

BEFORE THE NATIONAL ENVIRONMENT APPELLATE AUTHORITY,  
NEW DELHI

D. TED 14<sup>TH</sup> JULY, 2010

PRESENT:  
THE HON'BLE MEMBER SHRI J.C. KALA

A. PEAL NO. 1 OF 2010

**IN THE MATTER OF :**

T. Mohana Rao S/o Late Seetharan  
Aged 65 years, Advocate,  
Residing at Sompeta Town,  
Sompeta Mandal/Tahsil, Sompeta I.O.,  
Srikakulam Dist., (A.P). Pin : 532 234

... APPELLANT

VERSUS

1. The Director,  
Ministry of Environment and Forests,  
Government of India,  
Paryavaran Bhawan, C.G.O Complex,  
Lodhi Road, New Delhi – 110 003
2. The Secretary (Environment & Forests)  
Environment Department,  
Govt. of Andhra Pradesh,  
Hyderabad – 500 018, A.P
3. The Chairman,  
Andhra Pradesh State Pollution Control Board,  
Paryavaran Bhawan,  
A-3, Industrial Estate, Sanath Nagar,  
Hyderabad – 500 018, A.P
4. Environmental Engineer,  
Andhra Pradesh State Pollution Control Board,  
A.P Pollution Control Board,  
Vizianagaram, A.P
5. State of Andhra Pradesh,  
Represented by the District Collector,  
Srikakulam, A.P
6. M/s. Nagarjuna Construction Company Ltd.,  
Nagarjuna Hills, Punjagutta,  
Hyderabad, A.P

7. M/s. Nagarjuna Construction Company Ltd.,  
Project Office at Sompeta Town, Sompeta,  
Mandal /Tahsil, Srikakulam Dist., (A.P) ... RESPONDENTS

**APPEAL NO. 2 OF 2010**

**IN THE MATTER OF :**

Maddu Raja Rao S/o. Lakshminarayana,  
Member of Mandal Parishad Territorial Constituency,  
(M.P.T.C), Gollagandi of Sompeta Mandal,  
Residing at Ramayyapatnam Village,  
Sompeta Mandal/Tahsil, Isakalapalem B.P.O  
Srikakulam Dist., (A.P), Pin : 532 084 ... APPELLANT

**VERSUS**

1. Ministry of Environment and Forests,  
Represented by its Director,  
Government of India,  
Paryavaran Bhawan, C.G.O Complex,  
Lodhi Road, New Delhi – 110 003
2. Andhra Pradesh State Pollution Control Board,  
Represented by its Chairman,  
Paryavaran Bhawan, A-3, Industrial Estate,  
Sanath Nagar, Hyderabad – 500 018, A.P
3. M/s. Nagarjuna Construction Company Ltd.,  
Nagarjuna Hills, Punjagutta, Hyderabad, A.P
4. M/s. Nagarjuna Construction Company Ltd.,  
Project Office at Sompeta Town, Sompeta,  
Mandal /Tahsil, Srikakulam Dist., (A.P) ... RESPONDENTS

**APPEAL NO. 3 OF 2010**

**IN THE MATTER OF :**

1. Forum for Sustainable Development (Regd. No. 305/2008),  
D. No. 8-2-602/c, Flat No. 305,  
Hanging Gardens, Road No. 1,  
Banjara Hills, Hyderabad – 530 034,  
Represented by its Member &  
Convener of Coastal Area,  
S. Bhujanga Rao S/o. Late Sastryam,  
R/o 4-71-1, Lawsonsbay Colony, Visakhapatnam – 17,

2. Emani Anantha Satyanarayana Sharma  
S/o Late Lakshminarayana  
R/o 14-40-4-4/1, Gokhale Road,  
Maharanipeta, Visakhapatnam - 530 002 ... APPELLANTS

