words "appointed before and holding office on, the commencement of these rules" following the words "of the Chairperson" in the substantive portion of Rule 10 will not apply. This will be the position notwithstanding Rule 4 of the NEAA Rules. Rule 4 would be subject to Rule 10 as interpreted by this Court. As explained hereinbefore, these directions are essential to ensure that the NEAA functions as an effective appellate tribunal and satisfies the legislative mandate of the NEAA Act.

44. It is accordingly directed that the Union of India shall grant to the Chairperson of the NEAA hereafter appointed the salary, allowances and other conditions of service as applicable to a sitting Judge of the Supreme Court. The Respondent Union of India will now proceed to take steps on this basis to fill up the post of Chairperson and Vice-Chairperson of the NEAA and will complete the process within a period of 12 weeks from today. The necessary amendments to the NEAA Rules consistent with the above directions shall be carried out by the Union of India within the same time period. As regards the appointment of Members of the NEAA after the retirement of present incumbents, the Union of India will abide by the directions issued by this Court in para 37 of this judgment.

45. With the above directions, the application is disposed of. For not complying with the directions issued by this Court on September 29,

2005, which has necessitated the filing of this application, we direct the Respondent Union of India to pay the applicant costs of Rs.20,000 within four weeks.