

NATIONAL GREEN TRIBUNAL

(PRINCIPAL BENCH, NEW DELHI)

APPEAL NO. 3/2011 (T) (NEAA No. 26 of 2009)

Friday, the 20th day of April, 2012

QUORUM

1. Hon'ble Shri Justice C.V. Ramulu
(Judicial Member)
2. Hon'ble Prof. R. Nagendran
(Expert Member)

IN THE MATTER OF:

1. Adivasi Majdoor Kisan Ekta Sangthan
Through Harihar Patel
Camp-Gare, Tehsil Tamnar
District Raigarh, Chhattisgarh State.
2. Jan Chetna
Through Its Member
Ramesh Agrawal
Satyam Kunj, Naya Ganj
Raigarh – 496 001
Chhattisgarh State

APPELLANTS

VERSUS

1. Ministry of Environment and Forests,
Through the Secretary,
Paryavaran Bhavan
CGO Complex
Lodhi Road, New Delhi – 110 003
2. Chhattisgarh Environment Conservation Board

Through the Member Secretary
1-Tilak Nagar, Shiv Mandir Chowk
Main Road, Avanti Vihar, Raipur
Chhattisgarh State

3. M/s Jindal Steel & Power Limited
Jindal Centre
12 Bhikaji Cama Place,
New Delhi – 110 066

RESPONDENTS

(Advocates Appeared: Mr. Ritwick Dutta and Ms. Srilekha Sridhar for Appellant, Ms. Neelam Rathore for Respondent No. 1, Ms. Yogmaya Agnihotri for Respondent No. 2 and Mr. Krishnan Venugopal for Respondent No. 3)

J U D G M E N T

Judgment Delivered by the Bench

This appeal is filed challenging the Environmental Clearance (for short EC) granted to Gare – IV/6 Coal Mining Project (4 MTPA) and a Pithead Coal Washery (4 MTPA) of M/s Jindal Steel & Power Limited located at Raigarh District of Chhattisgarh State, by the Ministry of Environment & Forests (for short MoEF), the First Respondent herein, in its File No. J-11015/110/2007-IA. II (M) dated 18th May, 2009.

2. It is the case of the Appellant that the EC was granted to the project without properly conducting the public hearing. In fact, the EAC had recommended for re-conduct of the public hearing. Even this was not adhered to. The project proponent submitted false 'No Objection Certificates' from the affected Gram Panchayats. The impact of the project on the Kelo river and the forests around has not been considered. Therefore, the entire process of issuing the EC was vitiated under Law and thus deserves to be set aside. Whereas it is the case of the Respondents that the EC was granted only after conducting

public hearing as required under Environment Impact Assessment Notification of 2006. There was no violation of any kind in conducting public hearing nor it is true to say that false No Objection Certificates purported to have been issued by the Gram Panchayats were submitted. The MoEF had considered the impact on Kelo River and the forests around the proposed project.

3. The Learned Counsel on either side advanced lengthy arguments on each and every aspect of the issues and we have given our earnest consideration to the submissions made by them. We are of the opinion that mainly the following points arise for consideration in this appeal:

- i) ***Whether the Public Hearing in the present case was conducted as contemplated under EIA Notification 2006 and the written representations filed by the appellant were considered by the EAC and the same is valid or not;***
- ii) ***Whether the EAC ignored the mandatory requirement of Cumulative Impact Assessment as required under the EIA Notification 2006 (Form I Para 9).***

Issue No. i:

Whether the Public Hearing in the present case was conducted as contemplated under EIA Notification 2006 and the written representations filed by the appellant were considered by the EAC and the same is valid or not.

4. According to the Learned Counsel for the Appellant, the Public Hearing was held on 5th January 2008 and the procedure provided for

