

Item No.01:-

**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI**

Appeal No. 144 of 2016 (SZ)

(Through Video Conference)

IN THE MATTER OF

U. Kalimuthan,
S/o. Ulagan,
Uppoor South,
Uppoor Post,
Thiruvadanai Taluk,
Ramanathapuram District - 623 525 and Ors.

....Appellant(s)

Versus

The Union of India
Rep. by its Secretary to Government,
Ministry of Environment, Forests and Climate Change,
Government of India,
Indira Paryavaran Bhavan,
Jorbagh Road, New Delhi – 110 003 and Ors.

... Respondent(s)

Judgment Pronounced on: 17th March, 2021.

CORAM:

HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER

HON'BLE MR. SAIBAL DASGUPTA, EXPERT MEMBER

For Appellant(s):

Mr. Aditya Raj and Mr. Richardson Wilson for
M/s. P. Wilson Associates.

For Respondent(s):

Mr. G.M. Syed Nurullah Sheriff for R1.
Dr. V.R.Thirunarayanan for R2, R5.

Mr. Abdul Saleem and

Mr. Saravanan for R3.

Mr. C. Kasirajan for R4.

Mr. A. Yogeshwaran (Intervenor)

JUDGMENT

Judgment pronounced through Video Conference. Appeal is disposed of with directions vide separate Judgment.

.....J.M.
(Justice K. Ramakrishnan)

.....E.M.
(Shri. Saibal Dasgupta)

Appeal No.144/2016,
17th March, 2021. Mn.

NGT

Item No.01:-

**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI**

Appeal No. 144 of 2016 (SZ)

(Through Video Conference)

IN THE MATTER OF

- 1) U. Kalimuthan,
S/o. Ulagan,
Uppoor South,
Uppoor Post,
Thiruvadanai Taluk,
Ramanathapuram District - 623 525.
- 2) R. Kathiresan
S/o. Ramaiya
No.1/1358 Valamavoor (South) Kothiyarkottai Post,
Thirupalaikudi (Via)
Thiruvadanai Taluk,
Ramanathapuram District – 623 525.
- 3) P. Thivakaran
S/o. Panchavarnam
No.1/116 Naganendal Village Uppoor Post
R.S. Mangalam (via)
Thiruvadanai Taluk
Ramanathapuram District – 632 525.
- 4) G. Tamilmaran
S/o. Ganapathi
No.9/6, Naganendal Village Uppoor Post,
R.S. Mangalam (via)
Thiruvadanai Taluk,
Ramanathapuram District – 632 525.
- 5) Anaithu Vivasayikal Paathukapu Nalasangam
Represented by its President R. Karunanidhi
Registration No.60/2016
Naganendal Village, Uppoor Post
R.S. Mangalam (via)
Thiruvadanai Taluk
Ramanathapuram District – 623 525.

....Appellant(s)

Versus

- 1) The Union of India
Rep. by its Secretary to Government,
Ministry of Environment, Forests and Climate Change,
Government of India,
Indira Paryavaran Bhavan,
Jorbagh Road, New Delhi – 110 003.
- 2) The State of Tamil Nadu,
Rep. by its Additional Chief Secretary to Government,
Energy Department,
Fort St. George, Secretariat,
Chennai – 600 009.
- 3) The Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO Limited),
Rep. by its Chairman cum Managing Director,
10th Floor, NPKRR Maaligai,
144, Anna Salai,
Chennai – 600 002.
- 4) The Tamil Nadu Pollution Control Board,
Rep. by its Member Secretary,
76, Mount Road, Guindy,
Chennai – 600 0032.
- 5) The District Collector,
Ramanathapuram,
O/o. District Collector,
Ramanathapuram.

... Respondent(s)

For Appellant(s): Mr. Aditya Raj and Mr. Richardson Wilson for
M/s. P. Wilson Associates.

For Respondent(s): Mr. G.M. Syed Nurullah Sheriff for R1.
Dr. V.R.Thirunarayanan for R2, R5.
Mr. Abdul Saleem and
Mr. Saravanan for R3.
Mr. C. Kasirajan for R4.
Mr. A. Yogeshwaran (Intervenor)

Judgment Reserved on: 15th February, 2021.

Judgment Pronounced on: 17th March, 2021.

CORAM:

HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER

HON'BLE MR. SAIBAL DASGUPTA, EXPERT MEMBER

Whether the Judgement is allowed to be published on the Internet – Yes/No

Whether the Judgement is to be published in the All India NGT Reporter – Yes/No

JUDGMENT

Delivered by Justice K. Ramakrishnan, Judicial Member.

1. The above appeal has been filed by the appellants who are the local residents against the grant of Environmental Clearance (EC) –cum- CRZ Clearance granted to the 3rd respondent/TANGEDCO Ltd. by the 1st respondent/Ministry of Environment, Forests & Climate Change (MoEF&CC) as per their Proceedings No. J-13012/01/2012-IA.II (T) dated 18.05.2016 for establishment of 2 x 800 MW Uppur Supercritical Thermal Power Plant and also for establishment of foreshore facilities (cooling water intake and outfall structures) at Uppur, Valamavoor and Thiruppalaikudi, Tehsil Tiruvadana Villages of Ramanathapuram District, Tamil Nadu. For the purpose of establishment of this power plant, the 2nd respondent decided to acquire 1342.11 Acres of land in and around three villages viz., Uppoor, Valamavoor and Thirupalaikudi in Thiruvadana Taluk of Ramanathapuram District. It is alleged in the appeal memorandum that major portion of the lands proposed to be

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acquired for the purpose of establishment of this power plant were fertile farm lands and this would affect the livelihood of the people. They were engaged in rice cultivation during summer and alternatively in winter, chillies, cotton, dhal and gingelly plants were cultivated. The 2nd respondent had applied for the Environmental Clearance (EC) as well as CRZ Clearance and the 1st respondent had issued Terms of Reference (ToR) on 28.05.2012 which was valid upto 27.05.2014 and subsequently, the 1st respondent had extended the validity of the said Terms of Reference (ToR) for a period of one year upto 27.05.2015 and thereafter, the same has not been extended.

2. It is alleged in the appeal memorandum that after obtaining the Terms of Reference (ToR), the 2nd respondent claims to have engaged one M/s. Bagawathi Amalabs Limited, Hyderabad to conduct an Environmental Impact Assessment Study for the project and also engaged one M/s. WAPCOS for conducting Marine Environment Impact Assessment Study as required under the EIA Notification, 2006. Public hearing was conducted on 04.07.2014. In the public hearing, there was no opportunity given to the parties to raise their proper objections to the project. Further, according to the appellants, without conducting proper Environmental Impact Assessment Study and without application of mind, the 1st respondent had granted the impugned Environmental Clearance (EC) –cum- CRZ Clearance to the 3rd respondent for establishment of this power plant.
3. According to the appellants, the Environmental Clearance (EC) –cum- CRZ Clearance were vitiated for the following grounds:-

- (i) There was no proper public hearing conducted as contemplated under Para 7 of the EIA Notification, dated 14.09.2006. In fact, no

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proper time gap was provided for the local people to know about the public hearing as required under the Notification. Further, it was conducted at a place which was far away from the project area which prevented the participation of the local residents who were likely to be affected by the project. Further, the necessary EIA Report prepared by the project proponent was not furnished and it was not made available in the website so as to make the people to understand the nature of study conducted by the project proponent regarding the probable impact of the project on environment and also the socio-economic conditions of the people in that locality. Further, when persons attended the meeting, raised their objections to the project and they were removed forcibly and they were kept under the custody of police. The objections raised on the public hearing were not reflected in the discussion of the Expert Appraisal Committee report before recommending the project.

- (ii)** There is a suppression of material facts regarding the existing water bodies and its diversion which is likely to affect the agricultural activities of the local people. Further, no proper study was conducted regarding the impact of the project on marine ecosystem especially, along the coast which is likely to be disturbed due to the heat generated by the thermal power plant and the effluents that are likely to be discharged by the power plant into the sea. Since the people of the locality were not satisfied with the manner in which the public hearing was conducted, some of the villagers filed Writ Petition before the Hon'ble High Court of Madras at Madurai Bench as *W.P. (MD) No.10380 of 2016*, praying for a Writ of Mandamus restraining the 1st respondent

from granting Environmental Clearance (EC) to the 4th respondent and the same was pending before the Hon'ble High Court.

(iii) In fact, the proposed project will totally obliterate four important big tanks around the area viz., Thiruppalaikudi Tank, Mavilankaiyenthal Tank, Valamavoor Tank, Naganendal Big Tank apart from 37 small tanks. The biggest tank in the State of Tamil Nadu is R.S. Mangalam Tank in Ramanathapuram District. The overflowing water from the Vaigai Dam drains into this tank during rainy season and from there, it flows to 72 small tanks connected to it and thereafter, water flows into 4 tanks mentioned above. From these 4 tanks, water flows through certain culverts, bridges and channels into the sea. On account of the establishment of the present project at the disputed site, it will obstruct the flow of water in its natural way and that is likely to stagnate in the agricultural field which will affect the agricultural activities in that area. The most of the area that is likely to be affected on account of the acquisition of the project are agricultural wet lands.

(iv) Further, on account of the discharge of effluents from the project area into the sea, the marine life in that coastal area is likely to be affected which will in turn affect the livelihood of the fishermen community who are mainly depending their livelihood by doing traditional fishing in that area. The heated effluent that is likely to be discharged from the power plant will affect the growth of the fish in that area and that will result in loss to fishermen community.

(v) The existence of mangrove forest and its protection in that area have not been properly considered by the project proponent while

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preparing the Environmental Impact Assessment (EIA) Report.

There is nothing mentioned about the use of renewable energy in the Environmental Impact Assessment (EIA) Report prepared by the project proponent which itself was not available for discussion at the time of public hearing. Further, the socio-economic conditions of the fishermen community in that area have not been considered at all.

(vi) The height of the mast of the boats which is being used by the local fishermen community for doing their traditional fishing has not been considered properly while imposing conditions of fixing the height of the discharge pipes being constructed over the sea level.

(vii) In fact, the height of the mast of the boats was mentioned as 6 feet which is contrary to the actual height of the mast of the boats. If the pipe lines were made above the sea at a height of 6 feet that will prevent the fishermen community people using their traditional country boats with high mast to pass through thereby, their livelihood will be affected and that aspect has not been properly considered by the Expert Appraisal Committee before recommending the project.

(viii) It is also alleged in the appeal memorandum that the land acquisition proceedings were challenged before the Hon'ble High Court and the Hon'ble High Court had set aside the same as per order in *W.P. No. 2244/2018* by Judgment dated 03.07.2019 which has been challenged before the Hon'ble Apex Court by the project proponent by filing Special Leave to Appeal (C) No (s). 2272 - 22730 of 2019.

4. So, the appellants filed this appeal challenging the Environmental Clearance (EC) and prayed for the following reliefs:-

(i) *Call for the records of the 1st respondent pertaining to EC dated 18.05.2016 in J-13012/01/2012-IA.II (T) and set aside the same;*

(ii) *Grant an order of permanent injunction restraining the respondents from in any way proceeding with the Uppoor Thermal Power Plant at Ramanathapuram District without conducting fresh Environment Impact Assessment study and public hearing in accordance with law after giving due notice to the local villages; and*

(iii) *Pass such further or other orders as this Hon'ble Tribunal may deem fit and proper to pass in the facts and circumstances of the case and thus render justice.*

5. Though the Environmental Clearance (EC) was granted on 18.05.2016, the appellants were not aware of the date on which the same was uploaded. They came to know about the issuance of the same on 01.06.2016 and they filed the appeal on 17.08.2016 within the condonable period of filing the appeal as provided under proviso to Section 16 of the National Green Tribunal Act, 2010.

6. The appellants had filed the appeal along with delay condonation application as *M.A. No.147 of 2016* alleging that there was a delay of 47 days in filing the appeal and what was alleged in the application was that they came to know about the issuance of the clearance on 01.06.2016, when it was published in the notice board of the local bodies and thereafter, they will have to consult with the local people and collect necessary documents for filing the appeal which resulted in the delay in filing the same. This Tribunal by order dated 26.08.2016, allowed the delay condonation application and directed the Registry to number the appeal without issuing notice to the respondents.

