

National Green Tribunal

T.Mohana Rao & Others vs Moef And Ors on 23 May, 2012

BEFORE THE NATIONAL GREEN TRIBUNAL, NEW DELHI
(PRINCIPAL BENCH)

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

IN THE MATTER OF

1. T. Mohana Rao
S/o Late Seetharam
R/o Sompeta Mandal / Tahsil,
Sompeta P.O., Srikakulam Dist.,
Andhra Pradesh - 532284

.... APPELLANT

Versus

1. The Director, Ministry of Environment & Forests
Government of India, Paryavaran Bhawan,
New Delhi - 110003
2. The Secretary (Environment),
Forests & Environment Department
Government of Andhra Pradesh
Hyderabad (A.P.)
3. The Chairman,
Andhra Pradesh State Pollution Control Board
Paryavarana Bhawan,
A-3, Industrial Estate, Sanath Nagar
Hyderabad - 500018 (A.P.)
4. Environmental Engineer
Andhra Pradesh Pollution Control Board,
Vizianagaram,
Andhra Pradesh.
5. State of Andhra Pradesh
Represented by the District Collector,
Srikakulam, Andhra Pradesh

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6. M/s Nagarjuna Construction Company Ltd.
Nagarjuna Hills, Punjagutta,
Hyderabad, Andhra Pradesh
7. M/s Nagarjuna Construction Company Ltd.
Sompeta Town, Sompeta Mandal / Tahsil,

Srikakulam Dist., Andhra Pradesh

.... RESPONDENTS

APPEAL NO. 24/2011
(NEAA Appeal No. 2/2010)

1. Maddu Raja Rao
S/o Lakshminarayana,
R/o Ramayyapatnam Village
Sompeta Mandal / Tahsil,
Isakalapalem B.P.O.
Srikakulam Dist.,
Andhra Pradesh - 532284

.... APPELLANT

Versus

1. Ministry of Environment & Forests
Represented by its Director,
Government of India, Paryavaran Bhawan,
New Delhi - 110003
2. Andhra Pradesh State Pollution Control Board
Represented by its Chairman,
Paryavarana Bhawan,
A-3, Industrial Estate, Sanath Nagar
Hyderabad - 500018 (A.P.)
3. M/s Nagarjuna Construction Company Ltd.
Nagarjuna Hills, Punjagutta,
Hyderabad, Andhra Pradesh

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4. M/s Nagarjuna Construction Company Ltd.
Project Office at Sompeta Town,
Sompeta Mandal / Tahsil,
Srikakulam Dist., Andhra Pradesh

.... RESPONDENTS

APPEAL NO. 25/2011
(NEAA Appeal No. 3/2010)

1. Forum for Sustainable Development (Regd. No. 305/2008)
D. No. 8-2-602/c, Flat No. 309, Hanging Gardens,
Road No.10, Banjara Hills,
Hyderabad - 530034

2. Emami Anantha Satyanarayana Sarma
S/o Late Lakshminarayana
R/o14-40-4/1, Gokhale Road,
Maharanipeta
Visakhapatnam - 530002

.... APPELLANTS

Versus

1. Ministry of Environment & Forests
Represented by its Secretary
Government of India, Paryavaran Bhawan,
CGO Complex, Lodhi Road,
New Delhi - 110003
2. Government of Andhra Pradesh
Represented by its Chief Secretary, A. P. Government
Secretariat, Hyderabad - 500022
3. Department of Environment & Forests, Govt. of A.P.
Represented by its Special Chief Secretary,
Government of A.P.
Secretariat, Hyderabad - 500022

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4. Andhra Pradesh Pollution Control Board
Represented by its Member Secretary
Paryavarana Bhawan, Sanath Nagar
Hyderabad
5. Andhra Pradesh Industrial Infrastructure Corporation Ltd.
Represented by its Managing Director and Vice Chairman
Parisrama Bhawan, Hyderguda, Fateh Maidan Road,
Hyderabad
6. Commissioner
Department of Land Revenue
Government of Andhra Pradesh
Hyderabad, Andhra Pradesh
7. M/s Nagarjuna Construction Company Ltd. /
NCC Power Projects Ltd.
Regd. Office : 41,Nagarjuna Hills,
Punjagutta, Hyderabad - 500082