VERSUS

1. Ministry of Environment and Forests,  
Represented by its Secretary to  
Government of India,  
Paryavaran Bhawan, C.G.O Complex,  
Lodhi Road, New Delhi - 110 003
2. Government of Andhra Pradesh,  
Represented by its Chief Secretary, A.P Govt.  
Secretariat, Hyderabad - 500 022.
3. Department Environment & Forests)  
Govt. of Andhra Pradesh,  
Represented by its Special Secretary, A.P Govt.  
Secretariat, Hyderabad - 500 022.
4. Andhra Pradesh State Pollution Control Board,  
Represented by its Member Secretary,  
Paryavaran Bhawan,  
A-3, Industrial Estate, Sanath Nagar,  
Hyderabad - 500 018, A.P
5. A.P Industrial Infrastructure Corporation Ltd.,  
Represented by its Managing Director and Vice Chairman,  
Parisarama Bhavan, Hyderabad, Fateh Maidan Road,  
Hyderabad
6. Commissioner,  
Department of Revenue, Government of Andhra Pradesh,  
Hyderabad, Andhra Pradesh
7. M/s. Nagarjuna Construction Company Ltd.,  
NCC Power Projects Ltd.,  
Reg. Office 41, Nagarjuna Hills, Punjagutta,  
Hyderabad, Hyderabad - 500 082 ... RESPONDENTS

**APPEAL NO. 4 OF 2010**

**IN THE MATTER OF :**

Paryavarana Parirakshana Sangham  
Sompeta, Srikakulam District (A.P.)  
Through Authorized Representative  
Dr. Y. Krishnamurthy, M.B.B.S., D.A.

... APPELLANT

**VERSUS**

1. Ministry of Environment and Forests,  
Through Secretary,  
Paryavarana Bhawan, C.G.O. Complex,  
Lodhi Road, New Delhi – 110 003
2. Andhra Pradesh State Pollution Control Board,  
Through Member Secretary,  
Paryavarana Bhawan,  
A-3, Industrial Estate, Sanath Nagar,  
Hyderabad – 500 018, A.P.
3. M/s. Nagarjuna Construction Company Ltd.,  
Reg. Office 41, Nagarjuna Hills, Punjagutta,  
Hyderabad, Hyderabad – 500 082

... RESPONDENTS

**APPEAL NO. 5 OF 2010**

**IN THE MATTER OF :**

Donnu Behara S/o. Late Ugadhi Behara  
President, Inland Fishermen Association,  
Residing at Isakalapalem Village,  
Sompeta Mandal/Tahsil, Isakalapalem BPO, Via: Sompeta,  
Srikakulam Dist., (A.P) Pin 532 204.

... APPELLANT

**VERSUS**

1. Ministry of Environment and Forests,  
Represented by its Director,  
Government of India,  
Paryavaran Bhawan, C.G.O Complex,  
Lodhi Road, New Delhi – 110 003
2. Andhra Pradesh State Pollution Control Board,  
Represented by its Chairman  
Paryavaran Bhawan,  
A-3, Industrial Estate, Sanath Nagar,  
Hyderabad – 500 018, A.P
3. M/s. Nagarjuna Construction Company Ltd.,  
Nagarjuna Hills, Punjagutta, Hyderabad, A.P
4. M/s. Nagarjuna Construction Company Ltd.,  
Project Office at Sompeta Town, Sompeta  
Mandal / Tahsil, Srikakulam Dist. (A.P)

... RESPONDENTS

**APPEAL NO. 6 OF 2010**

**IN THE MATTER OF:**

Sandhi Kamaraju S/o Late Parasayya  
Aged 52 years, Agriculturist & President,  
Ayacutdars Association of Yettipothal Pathakam,  
Residing at Rushikudda Village,  
Sompeta Mandal / Tahsil,  
Rushikudda B.P.O Via Sompeta,  
Srikakulam Dist. (A.P) Pin 532 284