7. The first respondent filed reply affidavit contending that the 3rd respondent had applied for Environmental Clearance (EC) by filing an online application on 22.05.2015 and the project was considered by the Expert Appraisal Committee for Thermal Power & Coal Mining project in its meeting held on 25-26th June, 2015 and 29.02.2016 to 02.03.2016 as well as considered by the Expert Appraisal Committee (EAC) for project related to infrastructure development, Coastal Regulation Zone building/construction and miscellaneous project held on 29-31st July, 2015 and 28-29th January, 2016. The Expert Appraisal Committee for Thermal and CRZ thoroughly (4 times) examined the proposal and after detailed deliberations on the project proposal recommended for grant of Environmental Clearance (EC) –cum- CRZ Clearance. Accordingly, the 1st respondent, Ministry had granted the Environmental Clearance (EC) – cum– clearance for 1,600 MW capacity of Uppur Supercritical Power Plant and CRZ clearance for the foreshore facilities (cooling water intake and outfall structures) on 18.05.2016 as contemplated under the EIA Notification, 2006 and subsequent amendments therein and CRZ Clearance under the provisions of CRZ Notification, 2011 and subsequent amendments therein subject to strict compliance of stipulated conditions (Specific & General). They have denied the grounds raised in the appeal memorandum regarding the validity of the clearance granted. Further, the appeal is barred by limitation as the clearance was granted on 18.05.2016 and the appeal ought to have been filed within 30 days and at any rate before a further period of 60 days and thereby, filed beyond 90 days is barred by the limitation. So, they prayed for dismissal of the appeal memorandum.

8. The second respondent also filed counter adopting the counter statement filed by the third respondent.
9. The 3rd respondent filed reply affidavit contending that the appeal is not maintainable as it is barred by limitation, since it was filed beyond 90 days of issuance of the Environmental Clearance (EC) as the Tribunal has no power to extend the period of limitation beyond the 60 days over and above 30 days period of filing the appeal in view of the proviso to Section 16 of the National Green Tribunal Act, 2010. The 3rd respondent proposed to establish a 2 x 800 MW thermal power plant at Uppur, Valamavur and Thiruppalaikudi Villages in Thiruvadanai Taluk of Ramanathapuram District, Tamil Nadu which is located on the western side of the East Coast road connecting Ramanathapuram and Pattukottai at a distance of 28 KM North of Ramanathapuram Town. The said project is to adopt supercritical technology and is of great public importance taking into consideration that the need for mitigating the power crisis for the present and future requirements. They proposed to acquire 1342.64 Acres of land for the said project and the Administrative Sanction for the said acquisition was granted as per G.O. No.2 Energy (C1) Department, dated 21.01.2014. Thereafter, they have optimized the layout of the proposed plant with reduced land requirement and they restricted the land user for 995 acres only. Out of which 505 Acres are dry patta lands, 263 Acres are wet patta lands (Single crop agricultural lands) and 227 Acres are waste/barren lands (Poramboke lands). In fact, only 26% of lands proposed to be acquired are agricultural lands and not more than that as mentioned by the appellants. The project being “A – Category” Project as per the EIA Notification, 2006, Environmental Clearance (EC) –cum- CRZ Clearance has to be granted by the 1st

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respondent which includes public consultation and public hearing. Since a portion of the project falls under the CRZ zone, CRZ Clearance is also required under the CRZ Notification, 2011. On the basis of the application filed by the 3rd respondent, Terms of Reference (ToR) was issued on 28.05.2012 which was valid up to 27.05.2014. Thereafter, they applied for extension of validity of the same for one more year and the same was extended up to 27.05.2015 as per letter dated 08.09.2014. The respondent submitted an online application to the 1st respondent seeking Environmental Clearance (EC) for the project on 07.03.2015 which was filed within the extended period of 27.05.2015. The application for clearance was accepted by the 1st respondent vide their letter dated 12.06.2015. The public hearing was conducted on 04.07.2014 at Devipattinam, Ramanathapuram District in accordance with law. Prior notice was published on 31.05.2014 in newspapers of English and vernacular language i.e., in Dinamani Newspaper (Tamil language) and Indian Express (English Language) providing 30 days clear period for conducting the public hearing as contemplated under the EIA Notification, 2006. Large number of the people from these three villages viz., Uppur, Valamavur, Naganendal and Thiruppalaikudi had attended the meeting on the basis of the publication made and they expressed their views and objections in the public hearing which were considered in the public hearing. The entire public hearing was conducted under the chairmanship of the District Collector, Ramanathapuram District and the entire proceeding were video graphed by the Tamil Nadu Pollution Control Board and the same was submitted to the 1st respondent for their consideration for the purpose of considering the project. These respondents were not aware of the arrest of the first appellant as alleged

in the appeal memorandum. The allegation that establishment of the project will affect the marine ecology are not correct. They have in fact appointed accredited agencies for preparing Environment Impact Assessment Report and appointed M/s. WAPCOS along with IIT Madras for conducting comprehensive Marine Environmental Impact Assessment Study and Mathematical Modelling Study of Thermal and Salinity Dispersion of the Coolant Water which is likely to be discharged from the unit. Only after due consideration of all the documents produced, the Environmental Clearance (EC) –cum- CRZ Clearance was granted. Every steps are being taken for protecting the water bodies mentioned in the appeal memorandum. The diversion proposed by the project proponent will not affect the natural flow of the drainage pattern of the area. These aspects have been properly considered by the committee and recommendations have been made for the purpose of protecting the same and necessary conditions have been imposed. The impact assessment study conducted by M/s. WAPCOS will go to show that there was no serious impact on marine ecology on account of the establishment of the said project. Further, necessary cooling system with natural draft cooling towers were proposed to be established for cooling the water, before the same is being discharged into the sea. The temperature will only rise by about 0.5⁰C above and the ambient and salinity range will rise marginally about 4 part per thousand (ppt) and this will not affect the marine ecosystem. The entire sewage generated will be treated and recycled within the power plant itself as they are going to adopt Zero Liquid Discharge System (ZLD). So, no fuel or waste will be discharged into the sea as alleged. Necessary Ambient Air Quality tests have been conducted and there will not be any impact on Ambient Air Quality on account of the

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project. They have proposed to establish Flue Gas De-sulphurisation Unit for limiting the oxides of Sulphur and De-Nox system and selective catalytic reactors of limiting the oxides of Nitrogen within the prescribed limit. They have also maintaining the citing criteria for establishment of this unit. Lot of provisions have been made for protecting the mangroves in that area by providing Rs.1 Crore budget for that purpose. They have provided PV Solar Plant on the roof tops of alternate power generation for the project. According to the respondents, the MoEF&CC had considered all the aspects and rightly granted the Environmental Clearance (EC) which does not require any interference. They prayed for dismissal of the appeal.

10.The third respondent has also filed an additional reply statement as directed by this Tribunal by order dated 12.02.2020 contending that the Environmental Clearance (EC) –cum- CRZ Clearance was granted on 18.05.2016 and the appellants had filed the appeal before this Tribunal on 17.08.2016, but the application for condoning the delay filed only on 22.08.2016 so there is a delay of more than 90 days in filing the appeal, which includes even the extended period of 60 days as provided under Section 16 of the National Green Tribunal Act, 2010. The appellants filed M.A. No.147/2016 alleging that there was a delay of 47 days in filing the appeal on the ground that they came to know about the issuance of the impugned clearance only on 01.06.2016, when it was displayed in the office of the 5th respondent and as such the appeal is filed within the condonable period. They also alleged that they will have to obtain necessary copies of the reports for filing the appeal, the delay occurred and prayed for allowing the application. But in fact, the Environmental Clearance (EC) and CRZ Clearance for this project was uploaded by the

1st respondent, Ministry in their website on 19.05.2016 complying with the Judgment of the Principal Bench in *Save Mon Region Federation Vs. Union of India*.¹ The project proponent had uploaded the same in their website on 21.05.2016 and this was published in “Dinamani” Tamil Daily and “The Indian Express” English Daily dt.22.05.2016 as required under the EIA Notification, 2006, giving the details of the Environmental Clearance (EC) and CRZ Clearance and the particulars of the website in which it will be available. So, the appellants were not entitled to say that they came to know about the same only on 01.06.2016 so as to get the exemption from 18.05.2016 to 01.06.2016 from the period of limitation to be reckoned with. Further, appellants were closely following the proceedings regarding the issuance of Environmental Clearance (EC) and even as per their admission in the appeal memorandum, they participated in the public hearing and also challenged the validity of the public hearing by filing Writ Petition as W.P. (MD) No.10308 of 2016 before the Hon’ble High Court of Madras at Madurai Bench seeking for writ of mandamus forbearing the 4th respondent from issuing the Environmental Clearance (EC) to the 1st respondent or the Uppur Thermal Power Plant without conducting a fresh public hearing, after due publicity and notice to all affected persons in the affected villages etc. They have also mentioned in the same writ petition that they have submitted a representation dated 01.03.2016 in this regard. So under such circumstances, it cannot be said that they came to know about the issuance of the clearance only on 01.06.2016 and as such the appeal was filed beyond the condonable period of 60 days as provided under Section 16 of the National Green Tribunal Act, 2010. There is no sufficient

¹ (M.A. No.104 of 2012 in Appeal No.39 of 2012) dt.14.03.2013

reason stated even for the delay and as such the appeal is liable to be dismissed as barred by limitation as this Tribunal by order dated 12.05.2017, left upon the question of limitation to be heard in the appeal though, this Tribunal had allowed the delay condonation application M.A. No.147/2016 by order dated 26.08.2016 without issuing notice to the respondents. So, they prayed for dismissal of the appeal.

11.The 4th respondent filed their reply affidavit contending that they have conducted the public hearing as required under the EIA Notification, 2006, within the extended validity period of the project namely, 27.05.2015. The public hearing was conducted on 04.07.2014 at Bharath Thirumana Mandapam, R S Mangalam Road, Devipattinam. The public notice about the conduct of public hearing was published in Tamil Daily “Dinamani” dt.31.05.2014 and in the English Daily “The New Indian Express” dt.31.05.2014. The Rapid Environmental Impact Assessment Report, Executive Summary of the Environmental Impact Assessment Study Report – both in Tamil and English were furnished by the 3rd respondent were made available, in the offices, stated in the public notice. The Public Hearing conducted was properly video graphed and the representations and views of the public were properly recorded and the minutes of the public hearing was prepared and furnished to the MoEF&CC along with representation received from the public with compact discs containing the video graph of the public hearing proceedings along with letter dated 20.08.2014 and it is thereafter, the clearance was granted. The Administrative Approval for the acquisition of land for the project was issued as per G.O. No.2, Energy (C1) Department, dated 21.01.2014 as per the Government order the Total Land Requirement was stated as 543.365 Hectares. But while carrying

out the study, the area required is pruned to 367.742 Hectares. The public hearing conducted was proper and the allegations made in the appeal memorandum are not correct. All the necessary documents were made available in the respective offices and that would have been procured by the parties who were interested in participating the public hearing. Necessary impact assessment were conducted through M/s. WAPCOS and IIT Madras by the project proponent. The Environmental Impact Assessment Study indicates about the mangrove forests and necessary provisions have been made for protecting the same as well. So according to the 4th respondent, there is no merit in the appeal and they prayed for dismissal of the same.

12.The fifth respondent filed reply affidavit more or less adopting the contentions of the 4th respondent regarding the public hearing and also regarding the measures taken for protection of water tanks. The fifth respondent denied the allegations regarding the adverse impact of the project on agriculture as well as marine ecology.

13.I.A. No.57 of 2020(SZ) was filed by one G. Joseph to get himself implead in the matter as he was interested in protecting the environment and against the establishment of this power plant project in that particular area. He had also produced number of documents along with this application to get himself impleaded in this matter. But this Tribunal by order dated 18.11.2020, rejected the prayer for impleading on the ground that he was not entitled to come on record, after the period of filing the appeal expired. But at the same time, this Tribunal permitted him to intervene in this matter to assist the Tribunal through lawyer regarding the validity of the Environmental Clearance (EC) granted as the matter related to environmental issue and to get necessary assistance for arriving

at a just conclusion regarding the validity of the clearance granted to the project proponent in this case and only to that extent, permission was granted and the application was disposed of accordingly and the counsel for the applicant namely, Mr. A. Yogeshwaran was permitted to assist the Tribunal on environmental issues regarding the grant of Environmental Clearance (EC) –cum- CRZ Clearance to this project.

14.The parties have filed an additional type sets, written submissions and additional documents in support of their respective contentions.