conducting Public Hearing in Appendix IV of the EIA Notification of 2006 was not properly followed. The Public Hearing was not conducted systematically and in a transparent manner ensuring widest public participation at the Project Site(s) or in the close proximity to the Chhattisgarh Environment Conservation Board (for short CECB). Khamariya village was fixed as the venue for public hearing. This village is neither at the project site nor in close proximity to it. The said village is rather situated in a remote place which made difficult for the poor people affected by the project to participate and ventilate their grievances. On receiving the EIA Report, the District Magistrate shall give wide publicity in the respective areas enabling the interested persons to send their comments to the concerned regulatory authority. They shall also make available the draft EIA Report for inspection electronically or otherwise to the public during normal office hours till the public hearing is over. Neither the summary of the draft EIA was posted on website nor made available for reference at a notified place. Without informing the public the contents of EIA Report of the project, conducting public hearing is illegal. The draft EIA Report and Executive summary was not made available in the local language as required by EIA Notification 2006. Without proper information about the project it was not possible for the project affected people of the area to meaningfully participate in the public hearing. In fact the appellant wrote a letter dated 26.12.2007 to the Respondent No. 2 to cancel the Public Hearing, scheduled to be held on 05.01.2008, raising all the issues. However, the Respondents conducted the Public Hearing without following the procedure. Immediately after commencement of the Public Hearing there was some commotion, the presiding Officer declared the Public Hearing as cancelled. However, the Respondent No. 2 illegally declared that the Public Hearing was complete. Therefore, Appellant had written another letter dated 8.1.2008 to the Respondent No. 1 and 2 requesting them to declare the Public Hearing held on 5.1.2008 as null and void. Thus the public hearing held on 5.1.2008 was in gross violation of the procedure and the principles of natural justice.

5. The Respondents filed their replies, separately, denying the allegations made by the Appellant and stating that the public hearing conducted on 5.1.2008 on the project site was very convenient to the general public to participate. In fact, the general public participated in the public hearing and raised all objections and the same were taken into consideration by the Additional District Magistrate and the summary of the proceedings was drawn and made known to the people in the local language. It is the appellant along with his henchmen who created lot of problems in conducting the public hearing. He held the mike and shouted loudly that the public hearing should not be conducted and the people are against the project coming up in the area. The appellant never raised any question relating to the Environment and Ecology or even as to social environment. The whole object of the appellant was to obstruct the proceedings. Therefore, the Additional District Magistrate had to seek help of the Police and as soon as the situation was under control, the proceedings of Public Hearing were resumed and completed. In fact, a police case has been booked against the appellant and others and recently a charge sheet has been filed after due enquiry by the Police into the Court of the Learned Magistrate. This itself shows that the appellants are belligerent and their intention was only to disrupt the proceedings and not to raise real environmental problems that may arise, due to establishment of the project. The copy of criminal proceedings also filed into the Court and the same is on record.

6. As many as 270 people participated in the public hearing held on 5.1.2008 and ventilated their grievances and also suggested some precautionary measures to be taken in the event of the project getting cleared. All the objections and suggestions were examined by the Public Hearing Authority and final summary proceedings were drawn and sent to the Respondent No. 1. Though some people objected for the project, majority of the participants have expressed their support for the project as soon as they came to know about the social responsibility schemes to be implemented by the project proponent including providing employment to the children of that area. In fact,

the project is for the benefit of the local people as the area is very backward and deserves encouragement for setting up of industries subject to sustainable development and precautionary measures. All the measures suggested by the people were taken into consideration even by the EAC and recommended for the grant of EC. Thus, it cannot be said that there was any violation worth the name to make the public hearing conducted a nullity in the eye of law. The appellant had only one objective to see that the project is not established. Therefore, it does not lie in the mouth of the appellant to say that the public hearing was not conducted properly.

7. The Video CD of the public hearing has been furnished by the Pollution Control Board and we have viewed the same.

8. It is seen that in every case where the EC granted is under challenge, one of the grounds is that the public hearing was not conducted properly. Here we may have to note that even if there is any lapse in the public hearing it may not be proper on our part to declare the same as illegal or invalid, unless the objections raised by the people present in the public hearing are either not reflected in the proceedings recorded and some prejudice is caused and not otherwise. The validity or otherwise of a public hearing is always depends upon facts of each case and where there is gross violation of the procedure and the public hearing becomes a mockery, this Tribunal may not hesitate to declare the same as invalid.

9. In the case on hand, after viewing the CD of the public hearing conducted on 5.1.2008, we are surprised to note to our dismay that the same was a “farce”. It was a mockery of the public hearing and the procedure required to be followed thereof. All the norms required in conducting a smooth and fair procedure was given a go by.

