

BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH:KOLKATA

APPLICATION NO.60 OF 2012

AND

M.A.NO.73 OF 2013

In the matter of:

Murli Manohar Sharma

S/O Tarachand Sharma

PO./PS. Barbil ,Distt.Keonjhar ,Odisha

----- Applicant

VERSUS

1. Union of India
Represented through the Secretary
Ministry of Environment and Forests
C.G.O.Complex ,Lodhi Road
New Delhi-110510
2. State of Odisha
Represented through its Principal Secretary
Water Resource Department
Secretariate Building ,Bhubaneswar
Distt. Khurdha- 751001
3. Collector-cum-District Magistrate ,Keonjhar
PO/Distt. Keonjhar ,Odisha-758001

4. M/S Brahmani River Pellets Ltd.

IPICOL Annex Building ,5 & 6th Floor

Janpath ,Bhubaneswar

Distt. Khurdha ,Odisha-751002

5. M/S Essar Steel Orissa Ltd.

5-B/2 ,Fortune Tower ,Chandrasekharpur

Bhubaneswar ,Distt.Khurdha

Odisha -751016

6. M/S Jindal Steel and Power Ltd.

Jindal Centre

12,Bhicaji Cama Place

New Delhi- 110066

----- Respondents

Counsel for Applicant

Mr.Raj Panjwani ,Mr.G.Pujari ,Mr.Bibhu Prasad Tripathy , Mr.Sanjay
Upadhaya and Ms Manisha Badoni - Advocates

Counsel for Respondent

Ms.Neelam Rathore , Mr.Vikramjeet ,Ms.Syed Ambar ,Mr.Vikash
Malhotra and Mr.M.P.Sahay - Advocates for Respondent 1

Mr.Abhisek Sharma ,Mrs C.K.Sucharita ,Mr.Ashok Kumar Panigrahi ,Mr.Surjit,Mr.S.K.Das and Mr. Ashmi Mohan - Advocates for Respondent 2

Mr.Ashok Kumar Panda ,Mr.S.Panda ,Mr.L.Sarangi and Mr.S.K.Das - Advocates for Respondent 3

Mr.P.S.Narsimha ,Mr.Amar Gupta ,Mr.Gyaneswar ,Mr.Apoorva Mishra , Mr.Vishrov Mukheerjee and Ms.Vandana Ananda -Advocates for Respondent 4

JUDGMENT

PRESENT

Hon'ble Mr. Justice Dr.P.Jyothimani (Judicial Member)

Hon'ble Prof.(Dr.) P.C.Mishra (Expert Member)

Dated 5th August 2014

JUSTICE DR. P. JYOTHIMANI (JUDICIAL MEMBER)

1. The applicant who is stated to be a public spirited person ,has filed the present application,praying for a declaration that the changing of natural flow and course of Baitarani River by respondents 4 to 6 is illegal with a further direction to the State Govt. to ensure that the

natural flow of water in the above-said river is not obstructed by any one including the said respondents. That apart, he has also asked for setting aside the letters issued by the 2nd respondent no 4231 dt 11-02-2009, no.34127 dt 24-12-2009 & no.28834 dt 26-8-2008 in favour of respondents 3 to 6 respectively. It is the case of the applicant that Baitarani river originates from Guptaganga hills in Keonjhar District of Odisha. The Baitarani, along with Mahanadi and the Brahmani forms the Middle Coastal Plain. According to the applicant, Baitarani is the only robust source of water in the district, providing 95% of drainage of the district and the lifeline of the people, land and its ecology.

2. It is further the case of the applicant that the water of Baitarani is required for various projects like the Kanupur Major Irrigation project for irrigation of 48000 acres of lands, Anandapur Irrigation Barrage to irrigate 150,000 acres of lands in the north Odisha coastal areas, many minor irrigation projects, domestic water supplies to 8 urban complexes apart from many water-based industries. While so, the 4th respondent, M/S Baitarani River pellets Ltd. proposed to construct 4.0 MTPA iron ore beneficiation plant at Tanto village and a tailing dam at Nalda in Barbil Tahsil of Keonjhar District. A joint venture agreement was entered with government of Odisha on 15-03-2007. The beneficiation plant will be connected by 220 km underground slurry pipes to a 4 million tonnes per annum pellet plant under construction at Kalinga Nagar in Jajpur District, where the ore slurry will be balled

and fired in to pellets.