15.Heard Mr. Adityaraj and Mr. Richard Wilson for M/s. P. Wilson Associates, the learned counsel for the appellants, Mr. G.M. Syed Nurullah Sheriff, the learned counsel for the 1st respondent, Mr. Dr. V.R. Thirunarayanan, the learned counsel for the respondents 2 & 5, Mr. Abdul Saleem and Mr. Saravanan, the learned counsel for 3rd respondent and Mr. C. Kasirajan for 4th respondent and Mr. A. Yogeshwaran for the intervenor.

16.The learned counsel appearing for the appellants argued that there was no certificate attached so as to rely on the submissions made by the counsel for the 1st respondent and 3rd respondent that the Environmental Clearance (EC) was uploaded in their respective websites on 19.05.2016 and 21.05.2016 so as to reckon the date of knowledge or communication from that date onwards. Further, appellants came to know about the grant of Environmental Clearance (EC) only on 01.06.2016, when it was affixed in the office of the 5th respondent and they made enquiries about the same and collected the documents, consulted with the local people who were interested in the matter which resulted in the delay in filing the appeal. In fact, the appeal as well as the delay condonation applications were presented on 17.08.2016 but it was returned for certain defects and

thereafter, it was represented on 22.08.2016 and as such the date of presentation of the appeal had to be reckoned as 17.08.2016 and not as 22.08.2016 as contented by the respondents. So according to the learned counsel for the appellants, this Tribunal was perfectly justified in condoning the delay as the delay is within the permissible limit and that order did not called for any interference.

17.As regards the merit of the appeal, the learned counsel appearing for the appellants argued that there was no proper public hearing conducted as contemplated under the EIA Notification, 2006. The place of hearing was not selected in such a way which was approachable to the local people of four villages which were in fact affected on account of the establishment of the project. In fact, the place of hearing was selected at a distance of 12 Kms from the affected village thereby, preventing the participation of affected people from all those villages. Further, there was no proper time gap provided as required under the EIA Notification viz., 30 clear days so as to enable the parties to equip with the documents to substantiate their objections regarding the project. Necessary Environmental Impact Assessment Reports prepared by the project proponent were not made available at the time of public hearing which was projected by the participants in the public hearing itself. Further, when the 1st appellant had objected certain procedure of conducting public hearing, he was forcibly removed from that place and entrusted with the police and he was released only after two days. So they were trying to suppress and prevent the persons who were raising their objection to the project and also denying the opportunities to them to raise their issue before the authorities.

18. The learned counsel also argued that none of the objections raised at the time of public hearing were considered by the Expert Appraisal Committee while recommending the project. Further, there were suppression of material facts by the project proponent in the application as they had not mentioned all the water bodies available in and around the villages near to the project area which were likely to be affected on account of the establishment of the project. Further, the Expert Appraisal Committee had not considered the scope of stagnation of water in the agricultural land on account of raising the level of the property for establishment of the project in that disputed area. Further, the land acquisition proceedings initiated for the project was quashed by the Hon'ble High Court of Madras. Though, appeals were filed before the Hon'ble Supreme Court, proceedings were not stayed, except staying certain observations made by the Hon'ble High Court while disposing the writ petition. So, the project proponent is not having required land for establishing the project and that aspect has not been properly considered by the Expert Appraisal Committee. The Environmental Impact Assessment Reports both marine and other aspects did not reflect the real issues in that area. There is no impact assessment done regarding the Mercury content and Mercury emission that is likely to be emitted while using the flue coal by the project proponent. The Ambient Air Quality reports provided were also not proper and did not reflect the real state of affairs in that area. The socio-economic conditions of the fishermen community who were likely to be affected on account of the project had not been considered by the Expert Appraisal Committee and also the issuing authority before recommending and issuing the clearance. There was no proper Environment Impact Assessment Report prepared

regarding the impact of the project on marine ecology and the details provided in the Environmental Impact Assessment (EIA) Report did not reflect the real state of affairs in respect of that area and thereby, there was no proper appraisal of the impact of the project on marine environment. Most of the documents produced by the project proponent would go to show that the material impact assessment reports were obtained only after issuing of the Environmental Clearance (EC) and thereby, the Expert Appraisal Committee did not have the opportunity to verify the same while considering the project. There was no proper application of mind on the part of the Expert Appraisal Committee as well as the issuing authority in issuing the clearance. So, the learned counsel appearing for the appellants prayed for setting aside the Environmental Clearance in dispute.

19. The learned counsel appearing for the intervenor also more or less supported the submissions made by the counsel appearing for the appellants apart from raising the same issue raised by the appellants, he had also raised certain environmental impact issue on the basis of the documents produced by him along with the application to get himself impleaded and also certain circulars of the MoEF&CC regarding the establishment of thermal power plant. The learned counsel also argued that the flue gas desulphurisation method had not been considered by the project proponent while preparing the Environment Impact Assessment report submitted by them. Further, they had not provided the source of coal and without ascertaining the nature of coal, the place from where they were going to procure the same, any report submitted regarding the initial level of the coal that was likely to be used was of no value as it would only reflect the general aspect and not the specific aspects of the

fuel to be used by the project proponent. Further, there was no proper cluster impact assessment of the industrial area conducted by the project proponent while assessing the Ambient Air Quality test so as to ascertain as to how far the project in question would have impact on existing air quality in that area. The project proponent had not produced any reliable documents to prove the method by which the gypsum produced as a by-product while disposing the fly ash generated in a scientific manner would to be dealt with. The Marine Impact Assessment conducted by the agency also did not consider the real and ground level reality of the impact of the project on marine environment. He had relied on certain observations made by the reports prepared by the Wildlife Institute of India and also certain articles regarding the marine ecology, marine flora and fauna and the marine biodiversity including the nature of fishes, sea animals, mammals etc. so as to convince this Tribunal that the real state of affairs were not reflected in the Environmental Impact Assessment report prepared by the agency and thereby, the Expert Appraisal Committee had been misled by the project proponent on these aspects.

20.The learned counsel appearing for the intervenor also argued that there was misrepresentation made by the project proponent regarding the height of the mast of the fishing boats which are being used by the traditional fishermen in that locality so as to consider the height of the pipeline to be laid above the sea level. In fact, the normal height of the mast of the boats are more than 14 m whereas, the height that has been provided is only 6 m which is significantly low and that will affect the movement of the boats of the fishermen thereby, affect their livelihood. Further, subsequent documents produced by the project proponent themselves as the proceedings of the District Collector requesting the

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project proponent to raise the height of the pipeline above the sea level to the extent of 10 m from the existing 6 m itself will go to show that the project proponent had misled the authorities regarding the height of the mast so as to fix the height of the pipeline from the sea level. In fact, the proceedings of the District Collector produced by the project proponent themselves would also go to show that there was no consensus arrived at regarding the height to be provided and also the area to be covered. The details regarding the nature of heat to be generated by the effluent which is likely to be discharged also was not properly explained and in fact, the agency who prepared the Marine Impact Assessment Report also did not properly consider this aspect and there were contradiction regarding the amount of heat that is likely to be generated by the effluents which are likely to be discharged and thereby, there was no possibility of assessing its impact correctly on marine environment and marine livelihood. In fact, heat generated by the effluents that is this likely to be discharged from the project and it is likely to be affect the breeding conditions of the fishes which are likely to do their breeding near the sea drugs and that will have impact on fish generation and which in turn will affect the livelihood of the fishermen community. The presence of dugong and other sea animals and the impact of discharge of the effluent into the sea have not been properly assessed by taking into number of such flora and fauna and animals available in that area. Further, he had also argued that the coal that was permitted is 100% imported coal but the intention of the project proponent will go to show that they are intended to use the mixture of imported coal and indigenous coal in a particular ratio and for that purpose, they have obtained certain orders from the Coal India Limited and also from the Ministry which had even exempted the

necessity for obtaining Environmental Clearance (EC) in change of fuel which is mandatory under the EIA Notification, 2006. So according to the learned counsel, the entire assessment made was not proper and the Environmental Clearance (EC) granted is illegal and the same is liable to set aside.

21.The learned counsel appearing for the intervenor also argued that the public hearing is not valid as it was conducted after the validity of the period of Terms of Reference (ToR) is over.

22.On the other hand, the learned counsel appearing for the MoEF&CC viz., Mr. G.M. Syed Nurullah Sheriff submitted that all necessary procedures have been followed before granting the Environmental Clearance (EC) and CRZ Clearance. The Expert Appraisal Committee had considered the project in three meetings and only after getting the necessary details and reports from the project proponent on the clarification sought for, they recommended the project and after considering the recommendations, the MoEF&CC had granted the clearance with all necessary conditions both specific, special and general conditions taking into all the precautionary principles for protecting the environment. The learned counsel also contended that appeal is barred by limitation as it was filed beyond 90 days of communication of the clearance.

23.Mr. Abdul Saleem, the learned counsel appearing for the project proponent vehemently opposed the maintainability of the appeal on the ground of limitation. He had argued that the MoEF&CC had uploaded the Environmental Clearance (EC) on 19.05.2016 and the project proponent had uploaded the same on 21.05.2016, but the appeal was filed only on 22.08.2016 which is beyond 90 days. Though, the appeal was filed on 17.08.2016, the delay condonation application was filed only on

22.08.2016, after the appeal period and as such it cannot be said to be filed within time. Even assuming that the appeal was filed within the condonable period, the appellants have not shown sufficient cause for condonation of delay and reasons stated are not sufficient to condone the delay as well. In fact, every stage of the proceeding, the appellants were closely monitoring the proceedings relating to issuance of Environmental Clearance (EC) and as such it could be said that they were not aware of the issuance of the clearance till 01.06.2016 and the reason for the delay in filing the appeal is not sufficient in eye of law to condone the same.

24.The learned counsel further argued that the publication was effected granting 30 days clear time and the place was selected which is convenient for the people to attend from all the four villages. Further, anticipating certain protest and obstruction for the meeting, the meeting was convened at a safe place and as such it cannot be said that it is in violation of the procedure provided for public hearing. Further, the Terms of Reference (ToR) was issued on 28.05.2012 with a validity period of two years (i.e., upto 25.05.2014) and before expiry of the same, application for extension was filed and during the pendency of that application, the public hearing was conducted and thereafter, the validity period of Terms of Reference (ToR) was extended till 27.05.2015 and the public hearing was conducted on 04.07.2014 i.e., within that period. So, it cannot be said that the public hearing was conducted after, the validity period and as such it is not valid. A perusal of the public hearing minutes will go to show that people from all the villages have been represented either in person or through association and all the issues relating to the project have been considered and it is thereafter, that the public hearing

was concluded and the same was forwarded to the MoEF&CC for consideration.

25.The learned counsel also argued that all the necessary reports have been obtained in respect of environment impact including marine ecology and those things were made available to the Pollution Control Board along with the request for conducting the public hearing. So, it would be available with the Pollution Control Board and sufficient notice was given and any party interested could have obtained the same from the authorities.

26.The main issue was relating to the acquisition of agricultural lands and affecting fishermen community interest. Those aspects were considered by the Expert Appraisal Committee. Further, on the basis of the instructions given by the Expert Appraisal Committee in their meetings, subsequent reports were also obtained by conducting necessary studies and the same had been submitted to the Expert Appraisal Committee and only after considering the same, they have recommended the project. As regards the land acquisition proceedings are concerned, appeal is pending before the Hon'ble Apex Court and they are in possession of the property.

27.He had also argued that they intend to use only imported coal as directed in the Environmental Clearance (EC) and they have produced the memo of understanding with the supplier and the analysis of Mercury was conducted which will go to show that it will have only minimum emission of Mercury level which is within the permissible limit. All necessary precautions taken by the project proponent to secure the interest of the people. The Ambient Air Quality test was conducted properly and necessary provisions have been made for diverting the water

channels to the water bodies without affecting its flow. Necessary provisions have been made for disposal of fly ash and the gypsum generated in the project area.

28.The learned counsel also argued that though there was a proposal by the Ministry to permit indigenous coal also to be used along with the imported coal, they have no intention to convert the same at present and they propose to use only imported coal and whenever they intend to switch over to any other type of fuel, they will conduct necessary Environment Impact Assessment Study and take all precautionary measures to provide additional mechanism to prevent the pollution being caused on account of the operation of the unit. Subsequent to the grant of Environmental Clearance (EC), on account of the opposition raised by the fishermen community, a meeting was held under the leadership of the District Collector and the District Collector has directed to rise the height of the pipeline above the sea level at a particular point above 10 m so as to meet the requirements of the fishermen people who are using the traditional fishing boat with mast.