.... RESPONDENTS

APPEAL NO. 26/2011
(NEAA Appeal No. 4/2010)

1. Paryavarana Parirakshana Sangham
Sompeta, Srikakulam Dist., Andhra Pradesh

.... APPELLANT

Versus

1. Ministry of Environment & Forests
Through Secretary
Government of India, Paryavarana Bhawan,
CGO Complex, Lodhi Road,
New Delhi - 110003

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2. Andhra Pradesh State Pollution Control Board
Through Member Secretary
Paryavarana Bhawan, A-III, Industrial Estate,
Sanath Nagar,
Hyderabad - 500018 (A.P.)
3. M/s Nagarjuna Construction Company Ltd.
Nagarjuna Hills, Punjagutta,
Hyderabad - 500082 (A.P.)

.... RESPONDENTS

APPEAL NO. 27/2011
(NEAA Appeal No. 5/2010)

1. Donnu Behara
S/o Late Ugadhi Behara
R/o Isakalapalem Village,
Sompeta Mandal / Tahsil,
Isakalapalem B.P.O., Via : Sompeta
Srikakulam Dist., Andhra Pradesh - 532284

.... APPELLANT

Versus

1. Ministry of Environment & Forests
Represented by its Director

Government of India, Paryavaran Bhawan,
New Delhi - 110003

2. Andhra Pradesh State Pollution Control Board
Through its Chairman,
Paryavarana Bhawan,
A-3, Industrial Estate, Sanath Nagar
Hyderabad - 500018 (A.P.)
3. M/s Nagarjuna Construction Company Ltd.
Nagarjuna Hills, Punjagutta,
Hyderabad, Andhra Pradesh

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4. M/s Nagarjuna Construction Company Ltd.
Sompeta Town, Sompeta Mandal / Tehsil,
Srikakulam Dist., Andhra Pradesh

.... RESPONDENTS

APPEAL NO. 28/2011
(NEAA Appeal No. 6/2010)

1. Sandhi Kamaraju
S/o Late Parasayya
Residing at Rushikudda Village,
Sompeta Mandal / Tahsil,
Rushikudda B.P.O., Via : Sompeta
Srikakulam Dist., Andhra Pradesh - 532284

.... APPELLANT

Versus

1. Ministry of Environment & Forests
Represented by its Director
Government of India, Paryavaran Bhawan,
New Delhi - 110003
2. Andhra Pradesh State Pollution Control Board
Represented by its Chairman,
Paryavarana Bhawan,
A-3, Industrial Estate, Sanath Nagar
Hyderabad - 500018 (A.P.)
3. M/s Nagarjuna Construction Company Ltd.
Nagarjuna Hills, Punjagutta,
Hyderabad, Andhra Pradesh
4. M/s Nagarjuna Construction Company Ltd.

Project Office at Sompeta Town,
Sompeta Mandal / Tahsil,
Srikakulam Dist., Andhra Pradesh

.... RESPONDENTS

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Counsel for Appellant:

Shri Ritwick Dutta
Shri Rahul Choudhary

Counsel for Respondent :

Ms. Neelam Rathore
Shri Nikhil Nayyar
Shri C. Sundaram, Sr. Advocate
Shri A.D.N. Rao

JUDGMENT

PRESENT:

Justice A.S. Naidu (Acting Chairperson) Dr. G.K. Pandey (Expert Member) Dated 23rd May, 2012
All these appeals involve same question of facts and point of law. Even the order impugned and proposed Project is one and the same, therefore by consent of Parties all the six appeals were heard together and are disposed of by this common Judgment.

M/s Nagarjuna Construction Company Limited,(hereinafter referred to as NCC for the shake of brevity) Respondent in all the appeals proposed to set-up a Coal Based Thermal Power Plant at Villages Golagandi and Baruva appertaining to Sompeta Mandal, Srikakulam District of Andhra Pradesh. The Project was proposed to be implemented in two phases i.e. Phase I - 2x660 MW and Phase II - 2x660 MW. The Project Report revealed that the Power Plant would be based on Super-Critical Technology and would be using coal as the main feed stock. For the purpose of the project, approximately 762 hectare of land was the estimated requirement.

