

**BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE) BENCH, PUNE**

APPLICATOIN NO.157 (THC) OF 2013

CORAM:

**HON'BLE SHRI JUSTICE V.R. KINGAONKAR
(JUDICIAL MEMBER)**

**HON'BLE DR. AJAY A. DESHPANDE
(EXPERT MEMBER)**

B E T W E E N:

**Society for Environmental Protection,
Amravati, through its President
Dr. Hemant S/o Vijay Bonde Patil,
Aged 41 years, Occupation: Agriculture
Resident of near SBI ATM, Rathi Nagar
Amravati.**

.....**APPLICANT**

A N D

- 1. Union of India,**
Through its SECRETARY,
Department of Environment & Forest,
ParyavaranBhavan, C.G.O. Complex
Lodhi Road, New Delhi-110 003.
- 2. State of Maharashtra,**
Through its Secretary, Department of
Irrigation, Mantralaya, Mumbai-400 001.
- 3. Vidarbha Irrigation Development Corporation**
Civil Lines Nagpur.

- 4. Maharashtra Pollution Control Board,**
Through its Member Secretary, having
its office at Kalataru Point, 2nd, 3rd and
4th Floor. Opp. Cine planet, Near Sion
Circle, Sion € , Mumbai-400 022.
- 5. M/s Indiabulls Power Ltd,**
Amravati Thermal Power Project,
Additional Industrial Area, Nangaon
Pet, Amravati, Tahsil and District
Amravati.

.....**RESPONDENTS**

Counsel for Applicant(s):

**Asim Sarode Advocate (*Amicus Curiae*)
J.C.Shukla Advocate.**

Counsel for Respondent(s):

**Mr. Ishwer Singh, Advocate on panel/Legal Consultant/
Dr.Saroj, Director of MoEF / Mr. Krishna D. Ratnaparkhi, for
Respondent No.1.**

**Mr. S.G. Jagtap/Mr.S.S.Godbole, Advocates for Respondent
Nos.2, 3.**

**Mr.D.M.Gupte/Supriya Dangre, Advocates for Respondent No.4.
Mr.Niraj Tyagi, & Mr.Chetan Sharma Sr. Advocate
(V.P.Legal)/Mr.Dominic J.Braganza /Mr. Partha Pati/ Mr.Abhay
Nevagi/ Advocates for Respondent No.5.**

Date : August 8th, 2014

J U D G M E N T

- 1.** The present Application, was originally filed in the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, as Public Interest Litigation (PIL), No.27 of 2013, which was transferred by the Hon'ble Divisional Bench of High Court, to this Tribunal vide order dated June 12th

2013, noting that 'controversy needs to be looked into by the National Green Tribunal'. The Applicant is a registered Society comprising of the residents of Amravati city and the agriculturists.

FACTS AND LIMITATION

2. The instant Application is filed against establishment of a coal based Thermal Power Plant Project (TPP), of the Respondent No.5, which allegedly would not only destroy environment of Amravati city but would also deprive farmers of Amravati district from irrigation facility, made available to them by the Respondent No.3, through Upper Wardha Dam. It is grievance of the Applicant that the Respondent No.3, has allotted 87.6 Million Cubic Meters (MCM) water for the power plant of the Respondent No.5, from the Upper Wardha Dam, though said water is meant for irrigation of agricultural fields of the farmers and thus, the farmers would be deprived of irrigation facility. The Applicant further submits that the Respondent No.1, had approved change in configuration of the proposed power plant from 2x660 MW to 5x570 MW, vide letter dated 15th July, 2010 and further allowed expansion of said power plant vide letter dated 27th May, 2011. The Applicant further submits that there are several Thermal Power Plants, which have been approved and given necessary sanctions

by the various authorities without assessing the cumulative impacts of such high spurt in the power generation in Vidarbha region. Some of the plants referred are M/s TSR Power Pvt Ltd- 1320MW, Wardha Power Company, Dhamangaon -540 MW, M/s. RSI P Ltd, Amravati-4300 MW etc. The Applicant submits that except in Vidharbha, nowhere in the Maharashtra or for that of matter anywhere in India, such high power generation has been approved in one district. The Applicant says that nearby districts Chandrapur and Nagpur are already facing environmental consequences of the thermal power plants. The problems in Amravati district will be much severe due to proposed power plant. Apprehensions are also raised about Fly Ash disposal problem from such high coal based power generation capacity. The Applicant has, therefore, approached this Tribunal with following prayers:

