

National Green Tribunal Act, 2010, statutory rights having been conferred on the applicants, the inspection by the Expert Committee i.e. 07th and 09th June, 2012 as directed by the Tribunal will create an embargo on their valuable right of Appeal.

- b. If, pending filing of Appeal to the Hon'ble Apex Court, as per the order of the Tribunal stated above, the Expert Members visit the place and form an opinion it would frustrate the entire issues which are before the Tribunal especially when there is only a very short period left from the order and the date of visit. This would frustrate the intention of the applicants from moving the Hon'ble Apex Court effectively.
- c. Even though the order passed by the Tribunal dated 07th May, 2013 directing the appeal to be posted for arguments on 08th July, 2013, the interim order which is sought to be stayed dated 28th May, 2013 was passed without informing any of the parties. Infact applicants came to know about the order on 30th May, 2013 and immediately thereafter they have moved the present Application for stay on 03rd June, 2013 in order to enable them to move the Hon'ble Supreme Court by way of Appeal under Section 22 of NGT Act, 2010
- d. No prejudice will be caused to any of the parties by postponing the visit of the Expert Members. It is also submitted by the learned counsel for MoEF that this being the drought season, the visit of the Expert Members during this period will not give correct picture about the existing feature and there is a possibility of mistake in understating of the existing of facts.
- e. Even on the merits of the case, there are no actual differences between the various Reports of the Committees. According to the Learned counsel even though the Hon'ble Apex Court has ignored the previous Committee reports headed

by the Shri S.K. Shelath, Prof. C.K. Varshney and appointed a new Committee headed by Prof. C.R. Babu, in fact by going through various Committee Reports there are actually, no contradiction since all Reports unanimously are of the view that the land which is the subject matter is a water body. Therefore, there is a deliberate suppression on the part of the Project Proponent in making the statement that it is a waste land.

4) Learned counsel appearing for MoEF in support of her Application while adopting the arguments of the Learned counsel appearing for the villagers, would also submit that the site visit at this time does not serve any purpose. In fact both Learned counsel vehemently submitted that inasmuch as in the order dated 28th May, 2013, this Tribunal has not formulated any point for which the visit has to be made by the Expert Members, no useful purpose would be served by the Expert Member in visiting the site.

5) In addition, Learned counsel appearing for MoEF submits that in the event of the Tribunal deciding that the Expert Members should visit, it should also permit Prof. C.R. Babu to accompany the MoEF during the time of inspection. She also reiterated that this being the drought season, it is not proper time for the visit and it should have been post monsoon season so as to arrive at a proper conclusion.

6) Learned Senior counsel appearing for the Project Proponent while contending that the Applications are not maintainable, would submit that the Applicants especially villagers who have promptly chosen to file Application on 03rd June, 2013, immediately, on the knowledge of the Order on 30th May, 2013, have not taken any steps in moving the Hon'ble Apex Court which shows the slackening attitude of the Applicants in moving the Apex Court for the reasons best known to them. He would also submit that

by the visit of the Expert Members no prejudice is going to be caused to anyone as submitted by the applicants themselves, while so it is not known to as to how the applicants have come to the conclusion that the Expert Members would form an opinion against them. Ultimately Learned Sr. counsel would submit that this is the gross abuse of the process of law and wordings of the application filed are not in good taste and acceptable by any prudent person. Therefore, according to him the applications deserve to be dismissed with cost in accordance with Section 23 (2) of the NGT Act, 2010 as it causes imputation on the integrity of the Tribunal.

7) We have heard Learned counsel appearing for both sides and given our anxious thoughts to the issues involved in these Applications.

8) Before deciding the merit of the applications, we have to see that in respect of the Project of the Project Proponent, the Environment Clearance was given by MoEF on 11th December, 2008 based on a proposal made by Project Proponent in Form - I dated 05th September, 2007. It appears that even before the proposal, certain lands were acquired by the State Government and handed over to the Project Proponent. The villagers have raised objections regarding acquisition. It appears that certain extent of lands have been surrendered by the Project Proponent. Some construction appears to have been effected for the project thereafter. On the said application dated 05th September, 2007 made by the Project Proponent in which it was mentioned the nature of land as waste land, which was also the case in the EIA Report submitted by the Project Proponent to the MoEF based on a report of an Expert of the Project Proponent.