29.So, according to the learned counsel appearing for the project proponent, all the environmental impact has been considered by the Expert Appraisal Committee and there is no merit in the appeal. The learned counsel also argued that if this Tribunal wants to impose any condition as a precautionary measure applying the "Precautionary Principle", the project proponent is prepared to abide by any conditions imposed by this Tribunal, in order to fulfil their commitment to protect the environment while carrying out the project.

30. The points that arise for consideration are:-

- (i) Whether the appeal is filed beyond the condonable period and the reasons stated by the appellants to condone the delay are sufficient and whether the appeal is liable to be dismissed as barred by limitation?
- (ii) Whether the public hearing conducted is proper or not?
- (iii) Whether the Environmental Clearance (EC) granted is liable to be set aside for any of the reasons raised by appellants/intervenor?
- (iv) Whether any further conditions will have to be imposed on precautionary principle so as to protect environment applying the “Sustainable Development” principle?
- (v) Relief and cost?

Point (i):-

31. Admittedly, the Environmental Clearance (EC) was granted on 18.05.2016 and the appeal was filed along with the delay condonation application viz., M.A. No.147 of 2016(SZ) on 17.08.2016 and the same was returned for rectifying some defects and it was represented on 22.08.2016. According to the appellants, they came to know about the issuance of the Environmental Clearance (EC) only on 01.06.2016, when it was published in the office of the 5th respondent and thereafter, they will have to consult with the local people, collect necessary documents and engage a lawyer to file the appeal and that was a reason for 47 days delay in filing the appeal. But according to the respondents, the appeal was filed beyond 90 days as Environmental Clearance (EC) was granted on 18.05.2016 and it was uploaded by the 1st respondent on 19.05.2016 in their website. The project proponent had also uploaded the same on

21.05.2016, but the appeal was filed only on 22.08.2016 along with delay condonation application which is beyond 90 days.

32. In the decision reported in *Ramlal, Motilal and Chhotelal Vs. Rewa Coal Field Limited*,² the Hon'ble Apex Court had considered the scope of the discretion to be exercised under Section 5 of the Limitation Act and the Hon'ble Apex Court had also considered the several decisions and came to the conclusion that it has to be liberally construed and an opportunity must be given to the parties to meet the case on merit instead of rejecting the same on technical ground of limitation, if sufficient reasons have been given for the delay. Further, in the decision reported in *Esha Bhattacharjee Vs. Raghunathpur Nafar Academy*,³ the Hon'ble Apex Court has held that the Court must have lenient approach in dealing with the condonation of delay and the valuable rights of the appellant for hearing the matter on merit should not be denied owing to few technicalities. In the decision reported in *Save Mon Region Federation through its General Secretary Vs. Union of India and Ors.*⁴ the Tribunal had interpreted the word "communication" as provided under Section 16 of the Act and it has been held that if the Environmental Clearance (EC) is uploaded in the website of the project proponent or the MoEF&CC and it is available in public domain for free access for the public, then the date of communication will be reckoned from the date of uploading. If there are several methods by which this will have to be complied with under the EIA Notification by several parties, then the earliest method by which it was fulfilled by anyone of such stakeholders will have to be reckoned as the date of communication for the purpose of

² AIR 1962 SC (361) = MANU/SC/0042/1961

³ 2013 (12) SCC 649

⁴ 2013 (1) All India NGT Principal Bench, Page No.1.

computing the period of limitation. The same view has been reiterated by the Principal Bench of National Green Tribunal again in *Mr. Aman Sethi Vs. State of Rajasthan and Ors.*⁵ Further in that appeal, the date of presentation was taken as the date of filing of the appeal and not the date of representation.

33. Admittedly, earlier this Tribunal had condoned the delay by allowing the M.A. No.147/2016 by order dated 26.08.2016 without issuing notice to the respondents. But by order dated 12.05.2017, this Tribunal had left open the question of limitation also to be decided along with the appeal and that was how this question is also to be considered by this Tribunal along with the appeal.

34. Admittedly, the Environmental Clearance (EC) was granted on 18.05.2016 and the appeal ought to have been filed within 30 days thereafter, viz., before 18.06.2016. But under proviso to Section 16 of the National Green Tribunal Act, 2010, a further period of 60 days has been provided as the maximum period for condoning the delay in filing the appeal beyond 30 days, if sufficient reason is shown to the satisfaction of the Tribunal. Further, it will be seen from the Section cited supra that it is not from the date of issuance but the date of communication of the order. But in the case of non-party to the proceeding, the date of communication can be reckoned only from the date on which it was available in the public domain for access for the person who intend to proceed against the same as has been held in the *Save Mon Region Federation* case cited supra.

⁵ *Appeal No. 61 of 2013*

35.In this case admittedly, the MoEF&CC had uploaded the same on 19.05.2016, if that be the case, the appeal ought to have been filed on or before 19.06.2016. If further 60 days is added, then it ought to have been filed on or before 19.08.2016 but in this case, the appeal was filed on 17.08.2016 along with the delay condonation application. But the delay condonation application and the appeal were returned for curing certain defects and thereafter, it was represented on 22.08.2016 and thereafter, the delay condonation application was numbered and considered by the Tribunal. So, it is the date of presentation of the appeal and not the date of representation that has to be reckoned as the date of filing the appeal as per law. If that be the case, the appeal was filed within 88 days of issuance of the Environmental Clearance (EC) which is within the condonable period of 60 days, then the question is whether the reasons are stated by the appellants are sufficient or not.

36.It may be mentioned here that it was mentioned in the application to condone the delay that they came to know about the same on 01.06.2016 and thereafter, they will have to consult with the farmers who are interested in the matter as it is a collective action that they proposed to take against the issuance of the clearance on the basis of the common cause of the local farmers and since the Environmental Impact Assessment Reports were not made available by the project proponent, they will have to take steps to collect the same and consult the lawyer which resulted in delay. It is true that they were challenging the project on several forums including the Hon'ble High Court and also opposing the same in public hearing and that does not mean that they must be aware of the issuance of the clearance unless it is made known to them in accordance with law. EIA Notification, 2006 provides certain modalities

by which it must be published so as to make available to the public to know about the issuance of the clearance. One such method was uploading the same in the websites and publication in the newspaper and annexure of the same in the public offices within the particular time viz., 7 days. In this case, the MoEF&CC had uploaded the same on 19.05.2016 and the project proponent had uploaded the same on 21.05.2016 and it was published in the newspapers on 22.05.2016. So under such circumstances, it cannot be said that the appellants came to know about the same only on 01.06.2016. As per the dictum laid down referred to above, if several methods of publication are provided, the earliest method by which it was published first will have to be reckoned as the date of communication. Since it is a collective action by the farmers of the local people, they will have to raise money and also collect documents and obtain technical expert opinion in respect of the project before filing the appeal. For preparing the grounds of appeal, they will have to consult several persons and that was the reason contended by the appellants as the reason for delay in filing the appeal. So under such circumstances, this Tribunal is of the view that sufficient cause has been shown by the appellants for the delay in filing the appeal and the appeal was filed within the condonable period of 60 days and as such this Tribunal was perfectly justified in condoning the delay by order dated 26.08.2016 and that order does not call for any interference on the basis of the opportunities given to the respondents to raise the question of limitation also along with the appeal. So the contention of the counsel for the respondents that the appeal is barred by limitation and the same is liable to be dismissed on that ground is liable to be rejected and the point is answered accordingly.

Point No.(ii):-

37. The grievance regarding the public hearing was that there was no proper time gap provided and the place was not in any one of the villages where the proposed activity is to be established which is accessible and reachable by majority of the persons affected by the project. Further, necessary particulars were not provided which is required for proper consideration of raising objections by the parties. There is no dispute regarding the dictums laid down in the decision report in *Utkarsh Mandal Vs. Union of India and Ors.*⁶ of Delhi High Court, *Hanuman Laxman Aroskar Vs. Union of India*⁷ wherein, it has been specifically held regarding the necessity of public consultation regarding the project so as to give them a knowledge for the purpose of raising their necessary objections. In Para 118 of the Judgment of the Hon'ble Apex Court in *Hanuman Laxman Aroskar* cited supra it has been observed as follows:-

"118. The 2006 notification postulates:

(i) A public hearing at or in close proximity to the project site to ascertain the views of "locally affected persons";

(ii) Obtaining written responses from "other concerned" individuals having a "plausible stake" in the environmental aspects of the project or the activity;

(iii) The duty of the SPCB to conduct hearings and to forward the proceedings to the regulatory authority within the stipulated time;

(iv) Placing on the website of the Pollution Control Board a summary of the EIA report in the prescribed format and the making available of the draft EIA report by the regulatory authority on a written request by any person concerned, for inspection;

(v) The duty of the applicant to address all material concerns expressed during the process of public consultation;

(vi) The making of appropriate changes in the draft EIA and EMP; and

⁶ W.PC No.9340 of 2009 dt. 26.11.2009.

⁷ 2019 SCC Online SC 441.

(vii) The submission of the final EIA report by the applicant to the regulatory authority for appraisal.”

38. There is no dispute regarding the proposition laid down in the above decision regarding the importance of public consultation to be conducted for evaluating the objections to be raised by the persons to be affected on account of ongoing project before its establishment so as to enable the Expert Appraisal Committee as well as the issuing authority to consider those objections while considering the project before issuing the recommendations and clearance respectively. There is no case for the appellants as well as the intervenor that there was no public hearing conducted.

39. One of the grievance raised by the counsel for the appellants was that time limit was not sufficient for the people to collect the details and 30 clear days were not given for conducting the public hearing. But it may be mentioned here that the publication was effected in two local dailies as contemplated under the EIA Notification, 2006 on 31.05.2014 fixing the public hearing on 04.07.2014. As per the EIA Notification, 2006, 30 clear days will have to be given before conducting the public hearing so as to enable the parties to collect the details regarding the project to raise their objections in the public hearing. In this case, there is no case for the appellants or the intervenor that no such publications were effected. Going by the date of publication, the mandate provided under EIA Notification, 2006 has been complied with by providing more than clear 30 days before conducting the public hearing.

40. Further, the EIA Notification, 2006 only demands that the public hearing will have to be conducted in a place where the project is likely to be established so as to give an opportunity to the parties to attend the public

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hearing so as to raise their objections regarding the project. In this case, the public hearing was conducted at Barath Thirumana Mandapam, Devipattinam, Ramanathapuram District on 04.07.2014 at 10:00 A.M. The minutes of the public hearing was produced by the appellants themselves along with the appeal memorandum which will go to show that there were representation of the people from Uppur, Valamavoor and Thiruppalaikudi, Tehsil Tiruvadanaï of Ramanathapuram District which are all the villages which are said to be affected on account of the project. Further, it is also seen from the minutes that apart from individuals, certain organizations like Irrigation Association of Thirupalaikudi, Morpannai, Thirupalaikudi Group, representative of Nam Tamizhar Party, Ramanathapuram, Secretary of Tamil Nadu Fishermen Association, Ramanathapuram, Coastal Action Network, Nagapattinam, an Advocate of that area, Tamil Nadu Environmental Association, Erode, State Secretary of Tamil Nadu Fishermen Association and representative of Pooulagin Nanpargal had participated in the meeting. That shows that apart from the individuals, even representatives of the respective organizations including fishermen community, environmentalists and political parties had participated in the meeting and raised their concern about the project and all their representations and objections were recorded in the public hearing minutes and the same were forwarded to the MoEF&CC along with CD and video clipping for consideration. What was required under the EIA Notification, 2006 is the collection of opinion of the local people regarding their objections and representations and forward the same to the Ministry for their appraisal at the time of considering the project.

41.Further, it was also revealed from the allegations in the appeal memorandum itself that there was a possibility of protest against the public meeting itself likely to be organized by the farmers in that area and taking that into account alone, meeting was conducted in a safe place where the public could participate. Merely because the 1st appellant raised certain objections and attempted to obstruct the public hearing, he was removed by the District Collector with intervention of the police alone is not a ground to come to the conclusion that there was no proper public hearing conducted. The District Collector was expected to maintain law and order and see that the statutory function of conducting public hearing was being conducted in a peaceful manner and any steps taken by him, exercising that power vested in him cannot be treated as an act of oppression done by the District Collector against the persons who were raising the objection regarding the project. Merely because panchayat authorities opposed the project alone is not a ground for coming to the conclusion that there was no proper public hearing as contended by the parties.