... APPELLANT

**VERSUS**

1. Ministry of Environment and Forests,  
Represented by its Director, Government of India,  
Paryavaran Bhawan, C.G.O Complex,  
Lodhi Road, New Delhi – 110 003.
2. Andhra Pradesh State Pollution Control Board,  
Represented by its Chairman  
Paryavaran Bhawan,  
A-3, Industrial Estate, Sanath Nagar,  
Hyderabad – 500 018, A.P
3. M/s. Nagarjuna Construction Company Ltd.,  
Nagarjuna Hills, Punjagutta, Hyderabad, A.P

4. M/s. Nagarjuna Construction Company Ltd.,  
Project Office at Sompeta Town Sompeta  
Mandal / Tahsil, Srikakulam Dist. (A.P).

... RESPONDENTS

**COUNSEL FOR APPELLANTS:**

**Appeal No. 1 to 6 /2010** : Shri Ritwick Dutta, Advocate  
Shri Rahul Choudhary, Advocate  
Ms. Shibani Ghosh, Advocate

**COUNSEL FOR RESPONDENTS**

**Appeal No. 1/2010**

(i) Rep. for MoEF : Not Present  
(ii) Respondents 2 to 5 : Not Present  
(iii) Respondents -6 & 7 : Shri A.D.N Rao, Advocate  
Shri S.V. Bhat, Advocate

**Appeal No. 2/2010**

(i) Rep. for MoEF : Not Present  
(ii) Respondent- 2 (APSPCB) : Not Present  
(iii) Respondents -3 & 4 : Shri A.D.N Rao, Advocate  
Shri S.V. Bhat, Advocate

**Appeal No. 3/2010**

(i) Rep. for MoEF : Not Present  
(ii) Respondents 2 to 4 : Not Present  
(iii) Respondent - 5 (APIIC) : Shri Y. Rajagopala Rao, Advocate  
(iv) Respondents -6 : Not Present  
(v) Respondent-7 (M/s. NCC) : Shri A.D.N Rao, Advocate  
Shri S.V. Bhat, Advocate

**Appeal No.4/2010**

(i) Rep. for MoEF : Not Present  
(ii) Respondent- 2 (APSPCB) : Not Present  
(iii) Respondents -3(M/s. NCC) : Shri A.D.N Rao, Advocate  
Shri S.V. Bhat, Advocate

**Appeal No. 5/2010**

(i) Rep. for MoEF : Not Present  
(ii) Respondent- 2 (APSPCB) : Not Present  
(iii) Respondents -3 & 4(M/s. NCC) : Shri A.D.N Rao, Advocate  
Shri S.V. Bhat, Advocate

**Appeal No. 6/2010**

(i) Rep. for MoEF : Not Present  
(ii) Respondent- 2 (APSPCB) : Not Present  
(iii) Respondents -3 & 4(M/s. NCC) : Shri A.D.N Rao, Advocate  
Shri S.V. Bhat, Advocate

## ORDER

The above appeals were filed under section 11(I) of the National Environment Appellate Authority Act, 1997 by the above Appellants against order No. J-13012/119/2008.IA-II(T) dated 9<sup>th</sup> December, 2009 of Respondent-I (Ministry of Environment and Forests) conveying Environmental Clearance for 2x660 MW (Phase-I) Super Critical Coal Based Thermal Power Plant, in Sompeta Mandal, in Srikakulam District by M/s. Nagarjuna Construction Company Ltd. Nagarjuna Hills, Panjagutta, Hyderabad – 560 082 with a prayer to quash and set aside the Environmental Clearance dated 9<sup>th</sup> December 2009.

