



Appeal No. 30 /2009 – NEAA

राष्ट्रीय पर्यावरण अपील प्रधिकरण
NATIONAL ENVIRONMENT APPELLATE AUTHORITY

July 15, 2010

To

1. Shri Ritwick Dutta,
Advocate for Appellant
N-71, Lower Ground Floor,
Grater Kailash-I, New Delhi – 110 0 48
2. Shri Om Prakash,
Deputy Director, MoEF,
Representative of the Secretary to Govt. of India
Ministry of Environment & Forests,
C.G.O Complex, Lodi Road,
New Delhi – 110 003.
3. Shri Bhavanishankar V Gadnis
Advocate for Respondent No.2
No.69 E Second Floor, Ganjam Nagar,
New Delhi – 110049.
4. Shri Nitin Sardessai,
Advocate for 4th Respondent,
Velho Building, 2nd Floor Panaji,
Goa

1866021646

Sub: Appeal No. 30/ 2009 (Gobantak Shetakari Sanghatana and another Vs. Union of India (Ministry of Environment and Forests) & Others)

Sir,

The order dated 12th July, 2010 of the National Environment Appellate Authority in the above appeal is enclosed. Please acknowledge the receipt of the same.

Yours faithfully,

Court Master
NEAA

Copy to Shri Arivnd Gupta, Advocate, 209, Supreme Court Enclave, Mayur Vihar, Phase -1,
Delhi – 110 091.



जहाँ है हरियाली ।
यहाँ है खुशहाली ।।

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BEFORE THE NATIONAL ENVIRONMENT APPELLATE AUTHORITY
NEW DELHI

DATED THE 12TH JULY, 2010

APPEAL NO. 30 OF 2009

CORAM: HON'BLE MEMBER J.C. KALA

IN THE MATTER OF :

1. Gomantak Shetakari Sanghama
Through it's President
Venkatesh Keshav Prabhudesai,
Dayanandanagar, Dharbandora
Goa - 403 406
 2. Keshava Atmaram Sawaikar
Dayananda Nanda Nagar,
Dharbandora, Goa - 403 406.
- ... APPELLANTS

VERSUS

1. Union of India
Through the Secretary,
Ministry of Environment and Forests
CGO Complex Lodhi Road,
New Delhi - 110 003.
 2. Goa State Pollution Control Board,
Through its Member Secretary,
Dempe Tower, Patto, Panaji, Goa.
 4. Shri Jaisinh Maganlal
Vill -Pirla, Taluka - Quepem,
Dist. South Goa, GOA
- ... RESPONDENTS

Counsel for Appellant (s) : Shri Ritwick Dutta, Advocate
Shri Rahul Choudhary, Advocate

Counsel for Respondent(s)
Respondent No. 1(MoEF) : Shri OM Prakash, Deputy Director, MoEF,
Respondent No. 2 : Shri Bhavani Shankar V Gadnis, Advocate
(Goa SPCB)
Respondent No. 3 : Shri Nitin Sardessai, Advocate
(Shri Jaisinh Maganlal) : Shri Arvind Gupta, Advocate



ORDER

This is an Appeal filed under section 11(1) of the National Environment Appellate Authority Act, 1997 against the Order No. J-11015/157/2007-IA.II (M) dated 18.09.2007 of Ministry of Environment and Forests (MoEF) for granting Environmental Clearance in favour of Shri Jaisinh Maganlal, Maganlal Sadan, S.V. Road, Panaji, Goa -403 001 for Careamol Iron Mine (ML area 98.76 ha) at village Pirla, Quepem Taluk, District South Goa.

2. The Authority, earlier, vide its order dated 28th February, 2008 had not condoned the delay and did not admit the appeal for want of merit. Against this order the Appellants have preferred a Writ Petition (Civil) No. 3243 of 2008 before the Hon'ble High Court of Delhi and the Hon'ble High Court of Delhi has quashed the order passed by this Authority vide order dated 29.04.2009 by directing to entertain and dispose of the Appeal on merit. Accordingly, the Appellants have moved an application on 13.05.2009 before this Authority for hearing on merit. The Authority admitted the appeal on 10.07.2009 and renumbered the same as Appeal No. 30/2009. Respondents filed their statements of objections / counter to the appeal. The case was heard on 13.08.2009, 01.09.2009, 18.09.2009, 23.10.2009, 04.12.2009, 12.01.2010, 09.02.2010, 09.03.2010, 13.05.2010 and finally on 09.07.2010 after a site visit by the Authority.

Based on the points raised in the Appeal / Arguments made by the learned counsels for the Appellant and Respondents, the Appeal is dealt in succeeding paragraphs.