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

3. The said order dated 9th December, 2009 issued by the MoEF granting EC to NCC was assailed by the appellants before the National Environment Appellate Authority (NEAA). The said appeals were registered as NEAA Nos. 1/2010, 2/2010, 3/2010, 4/2010, 5/2010 and 6/2010. All the appeals were heard together by the NEAA. The then, Member of the Authority conducted a site visit and on the basis of the impressions gathered by him during the said site inspection allowed all the appeals by order dated 14th July, 2010 and set aside the order of the MoEF dated 9th December, 2009

granting EC.

4. The respondent not being satisfied with the judgment dated 14th July, 2010 filed six Review Petitions before the NEAA, inter-alia, praying to review / recall the order dated 14th July, 2010 mainly on the ground that no opportunity was granted to the respondent to make their submissions with regard to the site inspection relied upon by the Member of the Authority. It was also submitted that the principles of natural justice and equity was grossly violated as the Member acted judge of his own cause.

5. While matter stood thus the National Green Tribunal Act was promulgated in the year 2010 and the National Environment Appellate Authority Act got repealed. Consequently, the NEAA was abolished and all the Review Petitions stood transferred to this Tribunal.

6. In course of hearing of the Review Petitions, the Tribunal noticed that no opportunity was granted to the respondent to answer or clarify the impression gathered by the Member of NEAA in course of site inspection thus there was gross violation of principle of natural justice and equity. Further, the NEAA relying upon the inspection report alone disposed of the Appeals. After going through the order/judgment this Tribunal was satisfied that the Learned Member of NEAA had not adhered to the principles of Natural Justice and acted as judge of his own cause and as such the judgment dated 14th July, 2010 passed in all the six appeals cannot be sustained. On the basis of aforesaid conclusions, the Review Petitions were allowed and the judgment dated 14th July, 2010 was recalled, consequently all the six cases were once again posted for hearing.

7. In course of hearing it became apparent that the order dated 9th December, 2009 passed by the MoEF granting EC to the proposed project, is assailed in all the six appeals, more or less on the same grounds.

According to the Appellants, location of the site earmarked for the purpose of the proposed project, being WETLAND is not suitable for commercial use. It is further alleged that the project would affect the irrigation schemes of the area thereby causing scarcity of drinking water. It shall also deprive the poor farmers and the fishermen of the locality from their livelihood in as much as the same shall create adverse impact on the fresh water fish, agriculture, grazing grounds, etc. According to the topographical situation the lands get sub-merged, not only in monsoon season but also most part of the year, thus, the project shall affect the agriculture, fish culture and cause hindrance in grazing of cows and other animals. It shall also deprive the farmers from growing seasonal crops and vegetables in the area. Further, it is averred that number of coconut, cashew, jackfruits and mango etc. are grown in the area which are existing over the site would also be affected, if the project is set up. The area being swamp lands (Beela) is the breeding place for migratory birds and they will be disturbed by the project. The Authorities, it is empathetically alleged, did not keep in mind the aforesaid eventualities, and have also not conducted Public Hearing in proper way nor made the study and other reports, with regard to the site, available for public perusal. Consequently, the mandatory requirement of EIA Notification, 2006 so-far as Public Hearing is concerned, was flouted. According to the appellants, 95% of people who attended the Public Hearing opposed the project but then the Authorities ignored the same.

8. 'Beela Land', it is averred is a water body which balances the ground water and helps the farmers for cultivation and also provides drinking water to the local inhabitants. According to the Appellants, if any permanent structure is constructed over the Beela Land, it would adversely affect the farmers and villagers and would also cause ecological imbalance in the area apart from causing water scarcity. On the basis of aforesaid main allegations, the order dated 9th December, 2009 granting EC by the MoEF to the aforesaid project, is sought to be set aside.