2. The National Environment Appellate Authority (NEAA) registered the above Appeals as Appeal No. 1 to 6 of 2010 and notices were issued to concerned parties by listing case for hearing on admission. The Authority heard the parties on 08.03.2010, 01.04.2010 and 13.05.2010 on admission and admitted the Appeals for hearing on merit. The Appeals referred above are challenging the Environment Clearances order No. J-13012/119/2008.IA-II(T) dated 9<sup>th</sup> December, 2009 of MOEF and the grounds of appeals are common. Therefore, at the instance of the Counsel for Appellants and the Project Proponent it is decided to deal with these appeals together. Upon hearing the parties on 13.05.2010 and on the request of the Counsel for the Project Proponent and the Appellants, the Authority decided to undertake a site visit on 18-30<sup>th</sup> May, 2010 along with wetland Expert Dr. S Kaul, Director, MoEF. The Authority inspected the site on 29<sup>th</sup> May, 2010 and held discussions with people of the area along with the officials of State and Pollution Control Board. The views of the Authority are dealt in separate para. The parties were heard on 06.07.2010, 13.07.2010 and finally on 14.07.2010 on merit. Based on the points raised in the Appeals, documents filed by the parties to the Appeal, Arguments made by the Learned Counsels for the Appellants, Appellants and the Respondents, the Appeal is considered in succeeding paragraphs.

3. The Appellants have challenged the Environment Clearance on the following grounds in the above referred cases:

- i. That the minutes of Public hearing dated 18-08-2009, suppressed the fact that over 95% people spoke against the project. Further EIA Report and Executive Summary was made available only 15 days in advance as against the requirement of 30 days;
- ii. That the Beela swamp of Sompeta is very important from environmental angle which support economy of several villages. It is an Internationally recognized wet land ecosystem and declared as Important Bird Area (IBA) by Birdlife International UK and Bombay Natural History Society (BNHS);
- iii. That the project is coming up in Beela swamp – a rich water body balancing ground water for drinking and cultivation purposes and is source for three lift irrigation schemes of Rushikuda, Benkili and Kuttuma. These three schemes are the source of 750 Acres of wet lands and the project would deprive the livelihood of farmers. Beela swamp is also the source of fishes to inland fishermen of Sompeta;
- iv. That the EIA report has not taken the impact in 10 Km radius (water quality in 4Km and air quality within 7 Km). Residual pollutants solid, liquid and gaseous) released by the Plant will cause toxicity with wide spread health effects on people of the area and harmful effects on marine life. The coal burnt in the plant will contain sulphur, mercury and even radioactive isotopes and would cause adverse affects on the population. The report has failed to take note of NEERI Report 2006, which highlighted the impact of thermal power plant both on human beings and climate change;
- v. That the EAC in its 2<sup>nd</sup> meeting held on October 13 - 14<sup>th</sup> of 2008 has asked the Proponent to look for alternate site and recommended for rejection of proposal as the same was not environmentally compatible;
- vi. That the site falls under “ Neeru meeru” Programme of Government of Andhra Pradesh and is contained in the prohibitory order book of the Government; and



- vii. That Beela is a habitat for migratory birds and within the swamp a hillock Pamulamettu extending over 25 acres is full of endangered species.

4. Respondent (MoEF) has submitted that the proposal was considered by the Expert Appraisal Committee (EAC-Thermal) in its 32<sup>nd</sup> meeting on 13-14<sup>th</sup> October, 2008 and the grounds of site being marshy land, mud flat and area of significant ecological value has asked the proponent to look for an alternate site. In the meantime, Project Proponent got conducted various studies such as topographic survey, land use and land cover studies, demarcation of HTL, LTL, CRZ boundary, soil and water quality assessment, drainage and bio-diversity assessment etc through various agencies. Finding that the site does not fall in any of the prohibited area, the EAC in its 42<sup>nd</sup> meeting set the term of reference for EIA/EMP studies and simultaneously asked a sub-group to visit the site. Sub-group found the north east corner of the site with shallow water logging draining in to sea 8 Km away through Manikyapuram Bela and with no sign of tidal feature like mud flats or marshy land. The site was dominated by grass of fresh water environment. EAC deleted 400 acres of land including 86 acres of water logged area before prescribing TORs for undertaking EIA/EMP studies. Thereafter the EAC in its 56<sup>th</sup> meeting considered the proposal including the representation made by Shri EAS Sharma (Appellant in 3/2010), Shri Raman Kumar Kaundula and others and finding them of general nature and having been covered in public hearing, recommended for grant of EC. Minutes of this meeting were slightly amended in 58<sup>th</sup> meeting. All other issues raised in the appeal have been covered in the Environment Clearance.

