

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL (SOUTHERN
ZONE), CHENNAI**

Appeal No. 144/2016

U. Kalimuthan and others

...Appellants

Vs.

Union of India and others

...Respondents

BRIEF WRITTEN SUBMISSIONS FILED BY THE APPELLANTS

1. It is submitted that the 2nd Respondent decided to establish a coal based thermal power plant by the name 'Uppoor Power Plant' in Ramanathapuram District. For this purpose, the 2nd Respondent decided to acquire 1342.11 acres of land in and around 3 villages namely Uppoor, Valamavur and Thirupalaikudi in Thiruvadanai Taluk, Ramanathapuram District. It is submitted that the 1st Respondent issued the Terms of Reference on 28.05.2012 which expired on 27.05.2015 and thereafter the 1st Respondent has granted the impugned Environment Clearance dated 18.05.2016.

LIMITATION

2. It is submitted that the impugned Environment clearance was granted on **18.05.2016**. As per the provision to Section 16 of the National Green Tribunal Act, 2010 such grant of EC can be challenged by any aggrieved person within a period of 30 days from the date on which such order is communicated to him and this may be extended to a further period of 60 days provided there is sufficient cause for such delay. The Appellant herein came to know about the

grant of the EC only on **01.06.2016** when the same was displayed outside the office of the 5th Respondent (district collector) and the present Appeal was filed before this Hon'ble Tribunal on **17.8.2016** and therefore the present appeal falls well within the condonable 60 day time limit. The Appellants herein are all villagers whose livelihood is either farming or fishing. These villagers from this small village had to co-ordinate amongst themselves, procure the relevant documents and co-ordinate with the advocates in Chennai and therefore they were unable file the present appeal within 30 days, however the present appeal was filed well within the condonable time limit as per Section 16 of the NGT Act.

3. It is submitted that as per the EIA Notification, 2006 (hereinafter 'the Notification') the publication of the EC has three parts. Firstly, the Project Proponent has a duty to make public the environmental clearance granted for their project by prominently advertising it in two local newspapers, as well as publishing it on its website and submit copies of the same to the Heads of local bodies, Panchayats and Municipal Bodies in addition to the relevant offices of the Government. Secondly, the Heads of Local Bodies, Panchayats and Municipal Bodies in addition to the relevant offices of the Government have the duty to display the same for 30 days from the date of receipt. And thirdly, the Ministry of Environment and Forests and the State / Union Territory Level Environmental Impact Assessment Authorities (SEIAAs), as the case may be, shall also place the environmental clearance in the public domain on Government portal. It is evident from the language of the Notification that the primary onus of publication is on the Project Proponent to prominently advertise the same in two local newspapers and to

communicate the grant of EC to offices of the Heads of local bodies, Panchayats and Municipal Bodies and they in turn will have to display the same. The duty of the MoEF to display the EC on their website must be read in conjunction with the duty imposed on the Project Proponent and the Local Bodies.

4. It is further submitted that the 1st Respondent has not adduced any evidence to show that the impugned EC was uploaded on their website. Further the picture annexed along with the affidavit filed by the 1st Respondent dated 16.5.2017 does not show the date of upload at all since what is displayed in the address bar in the said picture is only the name of the document. Therefore if one were to name the document as 24/12/2020 then the same would be displayed in the address bar therein, therefore going to show that merely because a certain date is mentioned in the address bar does not mean that it is the date of upload of the document. The 1st Respondent has also failed to file a certificate as mandated by Section 65-B of the Evidence Act and therefore the said picture must not be considered for any purpose.
5. Further, the Hon'ble Supreme Court in the judgment reported in **(2013) 12 SCC 649** as well as a catena of decisions has held that the Courts/Tribunals must have a lenient approach in dealing with applications for condonation of delay and that the valuable rights of the Appellant should not be undone owing to few technicalities. Therefore it is submitted that the present appeal falls well within the condonable time limit prescribed under section 16 of NGT Act and since the delay was neither wilful nor wanton and was only occasioned owing to the difficulties of the Appellants to obtain the relevant documents from all the affected villagers and co-ordinate for

filing the appeal, and therefore this delay ought to be condoned by this Hon'ble Tribunal.