9. After receiving notice, a detailed reply has been filed on behalf of the Project Proponent NCC and also by the MoEF. The first and foremost contention of the Project Proponent is that the site over which the project is proposed to be constructed is not WETLAND. Referring to the reports of technical study conducted by Survey of India, it is contended that the site is not ecologically sensitive and no impact whatsoever would be caused if a Coal Fired Thermal Power Plant with appropriate precautionary measures is set up over the same. It is also averred that the site is not included in the list of natural or manmade wetlands, prepared by the Andhra Pradesh Forest Department and EPTRI, Government of Andhra Pradesh. Further, it is contended that the list of 25 wetlands prepared by the MoEF by Wetland Notification, 2010, does not include the project site. The area, in which the project is proposed to be put up, is also not ecologically sensitive as per the CRZ regulation is concerned, on the other hand the land has been classified as "PORAMBOKE WASTE" land belonging to Government and thus, it is suitable for setting-up of a Thermal Plant and there is no embargo whatsoever. That apart, 400 acres of land which sometimes become water logged have been left out of the layout plan, thus, the apprehension is neither justified nor tenable under law. The allegation that the project would affect ground water level is also stoutly denied.

10. The respondent - Project Proponent took a positive stand that before selecting the project site, attempts for finding out alternative sites were carried out, but then the site in question was found to be most suitable. Further, three lift irrigation schemes are located outside the proposed layout and there would be thus no hindrance or scarcity of drinking water. That apart, there are 67 irrigation tanks outside the project layout which will cater to the need of the common people.

The MoEF, in its reply emphatically took the stand that the Authorities had considered all the pros and cons and on being fully satisfied that the site is otherwise suitable, rightly granted EC and the said order, being in consonance with law.

11. Mr. Dutta, Learned Counsel for Appellant submitted that the EIA process has been undertaken on the basis of wrong data furnished by the Project Proponent who had concealed information. Erroneous decisions have been taken due to lack of seriousness on the part of MoEF and EAC during appraisal of the project. The main concern of the Appellant is that the Project area is in fact WETLAND and caters vital community needs as a source of ground water recharge, lift irrigation points, grazing, agriculture and fish culture. The special studies conducted at the behest of the Project Proponent were not made a part of the EIA report nor shared at the time of Public Consultation, as a result, the errors apparent on the report could not be pointed out. The Draft EIA Report which was shared with the public at the time of Public Consultation did not contain the special studies done by the various agencies.

12. The chronological events regarding grant of EC to the project, it is submitted by Mr. Dutta, indicates that the TOR was given by EAC/ MoEF on 14th April, 2009 whereas EC was granted on 9th December, 2009 by MoEF. The main contention of the Appellant is that the Power Plant should not be permitted to be located on the swamp / wet land, as the same would create adverse impact on fisheries, agriculture, horticulture, ground water recharging, availability of drinking water, irrigation facilities etc. and also create other hazards to the environment and ecology.

13. In response Mr. Sundaram, Learned Senior Advocate appearing for the Project Proponent took pains to draw our attention to number of documents annexed to the pleadings and submitted that while applying for EC, the Project Proponent scrupulously followed all the relevant rules, regulations and environmental laws which were then in vogue. There was neither any concealment nor submission of any wrong information or data as would be evident from the records and the allegations to that affect made by Mr. Dutta are based upon only surmises and conjectures and the same are contrary to the materials available.

14. According to Mr. Sundaram, the Project Proponent had faithfully reflected the true field position but then due to inadvertences, basing upon wrong topography, consequently, the EAC suggested for an alternative site as the proposed site was swampy land and was covered under the CRZ regulation. The Project Proponent got conducted further studies and realised its own mistake, on the basis of the reports and other documents rectified the mistake committed by it. The reports and documents were filed before the EAC, with a request to re- consider. Further in support of the submissions, that proposed site is neither a Wet land nor a swamp, the Project Proponent relied upon the technical study report of Survey of India, the list of wetlands identified under Ramsar convention, the list of wetland sites identified by the MoEF for conservation and protection, the list of wetlands prepared by the Environment Protection Training Centre, Government of Andhra Pradesh, list of sites nomenclature as wetland prepared by Andhra Pradesh Forest Department and last but not the least, the Wetland Notification, 2010 issued by the MoEF. It is emphatically submitted that in none of the lists, the name and / or particulars of the proposed site which is situated at Sompeta Mandal, Srikakulam District of Andhra Pradesh finds place, as Wet land.