3. Likewise according to the applicant, the 5th respondent (M/S Essar Steel Orissa Ltd. with a view to establish customized steel plants, has proposed to set up a 10.7 MTPA capacity iron ore beneficiation plant and tailing pond at Dubuna of Joda in Keonjhar District. Likewise ,the 6th respondent also proposed a pellet plant of 10.00 MTPA at Deojhar of District Keonjhar. An MOU is also stated to have been entered with the government of Odisha.
4. Similarly , the Respondent 6 , M/S Jindal Steel and Power has proposed a Pellet Plant of 10.0 MTPA capacity at Deojhar of Barbil Tahasil in the District Keonjhar ,odisha along with a 9.0 MTPA beneficiation Plant .MOU for such projects was signed between the Respondent 6 and the Government of Odisha on 3.11.2005
5. It is stated by the applicant that the 2nd respondent has allowed the Respondents 4 to 6 to draw water from Baitarani River for their plants.By the impugned letter dt11-02-2009,the 4th respondent was allowed to draw 4.70 cusecs of water ,while respondent 5&6were allowed 11.77 & 8.33 cusecs under the impugned letters dt.24-12-2009 & 26-08-2008.
6. According to the applicant, the EIA report of the 4th respondent shows that the minimum flow of water in river Baitarani during lean season namely,December ,February,March ,April is less than 0.5m³/s ,while

respondent 4 proposes to draw water @ $0.134\text{m}^3/\text{s}$ for its beneficiaton plant and $0.087\text{m}^3/\text{s}$ for tailing plant for the project. In addition to that, water intake well and pumping station are to be provided on the banks of the said river and it is transported through 220 km long underground slurry pipe line to the beneficiation plant. As per the MOU, the water requirement of the 4th respondent is $480\text{ m}^3/\text{hr}$ ($0.134\text{m}^3/\text{s}$) as per EIA Report. Likewise, in respect of the 5th respondent, as per its EIA Report the water requirement is $731\text{m}^3/\text{hr}$. i.e $6403560\text{ m}^3/\text{year}$. Out of this $666\text{m}^3/\text{hr}$ will be sent to Paradeep Beneficiation Plant in the form of underground slurry pipeline of 260 km. Again in respect of the 6th respondent as per its EIA Report, the total water requirement of water is $350\text{kl}/\text{hr}$. According to EIA report of Respondent 6 the average water flow in the lean months is around $4.56\text{m}^3/\text{s}$ where as EIA report of Respondent 4 states as $0.5\text{ m}^3/\text{s}$.

7. According to the applicant, the EIA reports of the respondents 4 to 6 are not uniform and contradictory and can not be trusted. Further, as per the the EIA Notification of the Ministry of Environment and Forests dated 14-09-2006, the projects being treated under category A of the Schedule, it requires prior Environmental Clearance. Therefore, the conduct of the respondent no 4&5 in unauthorizedly laying pipe lines in the reserve forest is illegal. The said illegal conduct has been deprecated by the District Collector who, by his letter dated 04-08-2012, has directed the said respondents to stop further laying of pipe lines. The applicant also relies upon a study conducted by Arnaud Cauchois and

Asian Development Bank on Baitarani River Basin, which has estimated dependable flow of water from surface water at 5149.47 million cubic meters out of which 46% are used for irrigation, drinking and industrial purposes and therefore the scarcity of water is bound to increase and in such circumstances it is not advisable for the respondents to permit further release of water to respondents 4 to 6. It is also the case of the applicant that even as per the Odisha State Water Policy, 2007, in case there is public-private participation in water resource development care will be taken to ensure that the riparian and traditional rights of the local communities are adequately protected. He would submit that the public hearing held on 25-03-2008 at Barbil has failed to consider about the riparian rights of the local people. It is also the case of the applicant that in the public hearing, sufficient number of people have not participated except 96 persons and therefore public hearing was only a farce. It is also stated that the Zilla Parishad, in the meeting held on 01-02-2010 has opposed the drawal of water by any company from upstream of the river.

8. Thus, the applicant questioned the rights given to the said respondents on various grounds including the followings,
 - i. that the drawal of such water will affect its natural flow and affect the steady supply of water to the villagers
 - ii. that the conduct of respondents 4 & 5 in laying pipelines even before grant of permission is illegal

- iii. that by excess drawal of water ,there is a possibility alteration of the natural flow of the river water
- iv. that the state government has failed to adhere to its water policy
- v that there was no consultation the Baitarani RBO for conflict resolution
- vi. that the common heritage of the people was ignored and that it involves public interest.