9) As against EC dated 11th December, 2008, some of the villagers have filed a Public Interest Litigation before the Gujarat High Court in SCA No. 3477 of 2009, that came to be disposed of on 26th September, 2010 with certain directions. In the said judgment given by the Hon'ble Division Bench of the High Court of Gujarat, a reference has been made to

Shri S.K. Shelath Committee Report dated 03th August, 2009. It was based on the said Report the Division Bench has made certain suggestions while disposing of said matter. It was challenging the said directions, a Special Leave Petition was filed before the Hon'ble Supreme Court. The Hon'ble Supreme Court is Special Leave to Appeal (Civil) No. 14698 of 2010 in the order dated 08th May, 2004 has given directions in appointing a Committee headed by Prof. Varshney along with other scientists. After referring to the said report of the said Expert Committee in order to decide about the exact nature of the land, the Apex Court has again appointed another Committee headed by Prof. C.R. Babu and others who have submitted a report to the effect that the land in which Project Proponent has proposed to make construction is a water body. It was based on the said report, the MoEF has issued a show cause notice and admittedly after enquiry, has cancelled the earlier EC, under the impugned order dated 01st December, 2011 against which the present Appeal has been filed and pending before the Tribunal. The impugned order has been passed based on the report of Prof. Babu Committee.

10) It is also relevant to note that in the meantime, of its own, the MoEF has appointed an another Expert Committee through the Project Proponent to find out the nature of flora and fauna in the said area so as to arrive at a conclusion as to whether it is permanent water body or not.

11) On a reference to various interim orders passed by this Tribunal, it is seen that this matter has been heard on many occasions and ultimately it was on 07th May, 2013 the Tribunal passed an interim Order to the effect that *"Nobody is present on behalf of the State of Gujarat. We have heard the parties present in regard to the question whether the expert Member/s needs to visit the site in question or not. Order is reserved. However, it is listed for further arguments. Stand over to 8th July, 2013"*.

It was thereafter the Tribunal passed the

interim order on 28th May, 2013 which is sought to be stayed by the applicants in these applications.

12) Since the argument is raised by both Learned counsel appearing for the Applicants that inasmuch as the order of the Tribunal dated 28th May, 2013 has not categorized as to the reasons for which the visit is to be made by the Expert Members, we are of the view that it is relevant to extract the order of the Tribunal dated 28th May, 2013 which is as follow:-

“In continuation of our order dated 7th May, 2013 and after having heard the learned counsel appearing for the parties, particularly keeping in mind the fact that four Experts’ Reports have been filed on record of the Tribunal and there are contradictions in the said reports, it is necessary for the Tribunal to know the exact state of affairs on the site, particularly with reference to wet lands, water bodies, bundhs/bundharas and adverse effect of the project on them if any.

We may notice that these contradictions and ambiguities were pointed out during the course of the hearing and are of very material nature. However, despite filing of additional affidavits, the same persisted. We are of the considered view that the inspection will not only narrow down the scope of controversies, but also put the matters, being technical in nature, in clear perspective and be in the interest of justice.

Therefore, it is directed that two Expert Members of the Tribunal, Dr. D.K. Agrawal and Dr. G.K. Pandey, shall visit the site in question during June 7-9, 2013. The Joint Secretary(SS), Ministry of Environment and Forests, dealing with the subject, shall ensure that all arrangements are made at the site and facilitate the inspection by the Expert Members. He shall inform the officers concerned in the Irrigation Department, Pollution Control Board and the Revenue Department to be present at the site on the date of inspection along with relevant information. The Regional Officer, CPCB, Zonal office at Baroda, shall also be present during the site visit. No impediments should be

caused by any person and the applicant, project proponent shall fully co-operate with the Expert Members during inspection.

List on July 8, 2013, as already fixed.”

13) On a reference to the said Order it is crystal clear that the Tribunal having applied its mind and having gone through 4 Expert Reports which are before it, has concluded that there are contradictions relating to the fact as to whether the subject land is a water body, Bund, Bandharas etc. and what will be the adverse effect of the Project on such land. Further the Tribunal having found that there has been contradiction and ambiguity, pointed out during the course of arguments by the respective Learned counsel that inspection by the Expert Members will narrow down the scope of controversies, the matter being technical in nature in clear perspective and in the interest of justice, it was based on that categorical finding that the Tribunal has directed its Expert Members to visit the spot in question between 07th and 09th June, 2013 with a direction to the MoEF to make arrangement for the said visit. Therefore, the primary contention by the respective learned counsel namely that what purpose and what for the Tribunal has directed its Expert Members to visit the place is liable to be rejected on the face of the Tribunal's Order.