15. According to Mr. Sundaram the area is not ecologically sensitive as per CRZ regulation and is not included in the Prohibitory Order Book maintained by the Government of Andhra Pradesh. On the other hand, it is submitted that the lands are classified as Poramboke waste land which means it can be used for public purpose. The Forest Department, it is emphasised, has not certified the proposed project land to be ecologically sensitive, even otherwise it is stated, an eco- conservation pond will ensure adequate water balance in the area.

16. Relying upon the minutes of several meetings as well as reports submitted by the Committee and Sub-Committee, Mr. Sundaram submitted that the Project Proponent had in fact presented a comparative evaluation of other alternative sites but then the proposed site was found to be most suitable due to infrastructural facilities available in the locality. Mr. Sundaram also denied the allegation that there will be scarcity of water and submitted that there are three lift irrigation schemes apart from 67 irrigation tanks in the vicinity to cater the need of water. That apart the land in question it is submitted is not fertile and is only a single crop rain fed land and / are otherwise fit

for construction of Power Plant. Mr. Sundaram also brought to the notice to the precautions which are to be adopted by the Project Proponent and assured this Tribunal that all steps for protecting the environment and ecology shall be sacrosanctly followed, thus the apprehension, anticipated by the appellants being not justified, may not be accepted.

17. Learned Counsel for the parties extensively advanced their respective submissions which were considered diligently. Before entering into the arena of the controversies, it would be necessary to mention that the EC granted by the MoEF by order dated 9th December, 2009, has been suspended by the MoEF vide order dated 15th July, 2010. Being confronted with the said position, Mr. Sundaram submitted that the order of suspension passed by the MoEF is not tenable under law in as much as the order dated 9th December, 2009 granting EC, was quashed by the then NEAA on 14th July, 2010, thus the order of suspension is a misnomer and nullify in the eye of laws, but then the said order has not been assailed. Fact remains, the order dated 14th July, 2010 passed by the then NEAA has been recalled by this Tribunal in Review Petition Nos. 4/2011, 5/2011, 6/2011, 7/2011 and 8/2011. Be that as it may, fact remains the EC dated 9th December, 2012, was revived, in view of the order passed by the Tribunal in the aforesaid Review Petitions. It appears, in spite of the aforesaid, the order granting EC has not been given effect to in view of order dated 15th July, 2010 passed by the MoEF suspending the clearance.

18. From the records and minutes of meeting of EAC filed as Annexre-C-3, it appears that the EAC at the first instance (32nd Meeting held on 14th October, 2008) did not prescribe Terms of Reference (TOR) to the Project, mainly on the ground that large parts of the land are wet / marshy lands or mud-flats. The Project Proponent was called upon to look for alternate site away from the mud-flats, conforming to CRZ regulation.

19. The Project Proponent (Respondent-6), it appears on the basis of results of various studies, presented their view once again in the 42nd meeting of EAC held on 13th March, 2009 emphasising that the proposed site neither is a mud flat nor marshy land, nor it is connected with sea and does not fall within CRZ area. It was contended that the particulars provided earlier were based on errors apparent on the face of record.

20. The EAC on the basis of materials produced before it arrived at a conclusion that about 85.9 acres out of a total of 2423.5 acres, proposed to be utilised for the project was water logged and decided to conduct a site inspection by a Sub-Committee. Accordingly, a site visit was conducted on 7th April, 2009 by the Sub-Committee constituted by the EAC. After visiting the site the Sub-Committee came to a conclusion that the project area was dry agricultural land and that the main proposed plant area was located on barren/waste land unaffected by sea water. It was also clarified that the initial confusion of mud flat was due to old topo sheet and there was in fact no tidal influence. The site visit report, recommended the project with a specific condition to exclude an area of 200 acres instead of water logged area of 86 acre and prepare an action plan for overall drainage improvement.