42.So under such circumstances, the contentions raised by the counsel for the appellants that there was no clear 30 days provided for conducting the meeting and the public hearing conducted was not proper and the place selected is not in tune with the EIA Notification, 2006 etc. are without any merit and the same are liable to be rejected.

43.It is true that the Terms of Reference (ToR) was issued on 28.05.2012 and the validity period was for 2 years and it expired on 27.05.2014. But the public hearing was conducted on 04.07.2014 which was beyond the validity period of the Terms of Reference (ToR) issued and as such

according to the appellants and intervenor, the public hearing conduct is illegal.

44.It may be mentioned here that the project proponent had applied for extension of time for extending the validity period of Terms of Reference before the expiry of earlier validity period and the same was allowed on 08.09.2014, on the basis of the application filed dated 20.02.2014 by the project proponent for this purpose, extending the validity period upto 27.05.2015. So it will be clear from this that the extension was granted in continuation of the issuance of the Terms of Reference in tune with the expiry period of one year from 27.05.2014 and the public hearing was conducted at the time when the application was pending with the authorities and the same was granted and extended the time, then it relates back to the date of expiry to the previous validity period and anything happened in between will be treated as legal act only. So under such circumstances, there is no merit in the submission made that the public hearing was conducted after the validity period of expiry of the Terms of Reference (ToR) is without any merit.

45.Though, the appellants have a case that the entire Environmental Impact Assessment (EIA) Reports were not made available to the public for the purpose of discussion, but it may be mentioned here that even in the public hearing minutes produced by the appellants themselves that there was some discussion about the Environmental Impact Assessment (EIA) Reports by one of the participants but his case was that the necessary details required were not provided in the Environmental Impact Assessment (EIA) report and not that the Environmental Impact Assessment (EIA) report is not available to them.

46. Further, the main dispute raised in the public hearing was regarding the loss of agricultural income for the farmers whose agricultural lands are going to be acquired and also regarding the impact on the fishermen activities. But those grievances were raised by the persons attended the public hearing and the same were recorded in the public hearing and those materials were sent to the MoEF&CC and the same were considered by them while considering the project and issuing the Environmental Clearance (EC). The purpose of public hearing is to give an opportunity to the parties to participate in the public hearing and raise their objection and collect the public opinion and forward the same to the authorities for consideration at the time when the proposal of the project has to be considered by the Expert Appraisal Committee and issuing authority which has been complied with in this case. So under such circumstances, there is no merit in the submission made by the counsel for the appellants as well as the intervenor that the public hearing was not legal and as such the entire procedure is vitiated and the Environmental Clearance (EC) granted has to be set aside on that ground is without any merit and the same is liable to be rejected and the point is answered accordingly.

Points (iii) to (v):-

47. The learned counsel appearing for the appellant as well as the intervenor argued that there was no proper modelling of Ambient Air Quality test conducted considering all necessary factors of all possible pollution being caused on account of use of coal as fuel. The modelling was done taking into account of possible pollution only at the place where the fuel is being used and they have not considered the possibility of pollution at

ash pond, gypsum pond, transportation of coal and other possible places where the possibility of pollution due to dust being caused on account of the operation of the unit.

48. Further, there was misrepresentation on the part of the project proponent regarding the nature of coal used. They have projected that they are going to use 100% imported coal at the time when the project was proposed. Thereafter, when Environmental Impact Assessment (EIA) report was prepared, they have slightly deviated from their original proposal of 100% imported coal, to mixed coal both imported and domestic with ratio of 70:30. Subsequently, they have changed the idea of using 100% domestic coal and with that in mind, now they have link with the Coal India Private Limited for supply of coal.

49. Further, the Ministry of Power also recommended the use of domestic coal instead of imported coal and further the official memorandum issued by the MoEF&CC dated 11.11.2020, suggesting the conversion of coal from imported to domestic or partially domestic and partially imported without insisting for further Environmental Clearance (EC), but following the guidelines provided by notifications dated 07.12.2015, 28.06.2018 & 21.05.2020 also will go to show that their intention is to use only domestic coal and not imported coal and the Environmental Clearance without modification cannot be implemented.

50. Further, the Official Memorandum dated, 11.11.2020 is against the statute which cannot be implemented. Further, they also contended that at the time when Environmental Impact Assessment (EIA) report was prepared and made available for the public hearing, they have not mentioned the linkage of coal from where they are going to get the coal so as to ascertain the nature of possible pollution that is likely to be

emitted on account of use of such coal. The alleged report that has been made available for the Expert Appraisal Committee also does not indicate the place from where they are going to get the coal, but they have only produced the MoU with some company which are supposed to be the dealer supplying imported coal. The report submitted by the project proponent for appraisal of the Expert Appraisal Committee also does not show the source from where they have obtained the coal.

51. So under such circumstances, the report regarding radio activity that is likely to be emitted by using the proposed coal is not clear and there is no possibility for the Expert Appraisal Committee to apply its mind regarding its nature for the purpose of providing mitigation circumstances while imposing conditions.

52. Further, the marine impact assessment conducted also does not reflect the real picture of the marine ecology in that area. The marine environment management report prepared by M/s. WAPCOS will go to show that it is contrary to the nature of statistics of marine animals and marine ecology reflected in the report prepared by the Wildlife Institute of India, an internal organization of MoEF&CC and this aspect has not been considered by the MoEF&CC while considering the project. That also shows that there was no proper application of mind, while considering the project by the Expert Appraisal Committee and the MoEF&CC before recommending and approving the project.

53. The water intake, the possibility of affecting marine ecology by discharging the treated effluent on marine ecology and the manner in which the probable temperature that is likely to be emitted while discharging the treated effluent from the project proponent's unit is also not technically and scientifically evaluated by the experts who have been

entrusted with such study. The possibility of the pollution being caused on account of collection of gypsum and its disposal which is a by-product of Thermal Power Plant has not been properly appreciated. In fact, there was no possibility for the Expert Appraisal Committee to consider these aspects before recommending the project. Further, the Socio-Economic Study of the fishermen community people has not been properly considered. In fact there was suppression of fact regarding the height of the mast of the country boats that is being used by the fishermen community for fishing and the height of the bridge provided for carrying the marine discharge pipe will not tally with the height and that will affect the free movement of the fishing boat which will in turn directly affect the economic conditions of the fishermen community in that area.

54. Though project proponent in their report provided 7.5 m height of the mast, the Expert Appraisal Committee in the conditions have only provided 6 m height, which shows that there was no proper application of mind. Further, the subsequent documents produced by the project proponent in view of the protest made by the local community people and the decision taken by the District Collector to raise the height of the bridge to 10 m between 3.5 – 4.5 Km which in fact was not accepted by the persons who attended the meeting as there was no consensus on this aspect also will go to show that the appraisal on this aspect was not proper and revisit is required on that aspect.

55. Further, the District Collector has no power to amend the conditions and it is for the Expert Appraisal Committee after evaluation to come to the conclusion as to what would be the height of the bridge that will have to be provided for this purpose. The Terms of Reference (ToR) proposed was also not proper as independent assessment by the CZMA and the

power Expert Committee were not considered for the purpose of preparation of comprehensive Terms of Reference (ToR) which also will go to the root of preparation of Terms of Reference (ToR) and environment impact assessment reports which was prepared by the project proponent on the basis of the Terms of Reference (ToR) that has been issued are not proper and on that ground, the Environmental Clearance has to be set aside. Further, there is subsequent development of the land acquisition proceedings set aside by the Hon'ble High Court and whether the project proponent has sufficient land in their possession for this project also has to be considered.

56. So under such circumstances, according to the learned counsel appearing for the appellant as well as intervenor that the entire procedure that has been followed is vitiated and against law and as such Environmental Clearance granted cannot be sustainable.

57. They also relied on certain articles and reports prepared by Marine Ecology Experts and Wildlife Institute of India and also the decision of the Hon'ble Apex Court in *Hanuman Laxman Aroskar Vs. Union of India*⁸, *Utkarsh Mandal Vs. Union of India*⁹, *Centre for Social Justice Vs. Union Of India & Ors.*¹⁰, *M.J. Sivani & Ors Vs. State Of Karnataka & Ors.*¹¹, *Gau Raxa Hitraxak Manch and Gauchar Paryavaran Bachav Trust Vs. Union of India & Ors.*¹², *Sreeranganathan K.P. Vs. Union of India & Ors.*¹³, *Samantha & Ors. Vs. Union of India & Ors.*¹⁴, *Vellore*

⁸ 2019 SCC Online SC 441

⁹ MANU/DE/3070/2009

¹⁰ 2000 SCC Online Gujarat 55

¹¹ 1995 (6) SCC 289

¹² Appeal No.47 of 2012 of NGT dated 22.08.2013

¹³ Appeal No.172 to 174 of 2013 dated 28.05.2014

¹⁴ Appeal No.09/2011 of NGT dated 13.12.2013

*Citizens Welfare Forum Vs. Union Of India & Ors.*¹⁵, *Intellectuals Forum, Tirupathi Vs. State Of A.P. & Ors.*¹⁶, *M.C. Mehta Vs. Kamal Nath & Ors.*¹⁷, *Essar Oil Ltd Vs. Halar Utkarsh Samiti & Ors.*¹⁸, *Centre For Environmental Law, World Wildlife Fund of India Vs. Union of India & Ors.*¹⁹, *Dipak Kumar Mukherjee Vs. Kolkata Mun. Corp. & Ors.*²⁰, *Raghunath Rai Bareja & Anr Vs. Punjab National Bank & Ors.*²¹ in support of their case.

58. On the other hand, the learned counsel appearing for the MoEF&CC argued that it was not a case where the Expert Appraisal Committee in a single meeting recommended the project. In fact the proceedings of the Expert Appraisal Committee will go to show that it was discussed in 2 or 3 meetings and certain clarifications were called for and only after getting the further reports on the basis of the clarifications, ultimately recommended the project with specific and other conditions.

59. Further, the recommendations of the Coastal Zone Management Authority were also considered and those conditions were also incorporated while granting the Environmental Clearance – cum – CRZ Clearance. All probable and possible pollution aspects have been considered and they have only suggested for imported coal, though in Environmental Impact Assessment (EIA) report, two options were given one for 100% imported coal and other for mixture of imported and domestic coal at the ratio of 70:30. The subsequent Official Memorandum was issued considering the non availability of imported

¹⁵ 1996 (5) SCC 647

¹⁶ 2006 (3) SCC 549

¹⁷ 1997 (1) SCC 388

¹⁸ 2004 (2) SCC 392

¹⁹ 2013 (8) SCC 234

²⁰ 2013 (5) SCC 336

²¹ 2007 (2) SCC 230

coal and also considering the fact that in several matters, when domestic coal was considered as the fuel, the MoEF&CC is aware of the possible pollutions and conditions were imposed in such cases and as such there is no necessity for any further evaluation and that was the reason why the official memorandum was issued dispensing with Environmental Clearance considering the delay in getting the Environmental Clearance causing escalation in the project cost and also taking into account that this must be subject to the other conditions imposed referred to in the OM by virtue of earlier notifications issued in this regard. Further, the Environmental Impact Assessment (EIA) reports were prepared by the reputed organizations and competency of such institutions were not disputed by them.

60. The learned counsel appearing for the MoEF&CC also argued that all the possibilities have been evaluated by the Expert Appraisal Committee and only thereafter, recommendations have been made which after due consideration was accepted by the MoEF&CC and the clearances have been granted and there is no illegality in granting the Environmental Clearance (EC) to the project.

61. On the other hand, the learned counsel appearing for the project proponent argued that there is no merit in the appeal as most of the grounds alleged are on vague information and on the basis of certain articles published by different agencies. In fact, the Terms of Reference was properly issued by the MoEF&CC and on the basis of the Terms of Reference (ToR), Environmental Impact Assessment reports have been prepared by the project proponent and further reports were prepared on the basis of the directions issued by the Expert Appraisal Committee during the time at which the project was appraised by them and only

thereafter, the Expert Appraisal Committee had approved and recommended the project with certain conditions which was accepted by the MoEF&CC and the Environmental Clearance –cum- CRZ Clearance was granted.