14) As far as the next contention that, the Petitioners have statutory right of Appeal under Section 22 is concerned there is no difficulty about the said statutory right having been granted under Section 22 of the NGT Act, 2010. As per the Section 22 of the NGT Act which is as follows:

“Appeal to Supreme Court- Any person aggrieved by an award, decision or order of the Tribunal, may, file an Appeal to the Supreme Court, within ninety days from the date of communication of the award, decision or order of Tribunal, to him, on any one or more of the grounds specified in Section 100 of the Code of

Civil Procedure, 1908 (5 of 1908)".

The Hon'ble Supreme Court, being the Appellate Authority against the Order, decision or award of the Tribunal exercises its jurisdictions provided the award, decision or order raises any substantial question of law as referred to under Section 100 of Code of Civil Procedure.

15) Section 100 of CPC which speaks of second appeal makes abundantly clear that the second appeal which lies to the Hon'ble High Court from the decree passed by any Appellate Court which is subordinate to the High Court, shall be only if the Hon'ble High Court is satisfied that the case involves a substantial question of law.

16) It should be stated in the memorandum of appeal precisely as to what is the substantial question of law which the Appellant intends to raise. Even though, it is discretionary on the part of the Hon'ble High Court at the time of final hearing of the second Appeal to extend the substantial question of law, the fact remains that the right of appeal under section 100 of the CPC cannot be said to be an automatic right and is subject to the satisfaction of the Hon'ble High Court on a substantial question of law.

17) On a reading of the order of the Tribunal, we have extracted above, even though we do not find any substantial question of law involved in it, inasmuch as the applicants desire to file appeal before the Hon'ble Apex Court, we refrain from expressing any opinion about the same, except to state that we are of the view that the order passed by the Tribunal is only an interim order and has not decided finally any issue.

18) The next contention raised by the learned counsel is that after the matter was adjourned on 7.5.2013, suddenly the Order came to be passed on 28.05.2013 without informing the parties therefore, it affects their effective right of moving the Hon'ble Apex Court. This argument even though is attractive but without substance. We are unable to understand as to what prejudice would be caused to the applicants

especially when they have admittedly come to know of the order on 30th May, 2013 and filed applications before this Tribunal immediately on 03rd June, 2013. Therefore, the issue has become purely academic. It is as if the Hon'ble Apex Court is not sitting during the vacation, emergent application for stay has been moved before the Tribunal. Any diligent conduct of the Applicants exercised elsewhere for the purpose of remedy by moving the Hon'ble Supreme Court would have been a justified conduct.

19) The next issue raised is about the prejudice. As enumerated above in the order, it is not as if the Tribunal has directed its Expert Members to visit the site and file a Report.

20) The contention of MoEF that the visit of the Experts at this time when there is drought season will result in coming to an improper conclusion, in our considered view amounts to questioning not only the ability of the Expert Members to decide about the nature of the water body during the drought season but also undermining the very purpose of the constitution of the Tribunal and merits of its Members.

21) That apart, it is not as if the Tribunal has no power or jurisdiction under Order 26 Rule IX of CPC where the Civil Court can appoint a commission to verify the physical features and therefore it is always open to the Tribunal to appoint a Commission which works on its behalf as if the Tribunal itself takes up the work. Therefore the direction to the Hon'ble Expert Members to visit the spot is not alien to the principles of law.

22) It is also relevant to note that by visit of the Experts, it is as if the Tribunal is going to arrive at any conclusion, as the matter is going to be heard finally on legal and technical matters after giving due opportunity to all the parties. Even in the meantime, if the parties approach the Hon'ble Apex Court, any order of the Apex Court is binding upon Tribunal which will act as per direction and therefore in our view there is absolutely no prejudice caused to any parties.

23) Therefore looking from any angle, we have no hesitation to hold that the filing of these applications are vexatious and abuse of process of law. We strongly deprecate the conduct of the applicants since such stand taken by them would result in a disastrous situation. Accordingly we dismiss the applications with cost of Rs. 1 lakh to be deposited in Legal Aid Cell, NGT Bar Association jointly by both the Applicants within a period of 2 weeks from the date of receipt of the order.

.....,JM
(Dr. P. Jyothimani)

.....,EM
(Dr. D.K. Agrawal)