- a) Issue a writ of certiorari, and/or any other appropriate writ, order or direction, directing the Respondents to immediately stop proceeding with proposed project of Power Plant at Nandgaon Peth, Amravati.
- b) It be held and declared that the Respondent No.2 should call the public opinion particularly farmers and residents of the vicinity and after hearing them, should reconsider the permission granted to the Respondent No.5 to start the power project at Nandgaon Peth, Amravati.

3. In the present Application, the Ministry of Environment and Forests (MoEF), Govt. of India, is the Respondent No.1, the Irrigation Department, Govt. of Maharashtra is the Respondent No.2, while Vidarbha Irrigation Development Corporation (VIDC), is the Respondent No.3. Maharashtra Pollution Control Board (MPCB), which implements environmental regulations in the State, is the Respondent No.4. M/s Indiabull Power Ltd, who is developing the Thermal Power Plant, is the Respondent No.5.

4. The Respondent No.5 filed a detailed affidavit on 25th September, 2013, through Mr. Vatsal Shah. The Respondent draws attention of the Tribunal towards Judgment of Hon'ble High Court dated 1 and 2 March, 2013, in Writ Petition Nos. 757 of 2011, and 758 of 2011 and PIL No.19 and 20 of 2011, a copy of which is part of the record and pleads that the Judgment delivered by the Hon'ble High Court has settled the issue of allocation of 87.6 MCM of water to the Respondent No.5 – Company by the Respondent Nos. 2 and 3, by holding that :

“ 76. To sum up, then, our conclusions are as under :

(i) The impugned decision of the State Government and Vidharbha Irrigation Development Corporation in February 2009 to allocate 87.60 MCM of water

to the power plant of respondent No.5- Sofia Power Company Ltd (Now Indiabulls Power Limited) was not contrary to law or arbitrary or violative of the Governor's directives under Article 371(2) of the Constitution. ”

5. It is submission of the Respondent No.5 that in view of clear findings recorded by the Hon'ble Bombay High Court, the issue of allocation of water to the Respondent No.5, Company cannot be now challenged before this Tribunal, in view of principle of *Res Judicata* and principle analogues to it.

6. The Respondent No.5, further submits that Govt. of Maharashtra issued letter of support dated 17.12.2007, to Indiabulls Realistic Ltd., which is holding Company of the Respondent No.5. MIDC allowed 1350 Acres of land at Nandgaon Peth industrial area vide letter dated 15.2.2008 and the Respondent No.5 has already paid a premium of Rs.19 Crores for such land. Further, Vidarbha Irrigation Corporation Ltd, vide letter dated 22nd February, 2008 allotted 87.6 MCM for the project of the Respondent No.5. The Respondent No.5, further submits that the MoEF granted Environmental Clearance (EC), as per the provisions of Environment Impact Assessment (EIA) Notification, 2006, for stage-I project (2x660 MW) on 27.2.2009. Subsequently, the MoEF also granted EC for

change in configuration of the units from 2x660 MW to 5x270 MW, vide letter dated 15th July, 2010. Thereafter, the MoEF also granted EC for expansion of the project-stage-II, on 27th May.2011, as per the provisions of EIA Notification on certain terms and conditions. The Respondent No.5 states that they have also issued necessary advertisements in the newspapers immediately after such grant of EC's, in compliance with the EIA Notification.

7. The Respondent No.5, further submits that MPCB granted consent to establish for stage-I, i.e. 2x660 MW, under the provisions of the Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1972 and the Hazardous Waste (M&H) Rules, 2008 on 16th March, 2009. The MPCB further granted consent for change in configuration from 2x660MW to 5x270 MW vide letter dated 14.9.2010. The Board also granted consent to establish for expansion of project. The Board also granted consent to operate for one unit of stage-I, project on 25th March, 2013.