10. For conducting Public Hearing, a big pedal was erected, and a dais was created, and in front of the dais some officers were made to sit, for

recording the statements made by the participants. The area covering the dais and the place where the officers were sitting was safely cordoned and in front of them about 200 plastic chairs were arranged for the public. Even before the public hearing could start, the affected people raised slogans to stop the public hearing. However, on the intervention of the Additional District Magistrate a few persons came forward and gave their statements saying that no Gram Sabha was conducted and the Gram Panchayats have issued "No Objection Certificates" and such certificates are invalid and cannot be relied upon to say that the people in the village have no objection for acquiring their lands for establishing the project. It is also pointed out that none of the Sarpanches of the affected villages or other public representatives of the local bodies are present in the public hearing. Thereafter, the women from the affected villages who opposed the establishment of the project came in a queue one after the other and simply said that they oppose the project since their lands are being affected and their livelihood is taken away. The names of the persons and other details such as name of the father/husband, village and the extent of land and survey number were not recorded. The mike was not given to them and many of them were directly exposed to the video.

11. In the meanwhile, it appears the persons raising slogans against each other also pelted stones and that created some commotion which resulted in the intervention of the police and use of force. The participants however, broke all the plastic chairs and left the place. The officers were all sitting quietly even after the people left the place after the police used force. Some media persons and the local people objected for continuing the proceedings after the people left the place. In fact, there was no announcement that the proceedings would be resumed after some time. However, the Additional District Magistrate resumed and continued the proceedings in the presence of few persons. This time only the supporters of the project were paraded one after the other only to say one word ***"I Support"***. The persons who supported the project all appeared to have been brought and prompted by the proponent. It was a mockery of the entire process of public hearing. At the end, the Additional District Magistrate, declared that the public

hearing was complete and there was no necessity for the project proponent to answer anything since there was nothing much has been spoken by the persons opposing the project. Further, no summary of the public hearing was prepared in the local language nor it was made known to the public. The ADM abruptly declared that the proceedings are concluded. The way in which the proceedings are conducted is nauseating and no reasonable person would accept that it was conducted fairly and much less properly.

12. *It appears even the EAC has commented the way in which the public hearing was conducted and suggested for a fresh public hearing in the matter. The extract from the EAC meeting reads as under:*

“The Committee stated that the issue before the Committee was whether the procedure for conduct of Public Hearing was followed vide the EIA Notification 2006. The Committee noted that since there is no record of any prior intimation being given to the people who had dispersed from the venue after the initial disturbance, that the Hearing would reconvene, the comments/suggestions of those people were not available to the P H Panel. This is the lacuna.

The Committee after deliberations decided that the Public Hearing should be re-conducted in accordance with the EIA Notification 2006 giving due notice to the concerned people for conduct of the Hearing and invite all the people who had Any comment/suggestions on the matter as per the procedure laid down in the notification”.

13. The MoEF however, did not make any comment or furnished any reasons for differing with the findings and suggestions made by the EAC with regard to the public hearing conducted without following the procedure envisaged in the EIA Notification 2006 (clause 8). In the further meetings of the EAC, the aspect of public hearing was not raised and there is absolutely no mention as to whether re-conducting a public hearing was necessary or it was felt that there was no necessity of the same. Further, the MOEF has simply recommended, for grant of the EC, without taking care of a substantive procedure, which was found to be defective, into consideration, except saying that ***“since the EIA***

Notification has stipulated that objections/views expressed about the project could be given in writing. The views/objections received from the public and organisations prior to and after the conduct of the public hearing on 5.1.2008 could be discussed by the EAC.” Here, we may note that the original records placed before us by the MoEF does not disclose as to the following of the procedure as envisaged under clause 8 of the EIA Notification 2006 or there any comments made accepting the suggestions made by the MoEF by the EAC.

14. This is not a case where there are a few ignorable procedural lapses in conducting the public hearing. This is a case of a mockery of public hearing, which is one of the essential parts of the decision making process, in the grant of Environmental Clearance. This is a classic example of violation of the rules and the principles of natural justice to its brim. Therefore, we consider it appropriate to declare that the public hearing conducted in this case is nullity in the eye of law and therefore is invalid.