9. Before advertng to the reply by the respondents, it is relevant to note that when the matter came up for admission, this Tribunal in the order dated 21-11-2012 has recorded the statement of the learned counsel for the Applicant, Mr Tripathi that he is restricting in this case only against the 4th respondent,as he has realized that one application is not maintainable against all the respondents 4 to 6 as cause of action are different.. Accordingly,in the said order, the names of respondent no 5&6 are directed to be deleted. Therefore in this case admittedly we are dealing with only respondent no. 4 as the project proponent.
10. The 1st respondent MoEF,in its reply, has stated that the EIA report in respect of the 4th respondent has been prepared by the project proponent in accordance with the EIA Notification 2006 and the Terms of Reference (TOR) prescribed by the MoEF. It is also stated that the EIA Report was prepared by the accredited EIA (Environment Impact Appraisal) Consultant , for consideration for the issuance of Environmental Clearance. According to the first respondent, the

Environmental Appraisal Committee (EAC) has unanimously recommended for issuance of Environmental Clearance for the 4th respondent. It is also stated that the permission for drawal of water is granted by the Department of Water Resources of the State Government. The MoEF is only concerned about the monitoring and protection of riparian system, if the quantity of drawal of water is huge. The MoEF, states that Environmental Clearance was granted to the 4th respondent on 19-02-2009 imposing certain specific conditions. It is the further case of the 1st respondent, that there was no complaint received against the 4th respondent of any violation of EC conditions. The MoEF is also monitoring the 4th respondent through its Regional Office and in case of any violation action under Environment Protection Act 1986 will be initiated. It is also stated by the 1st respondent that as per conditions of clearance, if there is a proposal for diversion of forest land, necessary permission must be obtained under the Forest (Conservation) Act 1980. As the environment clearance in this case has been granted as early as on 19-02-2009, which is much before the coming in to force of the National Green Tribunal Act 2010 which is effective from 18-10-2010, the issue can not be raised before this Tribunal.

11. The respondent no. 2, State of Odisha, through its Chief Engineer, has filed its reply stating that the procedure for allocation of water has been strictly followed as laid down by the Odisha Irrigation (Amendment) Rules 2010. It is stated that the fourth

respondent Company has applied to the Government, the Dept. Of Water Resources ,for allocation of water in the prescribed form along with the processing fees and security deposit.The application was sent to the Water Allocation Committee(WAC) which after careful consideration of the views of the Chief Engineer and the Basin Manager has recommended the case and accordingly the engineer-in -chief, Water Resources recommended to the Government for allocation of water for the fourth respondent plant.Accordingly, the fourth respondent has entered an agreement in the prescribed form with the concerned Executive Engineer for drawal of water. It is also the case of the second respondent Government of Odisha that in Keonjhar District there are about 151 minor irrigation projects with the CCA of 27,553Ha (68,056Ac) and about 592 Lift Irrigation points with annual irrigation of 8680 Ha (21,440 Ac) and the total CCA is 36,233 Ha(89496Ac). It is further stated that Baitarani Basin provides domestic water supply to about 15 Urban Complexes, in addition to riparian rights along its 360 Km length.It is stated that the transportation of Iron Ores in the form of slurry through pipelines reduces pollution . It is the categoric stand of the second respondent that the fourth respondent has not constructed any “ intake wall” till date ,except installing one movable JIB crane near the bank of river Baitarani at the intake point to help drawing water from the river.It is also stated that three pumps of 37KW, two working and one standby with the discharge capacity of 250 cum have been fixed to the JIB crane to deliver the approved drawal of 480 Cum. Thus the State Govt denies the allegation that it has

failed to adhere to the concept of water-plan. It is stated that action is being taken for effective, efficient, equitable and sustainable management of water resources of the State.

