

O. Fernandes, Co-convener, Coastal Action Network Vs. Union of India (UOI), rep. by its Secretary to Government, Ministry of Environment and Forests and Ors.

Court :Chennai

Citations :2005(3)CTC527; (2005)1MLJ184

Judge :N. Dhinakar and ;M. Chockalingam, JJ.

Decided On :2005-06-30

Acts :National Environment Appellate Authority Act, 1997 - Sections 3, 5, 6 and 11

Appeal No. :W.P. No. 21532 of 2005 and W.P.M.P. Nos. 23473 to 23475 of 2005

Appellant :O. Fernandes, Co-convener, Coastal Action Network

Respondent : Union of India (UOI), rep. by its Secretary to Government, Ministry of Environment and Forests and O

Defendant :V.T. Gopalan, Additional Solicitor General assisted by ;P. Wilson, Adv. for Respondents No. 1, 2, 3, 5 and 6 and ;Rita Chandrasekaran, Adv. for Respondent No.4

Plaintiff :V. Prakash, Senior Counsel for ;P. Chandrasekaran, Adv.

Judgement:

ORDER

N. Dhinakar, J.

1. The petitioner having approached this Court on an earlier occasion raising objections for proceeding with Sethusamudram Shipping Canal Project, did not succeed, as on the earlier occasion, his contentions were rejected on the ground that as regards the project, public hearings are going on and cause of action arises only when an adverse order has been passed or some action adversely affecting someone's right is taken. It was rejected on the other ground that since no adverse orders have been passed nor action taken against anyone, there is no need to entertain the writ petition at this stage and issue Rule Nisi.

2. Now, the learned Senior Counsel appearing for the petitioner submits that environmental impact assessment order has been passed and thereafter, an order of clearance had been given to proceed with Sethusamudram Shipping Canal Project by the Ministry of Environment on 31.3.2005. According to the learned counsel, the order was passed by the authority concerned without taking into consideration the impact, that the project will have, on the environment and without following the guidelines issued by the Ministry of Environment for clearing such projects. He also submits that No Objection Certificate was not obtained from the Tamil Nadu Pollution Control Board and that therefore, the order dated 31.3.2005 giving environmental clearance under the Environment Impact Assessment Notification is bad in law.

3. A specific question was put to the learned counsel, whether the petitioner has exhausted the remedy available to him under Section 11 of the National Environment Appellate Authority Act, 1997, (for short 'the Act'), wherein it is contemplated that any person aggrieved by an order granting environmental clearance in the areas in which any industries, operations, or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards may, within thirty days from the date of such order, prefer an appeal to the authority in such form as may be prescribed. The proviso to the said Section also contemplates that the appeal can be entertained after the

expiry of the said period of thirty days, but not after ninety days from the date of aforesaid, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. The learned counsel submits that the petitioner has not preferred any appeal to the authority, but would contend that since the authority contemplated under Section 3 of the Act, is not properly constituted in terms of Section 5 of the said Act, he could not prefer any appeal. He submits that for an authority to be constituted, the authority should contain a Chairperson and a Vice Chairperson and a person shall not be qualified for appointment as a Chairperson unless he has been (a) a Judge of the Supreme Court or (b) a Chief Justice of a High Court. According to the learned counsel, there is no Chair Person from 2000 and the Vice Chairperson, who is acting as Chairperson, in terms of Section 6 of the Act, is only a retired secretary of the Ministry of Environment and the petitioner is not likely to get a fair hearing, since the Vice Chairperson was the secretary of the said Ministry when he retired.

4. The learned Additional Solicitor General submits that there is no need to obtain a No Objection Certificate from the Tamil Nadu Pollution Control Board and that if there is no Chairperson heading the authority, there can be no difficulty for the Union of India to appoint the said person within thirty days from the date of receipt of a copy of this order if there is no Chairperson for the authority and that the petitioner can approach the appellate authority thereafter and place all the materials before the said authority and redress his grievance before the authority.

5. We see no reason as to why such a course should not be adopted, more so, when the project is to be slated for inauguration on 2.7.2005, as entertaining any such petition at this stage will only lead to much hardship to all the parties concerned. We make it clear that the petitioner can file an appeal within thirty days from the date of the appointment of the Chairperson and he is at liberty to canvass all the points raised in this writ petition before the said authority. The learned Additional Solicitor General submits that there will be no objection by the respondents on the ground of delay in filing the appeal before the appellate authority, if the appeal is filed within thirty days from the date of appointment of the Chair Person. We record the said statement of the learned Additional Solicitor General.

6. In view of the above statements of the respective counsels, we find no reason to issue Rule Nisi, but, we give liberty to the petitioner to move the appellate authority as observed above. The writ petition is, accordingly, dismissed. No costs. Consequently, W.P.M.P. Nos. 23473 to 23475 of 2005 are also dismissed.