21. The EAC during its 44th meeting held on 15-16th April, 2009, considered the site visit report submitted by the Sub- group and suggested that 400 acres be left out including the 86 acres of water

logged area and prescribed TOR for preparation of Draft EIA report.

22. The EAC in its 56th meeting held on 13-15th October, 2009 considered the proposal based on the inputs from the Public Hearing held on 18th August, 2009. The Public Hearing report submitted by the State Pollution Control Board (SPCB) and the written representations received from various persons were also considered. It also took note of the special studies carried out by various agencies including detailed area drainage study conducted by WAPCOS Limited, and the suggestions given for the action plan for proper drainage and recharge and regulation of surface flows into the catchment areas (Beelas) and provision of drinking water to nearby villages. The EAC also considered the likely impact on fishery resources, agricultural crops etc. and recommended the project for EC subject to number of conditions and safeguards to protect the environment. The MoEF after considering the suggestions granted clearance on 9th December, 2009 for two units of 660 MW (Phase-I) as Coal was available for Phase-I only. The said order as stated earlier is the subject matter in all the six appeals. However, on 15th July, 2010, the EC has been kept in abeyance by MoEF awaiting the factual report of the Chief Conservator of Forest on the issues raised by the Public in July, 2010.

23. The controversy in the present six appeals centres around mainly on three issues:

- i. The Project Site, being Wetland and would cause environment hazards apart from ecological imbalance, and hence not proper to set up TPP.
- ii. The Environment Assessment Committee (EAC) has not properly dealt with the proposal submitted by the Project Proponent and has violated and / or by passed certain mandatory requirements stipulated under the EIA Notification, 2006 basing on false data submitted by the Project Proponent.
- iii. The Public Hearing was not conducted in proper manner. Consequently, the entire procedure culminating in grant of EC has become vitiated and a nullity in the eye of law.

24. Now, we propose to deal with the issues one by one.

So far as, issue no. 1 is concerned, the grievances of the appellants is that the proposed project site is Poramboke Wetlands and Swampy land which is not fit for setting up of a Thermal Power Plant. The said submission has been strongly repudiated by the Learned Senior Counsel appearing for the Respondents. The submissions and counter submissions have been extensively dealt with in the preceding paragraphs and as such not reiterated once again.

25. In course of hearing we called upon Ms. Rathore, Learned Counsel for the appellant to produce a copy of the environmental guidelines and / or siting criteria framed by the MoEF for setting up of a Thermal Power Plant. In response Ms. Rathore produced a set of guidelines framed by the MoEF way back in the year 1987. According to the said guidelines, the location of the Thermal Power Plant should be avoided within 25 km. of outer peripheries of metropolitan cities, national parks and wild

life sanctuaries, ecological sensitive areas like tropical forests, bio-sphere reserves, national parks and sanctuaries, important lakes and coastal areas rich in coral formation etc. The guidelines does not create any embargo with regard to setting up Coal Based Power Plant in / or around Wetland.

26. After going through the guidelines, we feel that the same are not exhaustive nor has taken care of many factors affecting environment and ecology prevailing as on date. It is pertinent to note that the siting criteria produced before us, were framed 25 years ago (1987). By afflux of time number of further studies have been undertaken, new concept and theories in the field of environment and ecology have developed. The changed scenario, scientific developments and change in technology mandates that the siting criteria as well as guidelines for setting up Thermal Power Stations (TPPs) should be revised to bring it in par with the modern techniques to suit the present environmental condition and to protect the ecologically sensitive areas. All these eventualities have not been kept in mind by the MoEF, which is still guided by the siting criteria formulated way back in the year 1987. We, therefore, direct the MoEF to take cognizance of the present day scenario and revise the siting criteria, guidelines for setting up of Thermal Power Projects to match with the present day requirements as early as possible so as to avoid future controversies. In course of hearing, this Tribunal was informed that an exercise in this respect was initiated in the year 2009 but then till date MoEF has not arrived at a logical conclusion. It should be kept in mind that the updated guidelines for setting up TPPs would not only avoid unnecessary litigation but would also go a long way in providing proper selection of environmentally compatible sites. Further, the principles of sustainable development and precautionary principles mandate that the guidelines should clearly spell out "GO" and "NO GO" areas for locating Thermal Power Plant so that the environmental issues can be internalised right from the beginning of project formation stage. We, therefore, direct the MoEF to frame new guidelines and siting criteria with the observations made in this paragraph for TPPs and file a copy thereof before this Tribunal within a period of three months hence.