8. The Respondent No.5, further submits that based on these permissions from various statutory Authorities, the Respondents have invested huge amount on the project development. It is averred that as on 31st August, 2013, Rs.6286.81 Crores on stage-I, and Rs.708.57

Crores on stage-II, have been invested. Development of the power plant is in full swing and 90% of stage-I of the project and 26% of stage-II project are already completed.

9. The Respondent No.5, further submits that EC granted on 27th February, 2009, was challenged before the National Environment Appellate Authority (NEAA) by the Society of Backlog Removal and Development, Amravati, by filing Appeal No.12 of 2009, on various grounds, including on the issue of possible environmental impact of the proposed power project. However, the Authority vide its order dated 22nd May, 2009, declined to admit the Appeal, citing various reasons, and the said order has not been stayed or quashed and therefore holds good. It is, therefore, claimed by the Respondent-5 that EC granted to them has attained finality and cannot be challenged now before this Tribunal.

10. The Respondent No. 3, filed affidavit on 3rd October, 2013 and submits that no relief is claimed against the Respondent No.3, and as such it may be discharged. As regards impact over drinking water and irrigation uses of water due to above water allocation is concerned, Respondent No.3 submits that above allocation of water is made within percentage of water reserved for industrial use. The Respondent No.3, also referred to Judgment of the Hon'ble High Court

mentioned above and therefore prayed that the matter has already been finally settled by the Hon'ble High Court as far as allocation of water to the Respondent No.5 – Industry is concerned.

11. The Respondent No.4, filed in all five (5) affidavits i.e. dated 25th October, 2013, 17th December, 2013, 10th January, 2014, 2nd May, 2014 and 12th June, 2014, mainly in compliance of various orders of the Tribunal.

12. The Respondent No.4 in its affidavit dated 25th October, 2013, submits that the MPCB has considered the EC granted by the MoEF to the proposed power plant of the Respondent No.5 and also, verified that the power plant has proposed necessary pollution control systems, and then, granted Consent to Establish to the proposed power plant on the specific terms and conditions. The Board has stipulated stringent emission standards like TPM in stack emission not to exceed 50mg/Nm³ along with requirement of adequate height of stack and fly ash disposal conditions. The MPCB further submits that during their visit on 15th October, 2013, one unit of 270 MW of stage-I, was in operation and the industry has provided a common chimney with two (2) flue passes of height of 275 meters attached to two (2) boilers, as well as ESP having two (2) paths provided to each boiler and the same was in operation. The MPCB has also mentioned

compliance of various other conditions, including provision of ambient air quality monitoring and also continuous online stack monitoring system. It is observed from the visit report that some of the works are ongoing. The affidavit dated 17th December, 2013, states that after going through the results of stack monitoring conducted recently, MPCB observed that the stack emission parameters are found to be exceeding the standards laid down under the provisions of the Environment (Protection) Rules, 2010 and as specified in consent. MPCB has sent necessary communication to the Respondent No.5, directing it to take effective steps to secure compliance of standards.

13. The Respondent No.5, filed counter affidavit highlighting various discrepancies in the entire sampling and analysis conducted by the MPCB of the stack air quality sampling, including site observation reports. The main grievance of the Respondent No.5, is that the MPCB has failed to recognize and monitor even basic information like stack gas temperature and velocity, which are normally consistent in such large plant. It is therefore contended by the Respondent-5 that the stack emission reports produced by the MPCB are not technically correct and they have already brought these discrepancies to the notice of MPCB. We asked the MPCB

to comment on the same and in reference, the MPCB filed another affidavit on 30th January, 2014, wherein it is submitted that the Board has decided to constitute a Committee to deal with the issue. The Committee's findings were submitted by the Board, in its affidavit dated 2nd May, 2014 and recommendations of the Committee are as under:

- i) The samples dated 12-7-2013, 28-8-2013 and 30-9-2013 have not been taken as per Standard Sample Protocol, therefore cannot be relied upon. Therefore, the said results given in respect of these samples should be discarded.*
- ii) However, samples dated 15-10-2013, does not suffer from drawbacks in terms of sampling. However, there is a delay in sample submission in the Laboratory as well as delay in analysis. Therefore the same also be discarded.*
- iii) MPCB shall cause a joint sampling of stack of Unit No.1, upon full commissioning in presence of committee to ascertain the compliance of emission standards.*
- iv) MPCB to cause revisit by following standard procedure and protocol for collection of stack samples including field data collection, instrument and field equipment calibration, sample preservation, submission of samples and procedures for laboratory analysis and reporting strictly in accordance with the guidelines issued by CPCB, i.e. Emission Regulation Part-10 (2013-2014) and Guidelines*

on Methodology for Source Emission Monitoring at LATS/80/2013-2014.