IMPROPER PUBLIC HEARING

6. It is further submitted that the EIA Notification, 2006 mandates that the public hearing must be held **“at the site or in its close proximity”**. In the present case the public hearing was held at Devipattinam which is **more than 12kms away** from the project site. This choice of location is by no means “proximate” and was done purposely so that the affected individuals would not be able to attend the same. It is further submitted that no adequate publicity to the public hearing was given by the Respondent as prescribed in the EIA Notifications, 2006.
7. It is submitted that firstly, the notice regarding the public hearing was issued merely days before the date of the public hearing and therefore many of the affected and interested people did not even know about this public hearing and were unable to attend the public hearing. In fact this issue was raised by several members during the public hearing itself and this was recorded in the minutes of the public hearing (at page 42-44 of the Appellant's Typed Set of Papers Volume-II).
8. Secondly, those who did attend the public hearing and raised questions were forcibly silenced and many of the individual's questions and concerns were not recorded in the statement of issues. Further, when certain villagers raised objections during the public hearing, they were arrested and expelled from the meeting. All these illegalities were detailed in the letter sent to the MoEF dated 1.3.2016 (at page 79 of the Typed Set of Papers Volume-II). In fact, the Kavanur Panchayat Board even passed a resolution which

touches upon these illegalities and infirmities (at page 54 of the Typed Set of Papers Volume-II). The Hon'ble Supreme Court in the case reported in **(2019) 15 SCC 401** (hanuman laxar case) has clearly elucidated the need and importance for a public hearing by stating that apart from science and technology, local communities have an innate knowledge of the environment and this process of public consultation is a vital aspect of governance based on rule of law and protects the intrinsic values of inclusion. The Apex Court held that the public consultation process as specified in the Notification cannot be reduced to a mere incantation or procedural formality. A proper public consultation is necessary as it factors in the concerns of the people whose lives and livelihood the project is to affect. Therefore the improper publication of the public hearing coupled with the attempt to silence the participants from voicing their concerns vitiates the entire process of the public hearing as it has been conducted as a mere procedural formality and there has been no genuine attempt to hear or address the concerns of the affected villagers.

MARINE EIA REPORT NOT AVAILABLE TO PUBLIC

9. It is further submitted that certain vital documents such as the Marine EIA Report was not made available to the public before/while conducting the public hearing and this issue also was raised during the public hearing (page 42, para 6 of Volume -II). This position is in fact admitted by the project proponent in its detailed reply to the issues raised by the ERC (at page 287 of Volume-III). The present thermal power plant is proposed to be situated on the shores of Palk Bay and all the villages in and around this area are all involved either in agriculture or in fishing. These are all primarily fishing

hamlets and many of the villagers sole source of income is through fishing and related activities. Therefore when the Marine EIA report has not been made available to the public, who are primarily fishermen who are worried about the impact of the power plant on the marine organisms, and the public hearing has been carried on, it invalidates the entire process.

MERCURY EMISSIONS - DEFICIENCY OF EIA REPORT

10. It is submitted that the Mercury emissions have not been studied at all in the EIA Report which is found at Table 4.2 at page 33 of additional typed set of papers volume-III filed by the Appellants and the same is a fatal flaw. As is seen in the Technical EIA Guidance Manual for Thermal Power Plants issued by the Ministry of Environment and Forests (at page 51 of volume-III), mercury emissions from power plants through the disposal and dispersal of coal ash is a major source of pollution, in particular the mercury emitted in flue gases and this can enter the human food chain which can harm the brain, heart, kidneys, lungs and immune system. The EIA Report has completely omitted this vital aspect and has just glossed over the impact of mercury emissions and this deficiency cannot be overlooked and the EC granted based on such flawed EIA Report ought to be quashed.

11. Therefore it is submitted that this omission of impact of mercury emissions in the EIA report is a fatal flaw and therefore the EC ought to be quashed on this sole ground itself.

LAND ACQUISITION

12. It is submitted that on 21.01.2014, the 2nd Respondent issued G.O. Ms 91 through which the 2nd Respondent sanctioned acquisition of lands for the purpose of constructing the Uppoor Power Plant.