However, it is made clear that the proposal of the present Project Proponent has rightly been dealt with in view of the siting criteria guidelines which were prevailing at the relevant time.

27. So far as the second issue i.e. the procedure adopted by the EIA is concerned, it would be just and proper to refer to certain shortcomings noticed in the EIA report:-

Scrutiny of the EIA report filed before this Tribunal reveals that ToR was issued on 14th May, 2009 basing on the minutes of discussions of the EAC meeting held on 15-16th April, 2009. Surprisingly, it appears that the same was based upon environmental data which was collected on a much earlier date i.e. on or from 1st March, 2009 i.e. earlier to the grant of TOR. The EIA consultant has not mentioned in the EIA report that necessary permission was obtained from the MoEF to commence baseline data collection prior to award of TOR. It is needless to be said that the environmental base line data are required to be collected only after award of TOR. The minutes of the 44th meeting of the EAC held on 15-16th April, 2009 do not disclose regarding grant of permission for prior collection of environmental data.

That apart, dates for sampling period of water quality monitoring with respect to ground water and sea water are not clearly reflected in the EIA report (Annexure-C-3).

28. Dates for soil sampling have also not been indicated in the EIA report. So also no dates with regard to noise survey have been indicated in the EIA report. All the aforesaid errors and inadequacies could have been avoided by EIA consultant, but then it appears that there was a callous attitude which created unnecessary hurdles in appreciation of the report. Apart from the said irregularities in the EIA report there is no mention or reference or findings of the special studies which had been carried out. Further, it appears that EIA report did not contain the findings of the special studies carried out by the various agencies at the time of Public Consultation. Non-mention and non-compliance of the aforesaid vital aspects creates a cloud of suspicion with regard to due application of mind by the EAC and gives an impression that the matter was dealt with in a very casual manner without realising its importance.

As the EIA Report is the key on which the EIA process revolves, it is important that EIA report prepared should be scientific and trustworthy and without any mistakes or ambiguity. MoEF may ensure that the quality of the EIA report remains fool proof and any consultants who's EIA reports are not found satisfactory, should be blacklisted.

29. The third and most important issue which remains to be addressed is Public Hearing. Importance of Public Hearing is very much wider and has to be sacrosently emphasised and followed:

Public Hearing / consultation is based on the principles of participatory democracy and ensures community participation and is aimed to ensure that the affected persons have a say and their voice is heard and respected. The legislature in its wisdom has given people a right of meaningful participation in decisions affecting their lives and livelihood. In order to have a proper and effective Public Hearing the common man is to be provided access to the executive summary of EIA report and the relevant studies carried out.

30. To appreciate the entire procedure of Public Hearing better, it would be necessary to refer to some of the provisions of EIA Notification, 2006.

31. The relevant clauses of the EIA Notification dated 14th September, 2006 requiring the publication of the notice concerning the public hearing as contained in paras 2.4 and 3 of Appendix IV to the said notification read as under:

"2.4 The SPCB or UTPCC concerned shall also make similar arrangements for giving publicity about the project within the State/Union Territory and make available the summary of the draft Environmental Impact Assessment Report (Appendix III A) for inspection in select offices or public libraries or panchayats etc. They shall also additionally make available a copy of the draft Environment Impact Assessment Report to the above five authorities/offices viz Ministry of Environment and Forests, District Magistrate etc. 3.0 Notice of Public Hearing:

3.1 The Member Secretary of the concerned SPCB or UTPCC shall finalize the date, time and exact venue for the conduct of public hearing within 7(seven) days of the of receipt of the draft Environmental Impact Assessment Report from the project proponent and advertise the same in one major National Daily and one Regional Daily. A minimum notice period of 30(thirty) days shall be provided to the public for furnishing their responses;

3.2 The advertisement shall also inform the public about the places or offices where the public could access the draft Environmental Impact Assessment report and the Summary Environmental Impact Assessment report before the public hearing.