12. The third respondent, the District Collector, in his reply, while denying the allegation raised by the applicant and adopting the reply filed by the State Government has admitted that by a letter dated 4.08.2011 the fourth respondent was directed to stop laying of slurry pipelines and the construction work of beneficiation plant over non-forest land till final order is obtained under the Forest (Conservation) Act. The Central Government has granted 1st stage clearance to the fourth respondent on 2.11.2011 followed by the stage-II Forest Clearance on 9.07.2012. It is stated that on 17.08.2012 permission was granted to lay pipeline and the State Pollution Control Board has issued consent to operate to the fourth respondent on 24.11.2012. It is also the case of the third respondent that for establishing the plant by the fourth respondent, hearing is mandatory. By a notification dated 19.02.2008, the Odisha State Pollution Control Board, Bhubaneswar has issued a public notice for a public hearing relating to the establishment of beneficiation plant of 4.08 Million Tonne per annum capacity at village-Tanto and Tailing Dam at Nalda under Barbil Tahsil of Keonjhar District, Odisha. It is stated that public hearing was held on 25.03.2008 at Vikas Mahal, Barbil of Keonjhar and the proceedings were released. In the said meeting, large number of local people have participated and given opinion about the fourth respondent's project

which were highly favourable to the plant, except some local people who required certain facilities like drinking water, medical facilities, educational facilities, employment, peripheral development, vocational training etc. in the village-Nalda. In accordance with the said public hearing. Government of India, Ministry of Forest and Environment has also issued Environment Clearance on 19.02.2009.

13. The fourth respondent project proponent, in its reply while admitting the project of the said respondent, has stated that the proposal of the project to process iron-ore fines, which are low grade iron ore fines which otherwise cannot be used in the steel industry, can be converted to high grade concentrate and used only for pelletization for further use in the steel making process. The project envisage use of unusable materials into usable products with the benefits of better utilization of mineral resources in India and facilitate mineral conservation, reduce high grade iron-ore mining which benefits the environment and that it reduces environmental impact. It is the further case of the project proponent that many environmental friendly measures relating to the projects for conservation of water have been taken including use of underground slurry pipeline instead of road and rail transport and there is totally negligible pollution and therefore the project is pollution free, that the transportation of slurry comprising of 70% solids creates no noise, no dust, no smell, that the transportation of slurry does not involve use of diesel, that the water drawn by the beneficiation plant is recycled for re-use in the slurry pumping and that water from river

Baitarani will be used only during the non-lean period and for the remaining period water is used from the reservoir built up by the fourth respondent itself.

14. It is stated by the fourth respondent that as per the Memorandum of Understanding entered between the Government and the project proponent dated 15.03.2007, the second respondent has to identify suitable water-source from river Baitarani for drawal of water to meet the requirement of the project. And in-principle approval was granted to the project proponent for laying iron-ore slurry pipeline on 13.06.2007. The Odisha Infrastructure Development Corporation, a Govt. of Odisha Undertaking applied to the Chief Conservator of Forests, Odisha on 5.07.2007 on behalf of the project proponent for diversion of 27.098 Ha of forest land for establishing the beneficiation plant. It is stated that on 19.07.2007, the project proponent obtained permission for laying pipeline along the State Highway. The State Pollution Control Board has granted consent to establish on 29.08.2007. On 7.12.2007 the Chief Engineer, National Highways granted permission for laying pipeline along NH-215. The Dept. of Water Resources of the State Govt has allocated 4.70 cusecs of water from river Baitarani on 11.02.2009 with various conditions. On 19.02.2009, the Ministry of Environment and Forests, Government of India granted environment clearance with various conditions. On 18.03.2009, the project proponent has resubmitted its proposal for diversion of forest land. An agreement was entered by the project proponent and the Governor of

Odisha through the Executive Engineer on 14.10.2009 to draw 4.70 cu-secs of water from river Baitarani. The Forest Range Officer, Barbil has sent a notice on 27.06.2011 to the project proponent to stop work in and around forest area till forest clearance is received for diversion of forest land. The Government of India has granted stage-I Forest Clearance on 2-11-2011 followed by the stage-II clearance for the beneficiation plant on 09.07.2012 and for the pipeline on 17.08.2012. Thereafter the State Pollution Control Board has issued consent to operate on 24.11.2012. It is further stated that on 07.12.2012 the agreement for supply of water from the river was renewed for a further period of 3 years.