Issue No. ii

Whether the EAC ignored the mandatory requirement of Cumulative Impact Assessment as required under the EIA Notification 2006 (Form I Para 9):

15. According to the learned counsel for the Appellant, the EIA Notification 2006 contemplates for Cumulative Impact Assessment of all present and proposed projects. Whereas, the EIA does not reveal any such assessment or even the mention about the other projects. In fact, in the 29th Meeting of the EAC, it was decided that Cumulative Impact Assessment is to be done in view of existence of number of mines in the proximity. However, this was not taken up in the subsequent 33rd, 39th and 43rd meetings of the EAC. Thus, the cumulative assessment study though mandatory was wantonly overlooked at the cost of environment and ecology. The study of Environmental Impact Assessment is one of the very important aspects

of the procedure to be followed in the grant of environmental clearance.

16. Whereas, the Learned Senior Counsel appearing for the respondent No. 3 submitted that the appellant has made a general statement that the mining will have an adverse impact on the Kelo river and the forests. Therefore, Cumulative Impact Assessment is not necessary. In fact, the appellants have not pleaded or argued that the respondents have not complied with the provisions of EIA Notifications or the terms of reference set by the MoEF for preparing the EIA/EMP report. The appellants have not given any particulars to show that there is a requirement of an additional Cumulative Impact Assessment study, over and above the studies carried out pursuant to the terms of reference. Though the appellants were given opportunity they could not produce any report of study to establish that there had been any environmental degradation in the 10 kms study area around the project. There are no scientific studies, analysis or reliable data on record to establish that there would be gross irreparable environmental degradation in the region. Absolutely there is no evidence to show that the area is sensitive environmentally and ecologically except saying that the project involves forest area and is nearer to Kelo river. In fact, the EAC in its 33rd meeting while dealing with written representation before them, it was recorded that the project proponent would neither draw any water from Kelo river for the project and would also maintain a safe distance i.e. 15 mts on either side of the river. There was no recommendation by the EAC that a Cumulative Impact Assessment be carried out. Further, the MoEF prepared a detailed and comprehensive TOR for conducting EIA studies. The TOR envisaged that type of cumulative impact analysis through "Collection of data and information generation of data, on impact including prediction modeling and the potential impact and the respondents have carried out the necessary studies in the light of TOR given by the MoEF and submitted a comprehensive Environment Impact Assessment to the MoEF and the EAC for its consideration. It is

also not the allegation of the appellants that the EIA/EMP submitted by the respondents did not fulfill the requirement of TOR. The impact assessment study was undertaken as per the TOR determined by the MoEF in respect of the project.

17. In fact, the EAC in its 39th meeting specially called upon the Respondents to provide the views and expert reports on the Hydrogeology, Conservation Plan and Habitat Restoration Plan.

18. Further, the EAC in its 43rd meeting discussed the Hydrogeology, Conservation Plan and Habitat Restoration Plan provided by the Respondent and found them to be satisfactory. Moreover, the EAC in the same meeting was provided with a letter dated 20.03.2009 from the Office of the Chief Wildlife Warden, Chhattisgarh informing them that "...no Schedule – I fauna such as Bear and Leopard were found in the area and clarified that it also does not form a part of the elephant corridor". This further goes on to show that the arguments raised by the Appellants in their oral arguments have neither been pleaded specifically in the appeal nor do they have any substance in terms of the consideration by the EAC of the Respondent's EIA/EMP Report.

19. Be that as it may. We consider that there is no necessity of going into all the details as to this issue since against issue No. 1 we have already come to the conclusion that the public hearing conducted was not proper and the same is invalid. Further, the suggestions made by the EAC for conducting public hearing afresh was brushed aside. Absolutely there was no discussion about conducting of the public hearing even with regard to the consideration of the representations made by the people raising objections for the establishment of the project. The MoEF simply ignored the mandatory procedure under clause 8 of the EIA Notification 2006 and granted the EC in favour of the project proponent. Therefore, the EAC recommendation and the grant of EC is liable to be set aside. Accordingly the appeal is disposed of as under:

- i) *The EC granted in file No. J-11015/110/2007-IA.II (M) dated 18th May, 2009 by the MoEF is set aside.*
- ii) *The MoEF is at liberty to direct the appropriate authority to re-conduct a Public Hearing by taking all steps as required under the law.*
- iii) *The public hearing may be directed to be conducted by an experienced ADM, other than the present one who conducted the public hearing on 05.01.2008, and special care may be directed to be taken while recording the statements of the people participates.*

Accordingly the appeal is allowed. No cost.

(Prof. Dr. R. Nagendran)
Expert Member

(Justice C V Ramulu)
Judicial Member