62. Further, the Environmental Impact Assessment Reports, Socio-Economic Community Study and Marine Environmental Impact Assessment Reports, etc. were prepared by the reputed agencies like IRS, IIT Madras, WAPCOS, Anna University and Madras Institute of Socio-Economics, after considering all the ground realities and the probable cause of pollution that is likely to be caused on account of the project being launched. Further, the experts on the field have conducted the inspection of specific areas which is likely to be affected on account of the project and it is only thereafter, that they have prepared the report considering the things they have noticed at the time of conducting the study and there is nothing to disbelieve the study conducted by them and findings arrived at by them in this regard.

63. Further, the project proponent has no intention to use domestic coal at present and they intend to use only imported coal and even if they want to switch over to domestic coal completely or partially, they will conduct necessary Environmental Impact Assessment and get proper Environmental Clearance from the MoEF&CC, though latest official memorandum dispense with such procedure for such shifting over. So, the apprehension of the appellant that they are going to use domestic coal is without any basis.

64. The learned counsel also argued that a reading of the Environmental Impact Assessment (EIA) reports prepared by various agencies will go to show that they have considered all the probable possibilities of impact of

the project on environment and gives all remedial measures to be taken by them and the project proponent is committed to comply with the recommendations and even to apply more stringent measures to curb pollution or any adverse environment impact on account of the operation of the project. Though there was no necessity for them to consider the question of gypsum disposal at that time, but in fact, they have taken that also into consideration for the purpose of meeting the situation applying the Precautionary Principle, anticipating the possible pollution or adverse impact which is likely to cause on account of the operation of the unit and necessary measures have been suggested by the agencies. The studies conducted by the various agencies will go to show that the impact of discharge of treated effluents into the sea will not have much impact on marine ecology due to temperature of the effluents that is likely to be discharged and the study will go to show that there is not much variation in the temperature level and that will not affect the marine ecology as such. All necessary precautionary measures under the marine environment management and protection of marine environment etc. have been taken care of and necessary funds have been provided for those purposes. All latest technologies are being adopted in the machineries to be used by the project proponent, which will curb the possible pollution anticipated by the appellant and the public.

65. Though the assessment of coal was not conducted at the time when the Environmental Impact Assessment (EIA) report was prepared, that was later prepared on the basis of the sample that has been procured from the dealer with whom they have entered the memorandum of understanding for supply of imported coal and that was made available to the Expert Appraisal Committee (EAC) for consideration and it is only thereafter,

that conditions have been imposed, applying the precautionary principles in its stricter sense.

66.The learned counsel appearing for the project proponent also argued that since the local public had raised objection regarding the height of the bridge that is to be constructed for carrying the discharge pipe line to the sea at intervention of the District Collector, it was decided to raise the height to 10 m at a particular point and on humanitarian consideration and the commitment to the social welfare of the local fishermen community, they agreed to raise the same so as to help the country fishing boats with having height mast to pass through the area to enable them to carry out the fishing activities without any obstruction.

67.So according the learned counsel appearing for the project proponent, there is no illegality committed by the MoEF&CC in granting the CRZ Clearance – cum - Environmental Clearance (EC) for this project.

68.Before going into the facts of the case, the precedents relied on by the counsel appearing for the appellant and the intervenor can be considered.

69.In the decision reported in *Utkarsh Mandal Vs. Union of India*²², the Hon'ble Delhi High Court had reiterated the necessity for proper public hearing and application of mind of the authorities who are issuing the Environmental Clearance, regarding the objections raised in the public hearing and that must reflect in the order passed by them.

70.It is also mentioned in the decision about the role to be paid by the Expert Appraisal Committee (EAC) and it was observed that the decision of the Expert Appraisal Committee (EAC) may not necessarily be binding on the MoEF but is certainly an input into the decision making process. Considering that it constitutes the view of the expert body, its advice

²² MANU/DE/3070/2009

would be a valuable input. In that case since the expert appraisal committee (Mines) did not consider the objections raised at the public hearing and nothing was mentioned about the same, the Environmental Clearance (EC) granted was set aside and it was remanded to the Expert Appraisal Committee (EAC) for re-appreciation and then, directed the MoEF&CC to pass appropriate orders in that matter.

71. In the decision reported in *Hanuman Laxman Aroskar Vs. Union of India*²³, the Hon'ble Apex Court had considered the importance of the role of Expert Appraisal Committee (EAC), the necessity and importance of preparation of Environmental Impact Assessment (EIA) reports to be prepared by the project proponent and the scope of the non-disclosure of certain material facts which the expert appraisal committee has no occasion to consider before recommending the clearance and MoEF&CC blindly accepting such recommendations, then held that the entire process is vitiated.

72. That was the case where certain ecologically sensitive areas were not shown by the project proponent while submitting the application for Environmental Clearance in respect of an Airport project and there was no occasion for the Expert Appraisal Committee (EAC) to consider about the impact of such project on forest land and it was on that ground, that the Apex Court had set aside the Environmental Clearance granted and directed the authorities to consider the same afresh, after getting proper Environmental Impact Assessment (EIA) reports containing all necessary details. The Hon'ble Apex Court also considered the importance of public consultation and the consideration of those objections by the authorities before considering the project. The Apex Court, on the basis

²³ 2019 SCC Online SC 441

of the materials available on record, came to the conclusion that there was no proper application of mind by the Expert Appraisal Committee (EAC) as well as the MoEF&CC in granting the clearance.

73. The Hon'ble Gujarat High Court in *Centre for Social Justice Vs. Union of India & Ors.*²⁴, reiterated the relevance and importance of the public consultation and the necessity to make necessary wider publication for the purpose of getting large attendants to raise their view regarding the impact of the proposed project on environment and the local people. The Gujarat High Court also considered the question as to whether public hearing will have to be conducted on different places considering the nature of project and came to conclusion, on facts of that case, non-conducting of public hearing in more than one place which are likely to be affected, was held to be a ground for setting aside the clearance granted.

74. In the decision reported in *M.J. Sivani & Ors Vs. State of Karnataka & Ors.*²⁵, was relied on by the counsel for the appellant that the administrative law demands adhere to the principle of natural justice and audi alteram partem principle. Further, the Hon'ble Supreme Court had also considered the scope of subordinate legislation, wherein, it has been observed as follows:-

"It has already been held that the orders are statutory in character. Though the delegated authority under the Act made a general order, it may well be that a part thereof is not applicable, or is bad, in relation to a particular trade or business. Partly good and partly bad legislation cannot be struck down as a whole. To the extent it becomes applicable to a particular trade or business, it would be valid and operative and the balance remains either inapplicable or invalid. Diverse situations may arise in a particular trade or business. For that reason, the delegated legislation cannot be, condemned as a whole

²⁴ 2000 SCC Online Gujarat 55

²⁵ 1995 (6) SCC 289

unless the invalid part is inextricably interconnected with the valid. The Court is, therefore, entitled to consider whether the rule as a whole or in part is valid or becomes invalid or inapplicable. On its finding that to the extent the rule is not relevant, the Court is entitled to set aside or direct to disregard the irrelevant or inapplicable part leaving the rest intact and operative.”

75. It is also mentioned in Para 32 of that Judgment that,

“32. It is also settled law that the order of quasi judicial authorities need not contain detailed reasons like a court order. Administrative order itself may contain reasons or the file may disclose reasons to arrive at the decision showing application of mind to the facts in issue. It would be discernible from the reasons stated in the order or the contemporaneous record. Reasons are the link between the order and the mind of its maker. When rules direct to record reasons, it is a sine qua non and condition precedent for valid order. Appropriate brief reasons, though not like a judgment, are a necessary concomitant for a valid order in support of the action or decision taken by the authority or its instrumentality or the State. Normally it must be communicated to the affected party so that he may have an opportunity to have it tested in an appropriate forum.”

76. So, it is clear from the decision that though there is no necessity to give detailed reasons for arriving at such conclusions by the quasi judicial authority or a decision making authority, it will not be invalid on that ground but a reading of the order and the contemporaneous records which were relied on by the authority must reflect the application of mind by the ordering authority on the facts before arriving at such conclusions.

77. In the decision reported in ***Gau Raxa Hitraxak Manch and Gauchar Paryavaran Bachav Trust Vs. Union of India & Ors.***²⁶, it was observed that appraisal requires application of mind independently and evaluation of material in order to find out whether it is a project work grant under the Environmental Clearance or for the purpose of refusal of Environmental Clearance as the case may be. In that case, Environmental

²⁶ *Appeal No.47 of 2012 of NGT dated 22.08.2013*

Clearance was kept in abeyance for certain period and directed the MoEF&CC and Expert Appraisal Committee (EAC) to re-appraise the same and then pass appropriate orders in accordance with law.

78. The same view has been reiterated by this Bench in *Sreeranganathan K.P. Vs. Union of India & Ors.*²⁷ and other connected cases, popularly known *Aranmula Airport Case*, where also, after considering the available materials, Tribunal came to the conclusion that there was no proper application of mind of relevant facts and there was suppression of material facts and the real impact of the project has not been considered by the authorities and set aside the Environmental Clearance granted applying the Precautionary Principle and principle of Sustainable Development.

79. In *Vellore Citizens Welfare Forum Vs. Union Of India & Ors.*,²⁸ *Intellectuals Forum, Tirupathi Vs. State of A.P. & Ors.*,²⁹ *M.C. Mehta Vs. Kamal Nath & Ors.*,³⁰ *Essar Oil Ltd Vs. Halar Utkarsh Samiti & Ors.*,³¹ *Centre For Environmental Law, World Wildlife Fund of India Vs. Union of India & Ors.*,³² *Dipak Kumar Mukherjee Vs. Kolkata Mun. Corp. & Ors.*³³ and *Raghunath Rai Bareja & Anr Vs. Punjab National Bank & Ors.*³⁴ the Hon'ble Apex Court had considered the question of applicability of Polluter Pay principle, Precautionary Principle, Sustainable Development and Public Trust Doctrine and the necessity for striking the balance between Sustainable Development and environment protection and consider the necessity for economic

²⁷ *Appeal No.172 to 174 of 2013 dated 28.05.2014*

²⁸ *1996 (5) SCC 647*

²⁹ *2006 (3) SCC 549*

³⁰ *1997 (1) SCC 388*

³¹ *2004 (2) SCC 392*

³² *2013 (8) SCC 234*

³³ *2013 (5) SCC 336*

³⁴ *2007 (2) SCC 230*

development as a part of sustainable development in public interest. But held in all these cases that when sustainable development and environmental protection are balanced with each other and if Sustainable Development causes irreversible damage on environment, then Sustainable Development must give a way for protection of environment and in such cases, the Sustainable Development cannot be the ground for allowing such project which are injurious to environment causing irreversible degradation, if such projects are permitted to come.

80. With these principles in mind, this Tribunal has to consider as to whether all these aspects were considered by the authorities while deciding to grant Environmental Clearance and whether there was proper application of mind and all necessary details were furnished for appraisal by the project proponent and there was any misrepresentation of fact or suppression of material fact etc. which has wrongly influenced the authority to grant the clearance and whether that requires a revisit by the authorities to consider the grant of Environmental Clearance (EC) to the project.

81. As regards the preparation of Environmental Impact Assessment (EIA) reports by the project proponent is concerned, the project proponent had prepared the studies by appointing M/s. WAPCOS for marine impact assessment, IIT Madras for temperature and salinity depression modelling study, M/s. Madras School of Social Work, Chennai for socio-economic and community needs assessment study, terrestrial Environmental Impact Assessment (EIA) Study was conducted by M/s. Bhagawathi Amalabs Limited, Hyderabad and the appellant as well as intervenor had no case that these institutions were not accredited agencies or competent experts for conducting such studies.

82.It is seen from the Environmental Impact Assessment (EIA) reports filed by the project proponent that the model study was conducted in respect of 10 Kms of area and there were no other industrial units in that area and it is a fresh unit. So, the possibility of any air pollution in that area on account of the existing unit does not arise. Further, though the Ambient Air Quality locations were shown as the place of stack and production area, a reading of the entire Environmental Impact Assessment (EIA) report will go to show that all probable possibilities of pollution namely, ash pond, gypsum pond, transport facility and other aspects have been taken into consideration while preparing the modelling as well as the necessary precautions to be taken for curbing the possible pollution that is likely to be caused on account of the same. As regards the marine impact is concerned, M/s. WAPCOS has conducted a study during the period between December and February and they have collected the datas which are available at that time and narrated the same.