15. The Fourth respondent has raised a preliminary objection about the maintainability of the application. It is their case that the order challenged by the applicant in so far as it relates to the fourth respondent dated 11.02.2009 which is prior to the coming into force of the National Green Tribunal 2010. Further the issue involved do not pertain to any of the Statutes enumerated in Schedule I of the NGT Act. That apart, the application is barred by limitation and is without merit, filed only to coerce the fourth respondent. The water permitted to be drawn from the river by the State Government is as per the Orissa Irrigation Act, 1959. Even otherwise according to the applicant, an order passed on 11.02.2009 is challenged in November 2012 which is even beyond the permissible discretionary power of the Tribunal to condone the delay. In addition to that it is the case of the project

proponent that the applicant has admitted about his knowledge of the project even as early as 2010-11 when his brother was arrested for arson and destruction of property belonging to the contractor who was carrying on work on the spot of the project carried on behalf of the project proponent. Further the applicant has given many statements about the project which show that even in the year 2010, he was aware of this project and in-spite of it, he has not explained as to why he has chosen to approach the Tribunal in November 2012. The NGT Act, has come into existence on 18.10.2010 while the second respondent has granted permission to draw water from river Baitarani on 11.02.2009. According to the applicant, even if the said order has to be challenged, the same can be only as an appeal u/s. 16 of the Act and therefore the said application is not maintainable. It is further stated that the matter which is directly and substantially in issue in the present application is already pending in the Writ Petition No. 9118/2010 before the Orissa High Court. Therefore this application is not maintainable. The project proponent while denying all other allegations raised by the applicant would state that the project proponent has followed all the procedures established by law and environmental clearance has been obtained after following every steps formulated by EIA regulation, 2006 framed by the Ministry of Environment and Forests, Government of India apart from obtaining consent to operate from the State Pollution Control Board. Therefore the project proponent prays for dismissal of the Main Application NO. 60 of 2012.

16. Before advertng to the submission made by the learned counsel, it is relevant to mention a few of the facts which mostly relate to the order passed by this Tribunal. On 21-11-2012,while directing the deletion of the 5th and 6th respondent as stated earlier in this order,the Tribunal has directed the 4th respondent not to go ahead with construction of the project without obtaining environment clearance. It was on 04-02-2013,the applicant has filed M.A.No13 and 14/2013 for a direction to the Collector to ensure the compliance of the said order and to punish the 4th respondent for disobedience of the order.On 04-03-2013, this Tribunal,on a representation of of the learned counsel for the applicant has dismissed M.A.No14/2013 as withdrawn with liberty. The order is as follows:

“M.A. No. 14 of 2013 in Application No.60 of 2012

Learned counsel appearing for Respondent No. 4 Submits that he has preliminary objections as regards the limitation as well as maintainability of this Application.

Liberty is granted to raise objections to the appropriate Application when the said Application is called for hearing.

List this matter on 18th March,2013.

The matter shall be heard on the next date of hearing.’

17. In pursuant to the said order, the applicant has filed M.A.No73 of 2013 ,on14-03-2013 ,praying for amending the prayer in the original application, seeking for a direction to the 4th respondent not to obstruct the natural flow of water in the river,to set aside the letter dated

11-02-2009 and a subsequent letter dated 28-01-2013, renewing the water agreement, to direct the 4th respondent to reconstitute the natural flow of water in Baitarani River, to direct the 2nd respondent to consult with Baitarani RBO regarding conflict resolution and consensus building and riparian rights of local people, to set aside the Forest Clearance granted by respondent no. 1 dated 09-07-2012 and 17-08-2012 in favour of the 4th respondent. This application was opposed by the project proponent in its reply, stating that, while the main application itself is not maintainable, there is no question of taking up the amendment application at this stage, that by virtue of the proposed amendment, the applicant attempt to change the entire cause of action raised by him in the original application, that even if the applicant wants to challenge the Forest Clearance, the same can be only by way of appeal, which is also hopelessly time barred and that this Tribunal has no jurisdiction to condone such a large number of days delay.

18. The 4th respondent, project proponent has also filed M.A.No229 of 2012, to dismiss the Application No.60 of 2012 or in the alternative, to clarify the order dated 21-11-2012 to the effect that the said order does not prevent the project proponent to carry on the project of the beneficiation plant in accordance with law. As the maintainability of the original application itself is in question, we have heard all the respective counsel on all issues.