Thereafter, show cause notice under subsection 2 of Section 3 of The Tamil Nadu Acquisition of Land for Industrial Purposes Act 1997 has been issued on 10.10.2015, in local newspapers, informing about the acquisition of patta lands for the proposed project. However, the acquisition process has been initiated under the Tamil Nadu Industrial Purposes Act 1997. The validity of the said Act and the lands acquired under it was challenged before the Hon'ble High Court of Madras in W.P. No. 22448 of 2018 and connected batch of cases. The Hon'ble High Court vide order dated 03.07.2019 held that the Tamil Nadu Industrial Purposes Act 1997 was repugnant to the central act and therefore the Act was null and void as on 27.09.2013 and all land acquisitions made under this Act after this date would be held to be illegal and quashed. The validity of the Act and the acquisitions made under it are now sub judice before the Hon'ble Supreme Court in SLP Nos. 22727-22730 of 2019 & batch. The Hon'ble Supreme Court has refused stay of the judgement of the High Court except para 158.8 alone. Therefore the remaining portion of the judgment stands even as on date.

13. Without prejudice to the above paragraphs, it is further submitted that it is the duty of the EAC to thoroughly scrutinise the objections raised in the public hearing and provide cogent reasons for accepting or rejecting such objections. In the judgment reported in 2009 SCC OnLine Del 3836 (Utkarsh Mandal v. Union of India) it was held that if the EAC failed to provide reasons for accepting or rejecting the objections, then it would render this decision vulnerable to be vitiated due to non-application of mind to relevant materials and therefore arbitrary. In the present case the EAC in the 38th meeting and the 52nd meeting has failed to apply its mind while

evaluating the concerns raised and has accepted the Project Proponents stance without any rhyme or reason. Issues related to the impact of the project on

DAMAGE TO WATER TANKS AND IMPACT ON DRAINS

14. It is submitted that there are four major tanks which are in immediate proximity to the project site and in fact three of the tanks namely Naganendal Big Tank, Valamavur Tank and Aladiyenthal Tank even share a border with proposed site (as seen on page 100 of the typed set) and the water from these tanks are used by the villagers for agricultural and drinking purposes. The Environmental Impact Analysis does not pay heed to the environmental impact of the construction and functioning of the proposed project on these tanks. Further, the Project Proponent seeks to divert the canals which carry the water from these 4 tanks to the sea without providing adequate information or reasoning on the environmental impact of the same. Presently, these streams pass through the project site at 4 points and the Project Proponent seeks to divert these streams. It is pertinent to note that the project site is proposed to be built at an elevation level of MSL+5.230 and the impact of this elevation on the natural flow of water from the tanks to the sea is not thoroughly analysed and failure of which could lead to flooding and other calamities. The EAC has failed to acknowledge the same and has failed to apply its mind and adequately analyse the EIA Report.

DAMAGE TO MARINE ECOSYSTEM

15. The Marine Environmental Impact Assessment conducted by M/s Wapcos states that the construction of the jetty for the intake and outfall pipelines would cause notable noise pollution. The

proposed pipelines are to be constructed up till a distance of 6.5-7km from the shoreline. It further states that this noise pollution from the construction of the pipelines could cause changes in hearing capability or actual damage to the inner ear, damage or destruction of the swim bladder, other cellular and molecular effects, adverse effects on eggs and larvae, behavioural effects such as fish leaving or avoiding an area have been observed (at page 260 of Volume-III). Further, cumulative stress induced impacts related to sound level and duration causing fish to be more susceptible to things like infection, predation, and slower growth rate. However the EIA suggests no concrete mitigation measures in this regard and further the EAC has failed to even take this aspect into consideration and thereby failed to apply its mind to the environmental challenges at hand. The marine EIA does not take into consideration the impact such noise pollution would have on the fishes which are found in Palk Bay and the EAC has not provided reasons and has failed to apply its mind in this regard.

16. In the judgment reported in (2019) 15 SCC 401 Hanuman Laxman Aroskar v. Union of India, the Hon'ble Supreme Court in paragraph 127 held that the EAC being an expert body, is bound to apply itself to every relevant aspect of the project bearing upon the environment and is not bound by the analysis which is conducted by the EIA Report. It was also held that the EAC is duty-bound to apply its mind to the environmental concerns raised in the public hearing as well. Therefore the failure of the EAC to assess the impact of the noise pollution on the marine animals and make an observation in this regard clearly shows that the EAC has not thoroughly applied

their mind to the environmental hazards and therefore the impugned EC has been obtained owing to the failure of EAC to apply its mind.

17. It is therefore humbly prayed that this Hon'ble Tribunal may be pleased to set aside the impugned Environmental Clearance dated 18.05.2016 and pass such other or further orders as this Hon'ble Tribunal may deem fit in the facts and circumstances of the case and thus render justice.

Dated at Chennai on this the 24th day of December, 2020.



COUNSEL FOR THE APPELLANTS