5. Respondent (Project proponent) in his affidavit, reiterating the points made by the Ministry brought to the notice of the Authority that an error was committed by him during the presentation before the EAC in its 32<sup>nd</sup> meeting. While the topo sheet of the area displayed the site as 'mud', it was referred as 'mud flat' in their presentation. As such the Committee observed that the proposed site was a marshy land and has mud flats, partly in CRZ and has significant ecological value and thus asked the Project Proponent to look for alternate site away from the mud flats and also to conform to CRZ Regulations. He referred to studies carried out for the purpose of ascertainment of location/nature/drainage disposal system such as (a) studies on demarcation of coastal Regulation Zone and setbacks by



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NIO; (b) Study on biodiversity and water quality by University of Hyderabad; (c) Resurvey by Survey of India; (d) National Hydrographic map published by Chief Hydrographer to the Government of India showing that the site is not mud flat; (e) Land use and land cover by A P state Sensing application centre; (f) Regional geology of site & environment by Dept. Of Geology, Andhra University etc. He further submitted that the site visit by sub-committee of EAC has also confirmed the fact that the area was dry agriculture land with rain fed paddy crop.

6. The area was visited by the Authority along with wet lands expert Dr S Kaul on 29<sup>th</sup> June, 2010 basically to ascertain whether, on environmental consideration, the project could come up on this site. It was noted that an extent of 972.69 acres of Government land in Rashikuda, Golagandi, Baruapeeta, and Benkili villages has been alienated by the Government in favour of APIIC for onward transfer to M/s Nagarjuna Construction Company Ltd. Hyderabad for setting up of 1980 MW Thermal Power Project on payment of market value of Rs 80000 per acre. On inspection, the Authority found this land a typical wetland of great ecological importance and a source of water for nearby villagers upon which three important lift irrigation projects of the Government depend. The report of various agencies including that of sub-committee of EAC was found misleading. The EAC was also carried away by these reports and reversed its decision of 32<sup>nd</sup> meeting on 13-14<sup>th</sup> October, 2008.

7. There was overwhelming opposition by the people of the area against the Project which is valid.

8. During the final arguments, on 14-07-2010, the learned Counsel for M/s. Nagarjuna Construction Company Ltd., produced in original the documents of various agencies to prove his point that project area was dry agriculture and waste land even though might bear a few character of wet land. He further submitted that there is no law which prohibits setting up of Thermal power Project on such lands.


9. It is relevant here to mention that the four corners of Project site were shown to the Authority and the expert by the Revenue Divisional Officer accompanied by his surveyor

and the Authority has no doubt that the area is a typical wetland of great ecological significance and despite no law prohibiting its use for Power Plant, would not permit its use for the purpose.

10. The Authority is thus convinced that the Environment Clearance accorded by the Ministry based on wrong information is bad and thus liable to be quashed.

11. Accordingly, Environment Clearance granted to M/s Nagarjuna Construction Company Ltd, Hyderabad for setting up 2x660 MW(Phase-I) super Critical Coal based Thermal Power Plant, in Srikakulam District, in Andhra Pradesh in Ministry's order No. J. 13012/119/2008-IA.II(T) dated 10<sup>th</sup> December, 2009, is hereby quashed. No cost.

12. The Ministry should undertake survey of all wetlands in Srikakulam District for their ecological sensitiveness as soon as possible and pending this, no project should be cleared in such locations.

  
(J C KALA)  
MEMBER, NEAA

Copy  
15/12/2009  
Court Master  
National Environment Appellate Authority  
2nd Floor, Srikalah Ganga Place,  
New Delhi-110006