19. According to the submission of the learned counsel for the 4th

respondent, who has raised the question relating to the maintainability of the Original Application, while the permission to draw water for the project of the 4th respondent was on 11-02-2009 and all other prayers are linked to that order. According to him, virtually the applicant has challenged that order of the 2nd respondent which was passed before the commencement of the National Green Tribunal Act 2010, which came into effect from 18-10-2010 and the subsequent order of the 2nd respondent dated 28-01-2013 was only the continuation of the earlier order dated 11-02-2009 extending the period of agreement and therefore this Tribunal has no jurisdiction. He would further contend that the permission granted to the project proponent to draw water is not under any of the seven statutes mentioned in the Schedule I to the NGT Act. It was the decision taken by the State Government which is not within the purview of the Act. His further contention is that, when an exactly similar matter is pending adjudication before the Hon'ble High Court of Orissa, it may not be proper for the fora to take independent decisions. He would finally submit that even otherwise the main application is totally barred by limitation even as per the Act and therefore liable to be dismissed. Further, he submitted that when the applicant's own brother was involved in offences committed in the project site he can not disown his knowledge. According to him there is absolutely no cause of action and he would also rely upon the judgment of the Hon'ble Supreme Court in (2004)2 SCC 579. Insofar as it relates to the amendment application, it is his submission that even on merit of the said application, it is on a total and different cause of

action which cannot be raised in this main application. Mere liberty given to the applicant to file appropriate application does not mean that it should be allowed without considering its merit. It is his vehement contention that the applicant having known that now he cannot maintain any appeal against the Forest Clearance, as it is barred by limitation, has chosen to file this application and therefore it is liable to be dismissed. He is categorical that the project proponent is not putting up any intake well.

20. Per contra, it is the contention of the learned counsel for the original application that the entire issue relates to the preservation and regular flow of water in the Baitarani River which cannot be said to be outside the jurisdiction of this Tribunal. According to him, technicality can not stand in the way of rendering substantial justice. It is his further submission that the Writ Petition, stated to have been filed in the High Court is not known to him and the applicant is not a party. In any event, there is no bar for this Tribunal to decide the issue if it is within its purview.
21. We heard in detail the learned counsel for the applicant as well as the respondents, particularly the 4th respondent, project proponent and having referred to all the papers filed and on application of our minds, we formulate the following issues for our consideration and decision thereon:

A. Whether the applicant is entitled for the relief of setting aside the order of the respondent no.2 dated 11-02-2009 and other prayers made by him?

B. Whether the Original Application is maintainable?

C. Whether the application for amendment of the Original Application can be entertained?

22. As all the three issues are interconnected, we propose to consider all the issues together. On the admitted facts explained in detail above, we will now proceed to examine the maintainability of the main application. As stated above, the relief claimed by the applicant not only relates to the maintenance of the natural flow of River Baitarani but also challenging the letter of the 2nd respondent permitting withdrawal of water by the 4th respondent project proponent from Baitarani River to be used for the project of the iron ore beneficiation plant. In fact, it is that letter impugned in this application which relates to the 4th respondent about which we are concerned in this application, that gives the cause of action for the main application itself. The said order dated 11-02-2009, has been issued by the Additional Secretary to Government of Orissa permitting the 4th respondent to draw 4.70 cusecs of water from river Baitarani for the proposed beneficiation plant at Tonto, Barbil District of Keonjhar for a period of two years subject to availability of water and

subject to various conditions. Therefore it is clear that the said order of permission has been passed by the State Government of Odisha. Clause no.8 of the impugned order makes it abundantly clear that the said order has been passed as per the powers conferred on the State under 'Orissa Irrigation Act 1959 and Rules 1961. The said clause reads as follows:

‘8. The drawal of water is in accordance with the provision of Orissa Irrigation Acts 1959 and Rules, 1961 and amendments made from time to time.’

Therefore it is crystal clear from the very contents of the order impugned that, the order challenged herein is not one passed under any one of the seven Acts enumerated in the Schedule 1 of the National Green Tribunal Act 2010 namely, The Water (Prevention and Control of Pollution) Act, 1974, The Water (Prevention and Control of Pollution) Cess Act, 1977, The Forest (Conservation) Act, 1980, The Air (Prevention and Control of Pollution) Act 1981, The Environment (Protection) Act 1986, The Public Liability Insurance Act, 1991 and The Biological Diversity Act, 2002.

23. Section 14 of the National Green Tribunal Act 2010, clearly states that,

‘14. Tribunal to settle disputes.--(1) The Tribunal shall have the jurisdiction over all civil cases where a substantial

question (including enforcement of any legal right relating to environment), is involved and such question arises out of the enactments Specified in Schedule I.’

In the light of the specific provision in the Act, which has created this Tribunal, restricting its jurisdiction only in respect of certain Acts, we are of the view that we have no jurisdiction in the matter.