GROUND OF APPEAL AND PRAYER

3. Appellants have challenged the Environment Clearance on the following grounds

- I. That the mining lease is close to Pirla village affecting its environment and agriculture.



- II. That the Project proponent has concealed the presence of 2 ha of good natural forest in the area which includes agriculture land, plantations of coconut since decades. Contrary to the rapid EIA, the core and buffer area of the lease contain a rich biodiversity and is under agro-horticulture with sustainable yield for more than 50 years.
- III. That there are rock carvings within 500 meters downstream of the lease notified by the Directorate of Archives and archaeology. Mining will change its landscape and would affect the plan of State in developing the area in to cultural tourism destination.
- IV. That the mining activity will affect the Kushawati Dam situated on Kushawati River at Quepem which is the life line of the farmers of 8 villages in the area and the same has been objected to by well known cooperative society.
- V. That the entire land of mining lease is fully cultivated with crops like coconut, cashew, areca nut, banana and various other species besides vast grazing pastures supporting milk production. Goa State Agriculture Marketing Board has strong discontent with the renewal of this lease through their letter dated 31.08.2006.
- VI. That the land is going to be excavated 30-50 meter deep affecting the water table. Soil erosion will silt the river bed and mining will contaminate the drinking water and affect the livelihood of the people in the area and crores of rupees spent on soil conservation plan of the State.
- VII. That the Public Hearing conducted for the project on 06-09-2006 was 50 km away from the site against the EIA Notification of 1994 and making it difficult for the affected people to attend. Further Public Hearing panel members have vested interests, being relative of the proponent, one of the member had transportation contract. Despite opposition and request for site inspection, no visit was done. Thus the hearing has gone against the provisions of Notification.



VIII. Following faults were pointed out in EIA report including by eminent environment experts like Dr Nand Kumar Kamat of Goa University –

- Wide sweeping conclusions were drawn from study conducted for a limited period i.e. Winter Season of 2005-06.
- Report refers more on technical and engineering aspects of mining rather than baseline studies of biological elements that will be impacted. No ecological data collected for core and buffer zone. No mention of plant species.
- Hydrological data limited to two samples of Kushawati surface water and six samples of ground water missing the fact that the area forms an ecologically sensitive catchment of Kushwati river specially near her source.
- Totally ignored the presence of historically, culturally and archaeologically rich rock carvings.
- No impact assessment matrix listing out positive and negative impacts were drawn.
- Sustainable employment due to agri-horticulture and animal husbandry will be destroyed which cannot be compensated by mining activity in the area.

4. PRAYER

Based on above, the appellants have prayed for immediate cancellation of clearance.

5. Respondent-2, the Goa Pollution Control Board submitted that-

1. Hearing was conducted as per Notification and the panel members, as per the notification, consisted of a) District Collector's nominee ie the Additional Collector, b) representative of State government ie.



Assistant Director, Department of Mines, c) representative of local body i.e Sarpanch of Village panchayat Netrolim, d) Sarpanch of village Panchayat Pirla,) three senior citizen from the area nominated by the District Collector.

2. Suggestions / views/comments/ objections were invited by publication of notice in two widely read news papers 30 days in advance.
 3. All the objections received including during the public hearing were forwarded to the Ministry.
6. Respondent-1, the Ministry of Environment and Forests in its reply has submitted -
- I. That the archaeological site referred in the appeal is located at village cavare while the project is in village Pirla.
 - II. That the EAC(Mines) has considered all the objections and the records of public hearing proceedings before recommending the case for grant of clearance and the Ministry has stipulated various safeguards to contain the environmental damages including the occupational health and safety measures for the workers, in the clearance.
 - III. That the river Kunawati is at a distance of 2.6 km from the lease area.
7. Learned Counsel for Respondent-3 (Project proponent) denied all the allegations by submitting that the Public Hearing was conducted as per law and the objectors were also asked to submit their written objections. The area was also visited by the sub-committee of the Expert Appraisal Committee (EAC) with reference to the objections raised in Public Hearing and also from various other technical aspects from environment and ecology point of view. EAC has recommended the project for clearance after due considerations and the Ministry has accorded environment clearance taking care of all the apprehensions raised and subject to proper safeguards. The EC is subject to clearance from forestry and wildlife point of view and also subject to final clearance from the Supreme Court. Narrating various safe guards, the Appellant submitted that the objections by Goa State Agricultural Marketing Board



are frivolous while other contentions are denied including the comments of Dr Nand Kumar who hold his PhD in microbiology

8. Counsel for Appellant during arguments, besides reiterating the flaws in Public Hearing such as the distance of the Public hearing meeting place from the site, EIA not made available in local Konkani language and overwhelming opposition of the people not having been considered by the EAC, impressed upon the Authority that the Project is located within 10 Kms. from the sanctuary which requires prior approval of Standing Board for wildlife while Supreme Court order dated 04.12.2006 in writ Petition No. 460/2004 in the matter of Goa Foundation v/s Union of India.