3.3 No postponement of the date, time venue of the public hearing shall be undertaken, unless some untoward emergency situation occurs and only on the recommendation of the concerned District Magistrate the postponement shall be notified to the public through the same National and Regional vernacular dailies and also prominently displayed at all the identified offices by the concerned SPCB or Union Territory Pollution Control Commission.

3.4 In the above exceptional circumstances fresh date, time and venue for the public consultation shall be decided by the Member Secretary of the concerned SPCB or UTPCC only in consultation with the District Magistrate and notified afresh as per procedure under 3.1 above."

32. Appendix III A of the Notification deals with contents of summary Environmental Impact Assessment (EIA) and stipulates as follows:

"The summary EIA shall be a summary of the full EIA Report condensed to ten A-4 size pages at the maximum. It should necessarily cover in brief the following Chapters of the full EIA Report:-

1. Project Description
2. Description of the Environment
3. Anticipated Environment impacts and mitigation measures
4. Environmental Monitoring Programme
5. Additional Studies
6. Project Benefits
7. Environment Management Plan"

33. The purpose of the above clauses is to make the public hearing a meaningful one with full participation of all interested persons who may have a point of view to state. The above clauses operationalize the de-centralised decision making in a democratic set up where the views of those who are likely to be affected by a decision are given a say and an opportunity to voice their concerns. This procedure is intended to render the decision fair and participative and not to thrust it on people, who may be unaware

of the implications of the decision.

34. What is important to note that the informations about the project and particulars about the EIA report were not made available to anyone in the public till the time of the public hearing. The same was available only with the Project Proponent and the MoEF. Unless it is made available, it is not possible for any member of the affected public to have access to such informations. It is imperative for the affected persons to be fully informed of the proposal (the EIA / EMP Report) submitted by the project proponent for dealing with the environmental damage that are likely to be caused if the project is granted clearance.

In the above background, it is not possible to agree with the stand of the Project Proponent and MoEF that there is no requirement in terms of the above clauses to make available the Executive Summary of the EIA Report of the Project, to the persons likely to be affected at least 30 days in advance of the public hearing. If their participation has to be meaningful, then they must have full information of the pros and cons of the proposed project and the impact it is likely to have on the environment in the area.

35. The views expressed by us stand fortified by the observations made by the Hon'ble High Court of Delhi in the case of UTKARSH MANDAL v/s UNION OF INDIA reported in 2009 (10) AD (Delhi) 365.

36. After going through the entire EIA report vis-a-vis the manner in which the Public Hearing / Public Consultation was carried on, we feel that the public was deprived of the relevant informations of different reports and other materials basing upon which the EC was granted. We, therefore, conclude that another opportunity should be given to the public for tendering their views /suggestions on the basis of the materials and the updated EIA report. We, therefore, direct the MoEF to revisit the EIA report from the stage of Public Hearing. We, further, direct that the EC granted which is kept in suspension by the MoEF vide their order dated 15th July, 2010, shall continue as such till the directions issued by us are complied, and would also be subject to the report of the Chief Conservator of Forests.

37. MoEF may also finalise and notify the important wetlands in the country as early as possible so that location of developmental projects in and around such ecologically sensitive areas could be avoided in future.

38. In the light of the observations made in para 26 above, we direct that the MoEF to finalise the guidelines and siting criteria for Thermal Power Plant urgently and file a copy thereof before this Tribunal as early as possible but not later than three months as the same is the most important component of EIA process and cannot be delayed any more.

39. All the six Appeals are partly allowed. Parties to bear their own costs.

Dr. G.K Pandey
Expert Member

Justice A.S. Naidu
Acting Chairperson

Dharamvir
23rd May, 2012