83.It is also an admitted fact that it is near Palk Bay one of the area identified as the habitats for dugong. The marine impact assessment study conducted by M/s. WAPCOS also mentioned that enquiry showed that there were occasional siting of dugong in that area and it is not a regular habitat in that area and the study conducted by the Wildlife Institute of India also reflects the same thing. Further, the study may depend upon the area specific, region specific as well. The study conduct by Wildlife Institute of India showed that Palk Bay starts from Mandabam upto Ramanathapuram District and it also contains two of the villages which are part of Palk Bay in which the industry is likely to be started.

84.It is seen from the report submitted by the Wildlife Institute of India regarding the existence of dugong and marine habitats are largely found in Gulf of Mannar and Palk Bay region which are part of India and this is the area where this marine mammal was found in large number and it is an endangered species which require protection and this is also one of the species mentioned in Schedule-I of the Wildlife Protection Act, 1972. Further, temperature level mentioned in different areas at different time shows between 29⁰C to 31⁰C and in some areas it goes to 34⁰C. The same is the approximate temperature that has been mentioned in the report prepared by M/s. WAPCOS as well. Further, the temperature rate may differ depending on the period during which the study was conducted also. Further, a comparison of these two studies also will go to show that the presence of sea grass in these areas are better grown areas and a probable habitat of dugong and other marine life. The report relied on by the counsel appearing for the intervenor also does not give any specific number of dugong in the area where the project proponent is intended to establish their unit during the time at which the project proponent's agency had conducted the study. It only showed there is increase in the population of these species during 2017-2018.

85.Further, there is every possibility of some difference in the study conducted by two different institutions in respect of the same subject depending upon the nature of information and data collected by them at the relevant time. The study conducted during 2012-13 and the study conducted during that period by Wildlife Institute of India relied on by the counsel for intevenor also shows more or less similar findings arrived at by the agency appointed by the project proponent.

86. So under these circumstances, we feel that there is no merit in the submission made by the counsel for the intervenor and the appellant that there was wilful material suppression of relevant facts while projecting the environmental issues by the project proponent through the accredited agencies so as to mislead the Expert Appraisal Committee (EAC) on these aspects. Further, when a project has to be started or established, they can only have all macro possible pollution and impact on environment and it is highly impossible for considering all hypothetical way of analysis as has been projected by the intervenor in this case and it is not possible to go into all micro issues as well and if such a analytical / hypothetical aspect is taken, then it is highly impossible to establish any industry in any part of the world. What is expected from such studies is to have a general idea about the nature of environment in a particular place and what would be the probable impact of a particular project in that area and what are all the necessary and probable protection methods applying the Precautionary Principle and Sustainable Development has to be taken, if such a project is allowed to come in that area. If these facts have been generally and substantially considered by the authorities while recommending the project, then it cannot be said that there was no proper assessment or application of mind in recommending the project. There is a difference between total lack of application of mind by the assessing authority and improper application of mind in considering a particular issue. In the earlier case, if the Courts are satisfied that there is lack of application of mind on the part of the assessing authority, then the Court has no further option but to set aside and send for reassessment. But in the later case, the Court need to consider whether such an assessment is also possible and if any further improvement is required, then probably to

that extent direct the assessing authority to reassess the issue and impose any further conditions, if any, required to meet the situation.

87. It will be seen from the minutes of the 52nd Meeting of the Reconstituted Expert Appraisal Committee on environmental impact assessment of thermal power plant (mines) projects which considered the present project as well produced by the intervenor and the appellant will go to show that it was not in the first meeting itself the project was considered and approved. It will be seen from the minutes of the meeting mentioned above that the present project was considered by the Expert Appraisal Committee Thermal Power held on 25-26th June, 2016, after considering all the aspects, they have directed the project proponent to give certain clarifications which reads as follows:-

- (i) *Pictures and location of the creeks in a legible map.*
- (ii) *Action plan for harnessing solar power.*
- (iii) *Revised layout clearly depicting the various units and facilities*
- (iv) *Clarification that the community land is not being acquired as per the definition of the State Govt.*
- (v) *Commitment for development of thick green belt of minimum 50 m width between the ash pond and village tanks.*
- (vi) *Notification issued by the State Govt. regarding acquisition of land as per the provisions of relevant act/rules.*
- (vii) *Explore the possibility of making an embankment without raising the level of the project site.*
- (viii) *Letter from competent Port and Railway authorities for handling & transportation of the coal.*
- (ix) *The transportation of coal shall be by Rail only. The PP shall take up the matter of transportation of coal by the shortest route which would save journey of around 100 Km.*
- (x) *Diversion of existing Nalahs shall be done in such a way that it shall not dry up the creeks and it shall be ensured that water flows perennially in the creeks so as to preserve the mangroves. Anna University, who has conducted the hydro geological study, shall present the same in the next meeting.*
- (xi) *The water quality data was not properly presented. Hence, the same needs to be done for the fresh water and sea water.*
- (xii) *Details of proposed e-auction for fly ash, the LoIs from prospective takers along with quantities etc. to be submitted.*

- (xiii) Explore various avenues for utilization of bottom ash*
- (xiv) Revised and detailed budgetary action plan for Public Hearing issues*
- (xv) Employment potential for locals.*
- (xvi) Detailed reply to the issues raised by ERC, New Delhi*
- (xvii) Borrowing of earth should be avoided and efforts be made to balance cutting and filling in the project area/site.*
- (xviii) In order to maintain tranquillity and sanctity of the creek area by ensuring bare minimum disturbances, proposed sea ward pipe line shall have to be realigned.*
- (xix) Concerns were expressed on the high pH of water which needs to be dealt extensively in EIA.*

88. It is seen from the minutes that these things were subsequently done and they have also obtained recommendations from the Coastal Zone Management Authority as required under CRZ Notification, 2011, where they have recommended the project with certain conditions and they have also considered the clarifications and information produced by the project proponent and only thereafter, the project was recommended with certain conditions and it is thereafter, the MoEF&CC had considered the same and then issued the clearance.

89. So, it is cannot be said that there was lack of application of mind on the part of the Expert Appraisal Committee (EAC) and the MoEF&CC, before granting permission for such project. Then the question is as to whether that is sufficient for protecting the environment and if not, what further consideration has to be made by this Tribunal on the basis of the materials available.

90. As regards the preparation of Terms of Reference (ToR) is concerned, after considering the entire project at the time of scoping as required under the EIA Notification by the persons having expertise in the field have prepared the Terms of Reference and issued the same. Merely because, it was not conducted by two agencies as projected by the

intervenor will not make the Terms of Reference (ToR) invalid, if those things were also considered independently by the Expert Appraisal Committee before recommending the project, other is only optional and not mandatory. Merely because the Environmental Impact Assessment report prepared at the time of public hearing does not canvas all the aspects also is not a ground for setting aside the Environmental Clearance (EC) if during the appraisal of the project the Expert Appraisal Committee (EAC) had anticipated those aspects as well and obtained necessary clarifications or further reports and it is thereafter, the project is approved, then it cannot be said that the Environmental Impact Assessment (EIA) report was not properly prepared and on that ground the Environmental Clearance (EC) will have to be set aside.

91. It will be seen from the minutes of the meeting produced by the appellant as well as the intervenor themselves that wherever the Expert Appraisal Committee (EAC) wanted clarification, the same was directed to be furnished by the project proponent, after conducting further study and such studies were conducted by the project proponent and it was presented before the Expert Appraisal Committee (EAC) and only after satisfying with the same, the same has been approved by the committee as well as MoEF&CC.

92. The main ground on which the Environmental Clearance (EC) was attacked was that the radio activity test of coal to be used was not properly presented before the Expert Appraisal Committee (EAC). Further the report, if any, later produced also does not show coal specific study and it is not clear from the report which is the coal that they are going to use.

93.It is true that at the time when the public hearing was conducted, they have only stated that they are going to use imported coal and the coal analysis report was not made available. Further, it will be seen from the guidelines provided by the MoEF&CC that at the time of preparing the Terms of Reference (ToR), the coal linkage need not be produced but that must be produced at the time when the project was appraised by the appraisal committee.

94.It is seen from the documents produced that they have produced a memorandum of understanding entered into between project proponent and the dealer who is dealing with supply of imported coal at the time when the appraisal was made by the expert appraisal committee. But they have not mentioned as to the area from where or country from where they are going to get the coal. Further, the documents produced by the project proponent namely, the report of the coal analysis shows that the Mercury component is only so much. But in fact there was no sample of imported coal that has been tested for the purpose of assessing this aspect and it is not clear from the Environmental Impact Assessment (EIA) report that it was not made available as well. Further, the documents produced by the project proponent regarding the test report of domestic coal dated 23.12.2016 shows that the Mercury level is 0.02 mg which according to the project proponent is less than the Mercury level which is likely to be emitted by using the imported coal. The radio activity in respect of domestic coal also produced by the project proponent dated 24.12.2016 also shows that it is below detection limit. But it may be mentioned here that the project proponent at the time when they made the proposal, intended to use only 100% imported coal and the Environmental Clearance was granted only on that basis.

95. Further, the Principal Bench of National Green Tribunal, New Delhi in *Krishi Vigyan Arogya Sanstha & Ors. Vs. The Ministry of Environment & Forests, Govt. of India & Ors.*³⁵ considered the question regarding the Environmental Clearance (EC) granted to the Maharashtra State Power Generation Co. Ltd. wherein, the Tribunal had after considering the nature of appraisal to be conducted in respect of coal based thermal power plant regarding the preparing the Environmental Impact Assessment (EIA) reports and disposed of the case with following conclusions,

“.....It is clear from this that there must be some nuclear radiation study to be conducted which are likely to be emitted as long term impact from the thermal power projects, by involving institute likes Bhabha Atomic Research Agency or any such other recognized scientific institution dealing with nuclear radiation with reference to the coal ash generated by thermal power projects particularly the cumulative effect of a number of thermal power project located in the area on human habitation and environment and ecology and also directed the MoEF&CC to include in the Terms of Reference of all the future projects asking the proponent to furnish details of possible nuclear radioactivity levels of the coal proposed to be used for the thermal power plant.”

96. But such an effort was not done in this case. There was no coal specific study conducted by the project proponent which was made available to the Expert Appraisal Committee (EAC) for consideration. Further, though the appellant as well as the intervenor contended that now there is a proposal for the project proponent to go for indigenous coal (domestic coal) on the basis of the documents produced by the project proponent along with their written submission and also the office memorandum dated 11.11.2020 issued by the MoEF&CC wherein, they have exempted for further Environmental Clearance (EC) in respect of change of fuel

³⁵ *Appeal No.07 of 2011 dated 20.09.2011.*

from imported coal to domestic coal will go to show that the entire process will have to be reassessed. But at the time of hearing, the learned counsel appearing for the project proponent had undertaken that though they have made some arrangements for coal linkage with Coal India Limited and other Indian coal agencies, they have no intention to use indigenous coal and whenever they want to shift from imported coal to indigenous coal, then they will conduct necessary environmental impact assessment and apply for fresh Environmental Clearance and only thereafter, they will go for the change.

97.In view of the decisions of the Tribunal and also the opinion given by the Expert Appraisal Committee (EAC) in various thermal power plants in respect of change of fuel regarding the coal based thermal plants from imported coal to indigenous coal/domestic coal, they have insisted for a fresh Environmental Clearance after conducting proper environmental impact assessment study as it was generally an admitted fact that there will be a large difference of its pollution load which may have impact on environment. Since the counsel appearing for the project proponent had undertaken that they will conduct necessary study and obtain Environmental Clearance (EC), before they shift over to domestic coal, we are not going to those issues at this stage, accepting the gentleman's undertaking given by the counsel for the project proponent on behalf of the project proponent in this regard but however in view of the discussion made above, there is some necessity to go for a further study on the basis of the specific coal that is likely to be used for the project as a fuel and for that purpose, a fresh study will have to be conducted and that will have to be independently assessed by the Expert Appraisal Committee

(EAC) and MoEF&CC and further conditions if any have to be incorporated.

98.As regards the marine environment impact assessment is concerned, in view of the discussions made above, we feel that there is no necessity for further study to be conducted as we compared the documents produced by the appellant, intervenor and the project proponent on this aspect and it is humanly impossible to go into the micro issue on hypothetical proposition and clear all those aspects as claimed by the counsel appearing for the intervenor.