9. Submissions of Appellant and the Respondents were carefully examined and are discussed below:

While perusing the order of Apex Court, Authority found that the circular dated February 27, 2007 of the Ministry stipulating a condition in the clearance letter to the effect that the project proponent would obtain clearance under Wildlife (Protection) Act 1972, did not reflect the true spirit of the order. In fact, in view of Supreme Court Order, wildlife clearance should have been a pre-requisite to Environment Clearance.

The Authority has also gone through the minutes of Public Hearing, held on 6th September, 2006, indicating near total opposition to the project which necessitated a meeting of panel members on 13th October, 2006 in the chamber of Minister, South Goa Collectorate Office, Margao and the minutes being finalised in another meeting held on 26th October, 2006, in which there were suggestions from the panel members (not being expert) to justify the project. These minutes should have been finalised and read over at the end of the hearing as per the EIA Notification.

The Authority also perused minutes of 12th EAC meeting which examined the report of sub-committee sent to assess the impact of mining on wildlife and forests. The sub-committee seems to have noted the presence of well vegetated slopes and the rest of the area containing moderately thick vegetation but the EAC had failed to consider the impact of mining on it and also on agriculture and other plantation crops



in the area including dairying and archaeological site located in the vicinity. The objections raised by the people during Public Hearing have also not been considered by the EAC in its deliberations.

The Authority, therefore decided to visit the site on 16-18th June, 2010, in order to have the first hand feel of the impacts. In the meantime, Ministry was asked to place the project before the Standing Committee on wildlife and keep the Environment Clearance in abeyance.

10. Accordingly, the authority accompanied by the representative of the Ministry (Shri Om Prakash, Deputy Director, IA Division) inspected the length and breadth of area on 17th June, 2010, heard the public affected by the project and independently assessed the impact of project on their agricultural land and the water resources specially the Kushavati River. Not only the Authority found the north-east boundary of the lease just abutting Sulcorna/Kushawati river and the archaeological sites located just 500 meters away, about three fourth of the mining area was found to contain thick forest growth and three small streams passing through the area joining Sulcorna/Kushawati river. Removal of this vegetation followed by excavation will cause serious impacts on river flow and adjoining agricultural lands. River Sulcorna eventually meets river Kushawati which is the main source of water for a number of villages both for drinking and irrigation and their existence is dependent on it. Several pumps are installed to lift water from Sulcorna/ Kushawati. Effect of mining on grass and fodder production in the area due to lack of moisture availability as a result of removal of vegetation over a large extent and in turn on the milk production was also obvious and to this effect objection raised by Goa State Agricultural Marketing Board was not found frivolous.

11. The Authority has thus come to the conclusion that the EAC has failed to appreciate the vital impacts of mining on the livelihood of the people of the area and the long term impacts on the ecology and environment. It was also observed that the mitigative measures and the safeguards proposed can hardly take care or compensate the damage mining would cause to the area in the short and the long term. Authority also feels that the contribution of this inferior iron ore to the States exchequer does



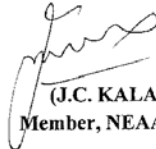
not call for striking a balance between development and environmental protection of the area.

12. To sum up, mining of iron ore in this area is not justified on environmental considerations even without taking in to account its effects on sanctuary and the eventual orders of Hon'ble Supreme Court on the distance in the context of Goa.

Mining leases in Goa have been accorded by the erstwhile Portuguese regime. Iron ore in the State, even though poor in quality, has the ease of sea export to China and Japan which prompts the State Government to exploit it. But the extent of leases given so far needs a careful assessment of the resilience of the environment and to this effect the decision of MoEF to impose a moratorium on further mining pending finalization of State Mining Policy is a welcome decision.

13. In fine, admitting the appeal, the Environment clearance order of Ministry of Environment and Forests in letter No. J-11015/157/2007-1A-II(M) dated 18-09-2007 for the production of Iron ore in Careamol Iron Ore Mine of Shri Jaisinh Maganlal at village Pirala, Quepem Taluk in District South Goa is cancelled imposing no cost on the Respondents.

14. Ministry of Environment and Forests may take note of the observations of this Authority at para 9 above for necessary further action under intimation to the Authority.


(J.C. KALA)
Member, NEAA

11/10/2007
Court Master
National Environment Appellate Authority
2nd Floor, Bhikaj Gamra Plaza
New Delhi-110066