- v) MPCB shall arrange an immediate training to field Officers and laboratory persons with the help of CPCB, to ensure the scientific monitoring and analysis of stack sample in general and Thermal Power Plants in particular.*

14. Based on this information and also, noting above recommendations of the Committee, the Tribunal further directed the Board to conduct monitoring vide its order dated 8th May, 2014 and accordingly, the Board has submitted affidavit on 10th June, 2014 and its report show that the stack emission parameters such as TPM and SO² are within the consented limits.

15. The Applicants have pleaded about public hearing in their pleadings and during the hearing, it was brought to the notice of the Tribunal that the Respondent-5 was given exemption from public hearing as stipulated in the EIA notification 2006. The Ministry of Environment and Forests, (MoEF) Government of India, (Respondent No.1), filed affidavit on 21st November, 2013, upon specific directions of the Tribunal dated 30th October, 2013, to clarify whether any public consultation process was followed prior to grant of EC for expansion project of the Respondent No.5. The Respondent No.1-MoEF, submits that the EC was accorded under the

provisions of EIA Notification 2006 and the thermal power project of Respondent-5 was exempted from public hearing in view of its location in a notified industrial area, in accordance with the provisions of EIA Notification. The Ministry claims to have confirmed this fact with the Maharashtra Industrial Development Corporation (MIDC) vide their letter dated 23rd June, 2008, that additional Amravati Industrial Area where the thermal power plant is located, is notified as 'Industrial Area'. The Respondent No.1- MoEF, specifically filed another affidavit on 13th March, 2014, based on the orders of the Tribunal dated 10th March, 2014, wherein the Tribunal directed learned Counsel for MOEF, to seek better clarification of Regulation No.7 (III) of EIA Notification, which requires clearance by the concerned Authority. An E-mail from the Deputy Director of MoEF, was placed on record by the learned Counsel. Considering inconsistency in the earlier affidavit and the present submission, the Respondent No.4, was directed to file an affidavit through a responsible officer in this regard. The Respondent No.4 – MoEF vide affidavit dated 13th March, 2014, expressed its stand, as mentioned in the affidavit, which is reproduced as below:

“ The exemption from public consultation, as provided for under Para 7(i) III. Stage (3) (i)(b)

of EIA Notification 2006, is only available to the projects or activities located within the industrial estate or parks which have EIA Notification 2006 as provided for under item 7(c) of the Schedule ”.

16. The Respondent No.5, filed affidavit on 21st April, 2014, which essentially claims that while granting EC to stage-I and II projects of the Respondent No.5, the MoEF, has considered all the aspects including that of exemption from public hearing based on understanding of the issue at that point of time and has granted the EC and, therefore, it is the stand taken by the Respondent No.5, that as the EC of stage-I, was already challenged before NEAA, which had not entertained the same and i.e. challenge to the E.C. Since the Respondents have invested such significant amount in the project development and even some of the units have already started operations, any adverse interpretation of ‘requirement/exemption from public hearing’ should not be made retrospective. The steps taken so far by the Respondents are irreversible. Respondents-5 therefore pleaded that the Tribunal should not take any decision with retrospective effect while interpreting the provision.

17. Considering rival pleadings and submissions of learned Counsel for the parties, following issues arise for adjudication of the present Application.

(i) Whether the Application is within Limitation?

(ii) Whether the thermal power plant of the Respondent-5 is being operated as per the conditions of EC granted by MoEF and consent granted by MPCB? Whether there is any adverse impact of the thermal power plant in the surrounding areas as apprehended by the Applicant?

(iii) What is interpretation of Rule 7(III), regarding exemption of public hearing in the EIA Notification, 2006?