99.As regards the presence of quantum of Mercury in the ash pond also appears to be on hypothetical method of calculation and such a calculation cannot be scientifically accepted as well. But since we have mentioned that further study is required in respect of the impact of coal that is likely to be used as a fuel specifying the imported coal which they are going to use, we are not expressing any opinion on this aspect at this stage and that has to be considered by the expert appraisal committee and MoEF&CC on the basis of the further study report to be submitted by the project proponent and impose necessary conditions.

100. As regards the land acquisition proceedings projected by the appellant is concerned, the land acquisition proceedings were set aside by the High Court of Madras and the matter is now pending in Appeal before the Hon'ble Supreme Court. However, it is not clear from the documents produced as to whether the project proponent has sufficient land with them, even if the acquisition proceedings fails for the purpose of proceeding with the project.

101. The Expert Appraisal Committee (EAC) only proceeded on the basis that there was an administrative sanction granted for acquisition of land

for this purpose and they will be having land for that purpose as well. But in view of the subsequent development taken place, it is necessary that further study will have to be conducted by the Expert Appraisal Committee by deputing a sub-committee to go into the issue regarding the availability of land for the purpose of establishing the project with all condition fulfilled effectively and operate the project.

102. So under such circumstances, we feel it appropriate that it is necessary to direct the MoEF&CC to conduct a further study in this aspect before allowing the unit to commission and some independent study will have to be conducted by the MoEF&CC regarding the land available taking into account even if the Judgment goes against the project proponent, whether they can proceed with the project in an environment friendly manner by providing all necessary facilities to meet the probable environmental impact that is likely to be caused on account of the operation of the unit.

103. As regards the height of the mast of the country boats is concerned, though in the Environmental Impact Assessment (EIA) reports, the probable height of the mast of the country boats which are used by the fishermen community in that area was stated as up to 7.5 M, the conditions imposed only shows that height of the bridge above the sea level for carrying the discharge pipe of the effluents from the unit is shown as only 6 m.

104. The documents produced by the project proponent themselves along with the written submission shows that there was some concern raised by the fishermen community in that area about the height of the bridge and there was a meeting held in the presence of District Collector, Ramanathapuram District and in the proceedings No. ROC No.B1/20138/2020 dated 30.07.2020, they have decided to raise the

height of bridge to 10 m between particular distance, so as to enable the country boat with higher mast to pass through so as to facilitate the fishermen community to do their traditional fishing work as evident from the documents which reads as follows:-

"Roc. No. B1/20138/2020, dt. 30.07.2020

Sir,

Sub: UPPUR Super Critical Thermal Power Project (2x800 MW) – Sea Water intake and outfall structures works in offshore area – Raising the height of Approach Trestle – Fishermen Issue – Reg.

- Ref: 1. Peace Committee Meeting held at the District Collectorate on 16.08.2019.*
- 2. Peace Committee Meeting held at the District Collectorate on 22.08.2019.*
- 3. Inspection to Uppur Site by the Deputy Director/Fisheries dt.21.05.2020.*
- 4. R.C. No.4026/A3/2019 dt 03.06.2020 from DD/Fisheries/Ramnad.*

With reference to the above, I wish to inform you that the Peace Committee meetings were held at the District Collectorate on 16.08.2019 and 22.08.2019 which were attended by the TANGEDCO officials, Revenue Officials, Fisheries Department, Forest Department, Police department and fishermen and representatives of fishermen from local fishing villages regarding the issue raised by the fishermen on the construction of bridge in the sea for drawal of water to Uppur Thermal Power project, Ramanthapuram. In the meeting the local country boat fishermen informed that, since they are using traditional fishing method using salts in the area where the bridge is constructed, there will be difficulty to cross if the bridge is constructed to the proposed height of 6 m.

Hence with the consultation of the respective officials and village people, it was directed by the District Administration to carry out inspection at the site by Fisheries and TANGEDCO officials to assess the height of the masts of the fishing boats available in Morepannai to Thiruppalaikudi fishing area.

Assessment of height of the masts in the country boats and possibility of raising the height of the bridge without affecting the masts of the country boats was carried out by the

team of fisheries department officials and report was submitted to this office by the Deputy Director of Fisheries, (Regional) Ramanathapuram vide the reference cited (4).

The Deputy Director/Fisheries opined that since many of the country crafts fitted with motorized engine as well as sail with mast would move from North to South and South to North direction for their fishing activities, the height of the bridge may be raised to 10 meter in between 4.00 Km to 5.00 Km which may enable them to go sea voyage with minimal fuel requirement and may not disturb their livelihood.

From the reports submitted by the Fisheries department and subsequent discussions with Deputy Director/ Fisheries and CE/USTPP it is ascertained that based on the technical feasibility, raising the height of the bridge from 6m to 10m for a stretch of about 150 metres between 3.50 Km to 4.50 Km with the required slope is found to be more beneficial to the fishermen and to sort out the local issues.

Hence, M/s. TANGEDCO is hereby requested to raise the height of the bridge from 6m to 10m for a stretch of about 150 meters between 3.50 Km and 4.50 Km with the required slope may be taken into consideration for the benefit of the fishermen community and for smooth implementation of the project.

*District Collector,
Ramanathapuram.”*

105. This height was also objected by the counsel appearing for the appellant as well as the intervenor. According to them, the height of the mast is upto 14 m and not 10 m and the area that has been provided for their passing is also not sufficient.

106. It may be mentioned here that since there is a wide gap between the height of the bridge provided in the Environmental Clearance (EC) and that was suggested by the District Collector in the proceedings referred to above and the height of the mast claimed by the appellant and the intervenor, we feel that some independent enquiry will have to be conducted by the MoEF&CC in this regard for the purpose of considering the necessary height of the bridge to be constructed for carrying the discharge pipeline for marine disposal by the project

proponent for the purpose of re-fixing the height of the bridge and its probable impact or possibility of marine impact and the necessary precautionary principle to be considered and those aspects cannot be considered by the District Collector while fixing the height of the bridge but that can be done only by the expert body of the MoEF&CC which deals with these aspects.

107. So under such circumstances, with these existing conditions, it cannot be said that there was proper appraisal of the project on this aspect by the MoEF&CC and the Expert Appraisal Committee (EAC) while recommending the project and revisit will have to be done by the Expert Appraisal Committee (EAC) on the aspects discussed by this tribunal in the earlier paragraphs, for which purpose it will have to be remanded to the MoEF&CC to be sent to the Expert Appraisal Committee (EAC) after making a fresh Terms of Reference on the points raised by this Tribunal in the earlier paragraphs asking for a further study by the project proponent to be appraised by the Expert Appraisal Committee (EAC) and for that purpose, it is not needed to be sent for further public hearing etc. Further, the entire environment clearance granted also need not be set aside and ask for a de-novo appraisal as claimed by the appellant and the intervenor.

108. So under such circumstances, the Environmental Clearance (EC) granted requires revisit by the Expert Appraisal Committee (EAC) for the reasons to the limited extent stated above and so we feel that the present Environmental Clearance (EC) granted to the project proponent which is under challenge viz., Environmental Clearance (EC) dated 18.05.2016 has to be kept in abeyance and the matter has to be remanded to the MoEF&CC to revisit on certain aspects which has been referred to above

by this Tribunal and take appropriate decision and issue revised Environmental Clearance (EC) in this aspect.

109. The Environmental Clearance (EC) is under challenge dated 18.05.2016 issued to the project proponent is liable to be kept in abeyance till fresh appraisal is conducted by the MoEF&CC on the points mentioned above and to be reappraised by the Expert Appraisal Committee (EAC) and further appropriate decision is taken on the following aspects:

- (i) The project proponent has to be directed to conduct fresh coal analysis in respect of specific coal which they have intended to use in respect of radio activity and the possible ash content and other aspects as has been observed by the Principal Bench in *Appeal No.07 of 2011 (Krishi Vigyan Arogya Sanstha & Ors. Vs. The Ministry of Environment & Forests, Govt. of India & Ors.)* and get a fresh Environmental Impact Assessment (EIA) Report from the competent accredited agency in this regard.
- (ii) Since the land acquisition proceedings have been set aside by the Hon'ble High Court of Madras and the appeal is pending before the Hon'ble Supreme Court with certain operation of stay has been made and the exact land that is available with the project proponent and whether that is sufficient to meet the conditions to be imposed for operating the unit in an environmental friendly manner to be assessed by the Expert Appraisal Committee (EAC) independently by conducting inspection of the area and satisfying about the sufficiency of the land available in the possession of the

project proponent and take appropriate decision on that aspect.

(iii) Further study will have to be conducted regarding the probable height of the mast of the country boat that is being used by the local fishermen community in view of the changed circumstances discussed above and consider whether what is the proper/appropriate modification that is required regarding the height of the bridge to be provided and its feasibility and probable cause of impact on marine ecology.

(iv) The MoEF&CC is directed to issue necessary Terms of Reference in the above lines and after getting necessary appraisal report from the project proponent, forward the matter to the Expert Appraisal Committee (EAC) for its further appraisal of the project on those aspects, after getting further Environmental Impact Assessment (EIA) from the project proponent and get their recommendations and after conducting independent enquiry by the Expert Appraisal Committee (EAC) on those aspects by deputing their own experts, if required and thereafter, reconsider and issue necessary revised Environmental Clearance (EC) incorporating additional conditions, if any required to the project proponent.

(v) All these exercise will have to be completed within a period of 6 (Six) months. Till then, the impugned Environmental Clearance (EC) is directed to be kept in abeyance and the project proponent is directed to suspend their work till they

get the revised Environmental Clearance (EC) incorporating the above aspects as well.

110. So considering the circumstances, we feel that the appeal can be disposed of with certain directions. So, the appeal is disposed of as follows:-

(i) The Environmental Clearance (EC) is under challenge dated 18.05.2016 issued to the project proponent is liable to be kept in abeyance till fresh appraisal is conducted by the MoEF&CC on the points mentioned above and to be reappraised by the Expert Appraisal Committee (EAC) and further appropriate decision is taken on the following aspects:

(ii) The project proponent has to be directed to conduct fresh coal analysis in respect of specific coal which they have intended to use in respect of radio activity and the possible ash content and other aspects as has been observed by the Principal Bench in *Appeal No.07 of 2011 (Krishi Vigyan Arogya Sanstha & Ors. Vs. The Ministry of Environment & Forests, Govt. of India & Ors.)* and get a fresh Environmental Impact Assessment (EIA) Report from the competent accredited agency in this regard.

(iii) Since the land acquisition proceedings have been set aside by the Hon'ble High Court of Madras and the appeal is pending before the Hon'ble Supreme Court with certain operation of stay has been made and the exact land that is available with the project proponent

and whether that is sufficient to meet the conditions to be imposed for operating the unit in an environmental friendly manner to be assessed by the Expert Appraisal Committee (EAC) independently by conducting inspection of the area and satisfying about the sufficiency of the land available in the possession of the project proponent and take appropriate decision on that aspect.

(iv) Further study will have to be conducted regarding the probable height of the mast of the country boat that is being used by the local fishermen community in view of the changed circumstances discussed above and consider whether what is the proper/appropriate modification is required regarding the height of the bridge to be provided and its feasibility and probable cause of impact on marine ecology.

(v) The Ministry of Environment, Forests & Climate Change (MoEF&CC) is directed to issue necessary Terms of Reference in the above lines and forward the matter to the Expert Appraisal Committee (EAC) for its further appraisal of the project on those aspects, after getting further Environmental Impact Assessment (EIA) from the project proponent and get their recommendations and after conducting independent enquiry by the Expert Appraisal Committee (EAC) on those aspects by deputing their own experts, if required and thereafter, reconsider

and issue necessary revised Environmental Clearance (EC) incorporating additional conditions, if any required to the project proponent.

(vi) All these exercise will have to be completed within a period of **6 (Six) months**. Till then, the impugned Environmental Clearance (EC) is directed to be kept in abeyance and the project proponent is directed to suspend their work till they get the revised Environmental Clearance (EC) incorporating the above aspects as well.

(vii) Considering the circumstances, the parties are directed to bear their respective costs in the appeal.

(viii) The Registry is directed to communicate this order to the Ministry of Environment, Forests & Climate Change (MoEF&CC) immediately by e-mail for their information and compliance of the direction.

111. With the above observations and directions, this appeal is disposed of.

Sd/-

.....J.M.
(Justice K. Ramakrishnan)

Sd/-

.....E.M.
(Shri. Saibal Dasgupta)

Appeal No.144/2016,
17th March, 2021. Mn.