24. But the next question is in the light of the objects of the Act ,which is very wide as stated in the Preamble as,
- ‘An Act to provide for establishment of a National Green Tribunal for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement a any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto.’

Can this Tribunal act as a passive spectator ,when a complaint is made that natural flow of running water in a river is being illegally directed, especially when The Water (Prevention and Control of Pollution) Act 1974, in its Preamble uses the word ‘restoring of wholesomeness of water’,as the object? The answer in our view is in the negative. But on the facts of this case ,it is the catagoric stand of the MoEF in its

reply that it has not only given environment clearance to the project of the 4th respondent but there are no complaint from any one about the breach of conditions by the project proponent. Moreover, the impugned order itself has made sufficient safeguards saying,

“7. The Industry will not disturb the normal flow of water so that riparian rights in the down stream will be affected and the industry shall have no claim on that account.’

Therefore it is always open to the applicant or any other person to obtain adequate remedy. We are fully satisfied that as on date there is no issue of environment by the conduct of the 4th respondent.

25. There is one other issue ,as submitted by the learned counsel for the 4th respondent namely, the order impugned is dated 11-02-2009, which is before the NGT Act came in to existence which is on 18-10-2010. On this score also we cannot entertain this application. Even otherwise ,there is a question of limitation. An order passed in 2009 cannot allowed to be questioned in 2012. Apart from the fact that this Tribunal has no jurisdiction, even as per the NGT Act the Tribunal can entertain only if an application is made within six months from the date of cause of action. However ,in the event of sufficient cause shown by the applicant that he has been prevented for sufficient reasons to approach the Tribunal, a further period of sixty days can be condoned. Beyond that period the Tribunal itself has no powers to entertain any application for any reason, which is a settled law. That is also the purport of the proviso to section 14(3)

which states:

‘Provided that the Tribunal may,if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period ,allow it to be filed within a further period not exceeding sixty days.’

As held by the Hon’bIs Supreme Court in N.C. Dhoundial Vs Union of India and others ,in the context of the jurisdiction of National Human Rights Commission, under the Protection of Human Rights Act,the period of limitation which is basically procedural in nature,it can also operate as fetters of jurisdiction.

26. Therefore , looking into any angle we are unable to accept the contention of the learned counsel for the applicant,except observing that it shall be the duty of the project proponent to scrupulously follow the conditions contemplated under the order of the 2nd respondent dated 11-02-2009 as subsequently extended as well as the conditions laid down in the environment clearance granted by the MoEF dated 19-02-2009. Further,in addition to the catagoric stand of the project proponent in the reply stating that the project proponent is no constructing any intake well,the learned counsel for the project proponent on behalf of his client has made a statement that his client has not made any intake wall and has no plan of making the same in future also. The said statement is recorded and it is expected of the authorities concerned to ensure the strict compliance of the same. It is also relevant

to point out at this juncture that the applicant has also not chosen to question the EC.

27. Now, coming to the application for amendment filed by the applicant, at the outset, as we have already concluded that the main application is not maintainable, it goes without saying that the amendment application is also not maintainable and hence liable to be dismissed. Even otherwise, we fail to understand as to how the issuance of Forest Clearance by some other authority under a different law can be even remotely connected with the issuance of permission to draw water for the project of the 4th respondent. As correctly submitted by the learned counsel for the project proponent, not only the entire cause of action is sought to be changed by the proposed amendment, but also the applicant is actually seeking to introduce a new case. If the applicant desires to challenge the Forest Clearance granted to the 4th respondent, the same has to be by a different process even if it is in the same forum. An appeal under the NGT Act is different from an application. An appeal and an application can be heard together, if the subject matter is the same. An application may even be converted to an Appeal in the interest of rendering substantial justice. Here, the case of the applicant cannot come anywhere near the said concepts. The applicant can not disown knowledge about this project from 2009, especially when there are records to show that his own brother was involved in a criminal case of riot in place of the project proponent and F I R has also been registered.

28. For the reasons stated supra, we dismiss both Original Application No. 60 of 2012 and M.A .No 73 of 2013. As the main application and amendment application are dismissed, M.A.No. 229 of 2012 and M.A.No.13 of 2013 filed by the project proponent is dismissed as nothing survives.We leave the Parties to bear their own cost.

Justice Dr P.Jyothimani (J.M.)

Prof. Dr. P.C,Mishra (E.M.)

Dated 5th August 2014.

NGT