Re :-- Issue (i) :

18. The present Application has been registered in the Tribunal, upon transfer of PIL by the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, vide order dated 12th June, 2013, noting that controversy needs to be looked into by the NGT. The Applicant prays for immediate stopping of proceedings for proposed power project and also, prays that public opinion of the residents be taken into consideration by hearing them for reconsideration of permission. It is pertinent to note that though the Applicant has not converted his PIL into Regular Form of the NGT (Practices and Procedure) Rules, 2011, the Tribunal has been given certain flexibility in its

procedure vide Section 19(1) and 19(2) and therefore, considering that the issues raised are of substantial nature related to Environment and also, the fact that this being the case which got transferred from the Hon'ble High Court by specific order, the Tribunal is of the considered opinion that the Application shall be proceeded with. However, the Tribunal notes that the issue of allocation of water has already been settled by the Judgment of Hon'ble High Court. Hence, this Application is considered without going into the water allocation aspects raised in the petition.

Re :- Issue (ii) :

19. Learned Senior Counsel for the Respondent No.5, argued that the Respondent No.5 has been granted ECs for their stage-I and stage-II projects, including change in configuration by the MoEF from time to time. The Respondent No.5 – Industry has also received necessary consent from MPCB. The Industry has also provided State of Art pollution control system to achieve most stringent norms, which have been prescribed by both MoEF as well as MPCB. The project is at advance stage of commissioning and the Respondent No.5 has invested huge amount after obtaining necessary permissions from the statutory Agencies.

20. Learned Senior Counsel for the Respondent No.5, further submits that the issue of 87.6 MCM water allocation has already been settled by the Hon'ble High Court and hence same cannot be re-agitated before this Tribunal, as it is barred by principle of *Res Judicata* and other principles analogues to it. He also further submitted that the EC of 2009, was challenged before the NEAA, which has refused admission of that Appeal challenging the E.C, stating various reasons. He also submitted that the industry has given wide publicity to the EC granted in 2009, 2010 and 2011, as per the provisions of the EIA Notification and therefore, those ECs cannot be challenged before this Tribunal, in view of limitation of time prescribed in Section 16 of the National Green Tribunal Act, 2010.

21. He also submitted that MoEF and MPCB, who are competent Authorities under the Environment Protection Laws, have considered all the aspects including cumulative impacts and only thereupon, they have granted permissions. Their consideration is reflected in stringent emission standards given to the Respondent-Industry, which will minimize the release of environmental pollutants in the area.

22. Learned Senior Counsel for the Respondent No.5, also submitted that the Industry has provided state of art

pollution control system and is committed to operate the same in efficient manner. He also brought to our notice the fact that environmental monitoring conducted by the MPCB had various scientific and technical flaws and based on their assertion; the MPCB had formed an Expert Committee, which has accepted the issues raised by the Respondents. The MPCB's further affidavit dated 10th June, 2014, also corroborates this fact by clearly indicating that stack emission levels at the Respondent No.5 – Industry are well within required standards.

23. The Environmental clearance and consent stipulate various conditions like stack emissions, use of specific quality coal, ambient air quality monitoring, waste water treatment, use of water, minimum flow in river etc. One of the main apprehensions of the Applicant is use of excessive water finally resulting in shortage of water for irrigation. Though, we are conscious of the fact that the issue about allocation of water to the Respondent-5 industry has been settled by Hon'ble High Court's judgment, we find serious concern regarding compliance of **specific conditions** of the MoEF, which read as under:

A. Specific Conditions:

- | | | | |
|-------|-------|-------|---------|
| (i) | xxxxx | xxxxx | xxxxxxx |
| (ii) | xxxxx | xxxxx | xxxxxxx |
| (iii) | xxxxx | xxxxx | xxxxxxx |
| (iv) | xxxxx | xxxxx | xxxxxxx |

(v) xxxxxx xxxxxx xxxxxxx
(vi) xxxxxx xxxxxx xxxxxxx
(vii) xxxxxx xxxxxx xxxxxxx
(viii) xxxxxx xxxxxx xxxxxxx

(ix) No ground water shall be extracted for use in operation of the power plant even in lean season.

(x) xxxxxx xxxxxx xxxxxxx

(xi) Minimum required environmental flow suggested by the Competent Authority of the State Govt. shall be maintained in the Channel/Rivers (as applicable) even in lean season.

24. The MPCB reports have mainly focused on the compliance of conditions stipulated in consent, i.e. mainly related to pollution control management within the plant premises. As per the conditions of EC, the responsibility of ensuring the compliance of EC conditions is within domain of the MoEF. We find lack of comprehensive affidavit from the MoEF on the compliance of the above EC conditions. The project in the present Application is a very large power plant, and it was expected that the MoEF would regularly inspect such plant to ensure the compliances. We are not aware whether any such compliance monitoring has been done by the MoEF so far. And if it is so done then, what are the observations? In the absence of such report from MoEF, we are unable to verify the status of surrounding environment, even as the plant is now partially operational.

25. MPCB monitoring also showed several flaws in sampling and analysis, thereby posing serious questions on the compliance monitoring done by both MoEF and MPCB. It is necessary that such large power plant needs to be regularly inspected and the compliance of EC/consent conditions are holistically and scientifically enforced on continuous basis, else the stringent conditions, as claimed by MPCB and Respondent-5, remains on paper, and the environment will be the salient sufferer.

26. The Respondent No.5 – Industry is now required to comply with the standards and norms prescribed by the MoEF/MPCB. What we find from the report of MPCB is that they have only assessed performance of the air pollution control system. It is necessary that the MPCB needs to implement measures suggested by its Expert Committee and conduct regular inspection of the industry in a scientific manner. Though, while appreciating the initiative of MPCB to form an Expert Committee, we are also concerned with the findings of MPCB Expert Committee, which raises serious doubt on entire sampling and monitoring conducted by the MPCB at such important power plant, in order to improve its credibility as scientific and technical organization. The environment monitoring is a very complex and scientific process and

we are aware that with increasing scope of pollutants and the specialized monitoring skills required in each of water, ambient air, stack and Hazardous waste sampling, it is now more difficult task for the field personnel to conduct scientific sampling and monitoring. In fact, each of these fields of monitoring itself is a specialization and MPCB needs to take various factors such as staff qualifications, training, and automation in sampling, remote monitoring etc. into account for avoiding such discrepancies in monitoring, sampling and analysis. We therefore expect the MPCB to consider this report of Expert Committee and the action taken thereupon, in next six (6) months. This is utmost necessary. The MPCB is a specialized regulatory body created by a special statute, wherein enormous responsibility is cast upon the MPCB to regulate industrial emissions and also, monitor environmental quality of air and water bodies in the state, which is essential to protect our precious environment. Any such non-observance of the procedure in sampling analysis and monitoring may result into inaccurate information leading to wrong decisions and environmental disasters and therefore, this needs to be immediately taken care of by the MPCB in most scientific and technical manner.

27. Considering the records and also, the above discussions, though the MPCB has submitted the compliance of consent conditions by Respondent-5 industry for one unit, it is necessary that a comprehensive compliance monitoring needs to be done by the MoEF and MPCB, preferably on joint visit basis, to ensure compliance of EC/consent conditions in most effective manner, both on and off site. The Issue No.(ii) is, therefore, answered as partly affirmative subject to further verification of compliances.

Re :-- Issue (iii) :

28. It is contended by Learned Senior Counsel that as the Respondent No.5 Industry is located in an area which had been acquired by the Govt. of Maharashtra for Industrial purpose and notified as an 'Industrial Area' on 27.12.1993, by the Govt. of Maharashtra and has undergone public hearing/consultation prior to acquisition of the lands and therefore, public consultation has already been conducted for the said area. It is the submission of Learned Senior Counsel that EIA Notification 2006, is only prospective in application. He submits that the MoEF has considered all such aspects and has given exemption from public hearing for the project of the Respondent No.5, which is just and within tenets of the Law. It is his submission that this view has

now been changed by the MoEF and the Tribunal might take a particular view in this regard. Such interpretation cannot be applied retrospectively.

29. Section 7 (i), (III), (i) of EIA Notification, 2006 reads as under :

III. Stage (3) –Public Consultation—(1) “Public Consultation” refers to the process by which the concerns of local affected persons and others who have plausible stake in the environmental impacts of the project or activity are ascertained with a view to taking into account all the material concerns in the project or activity design as appropriate. All Category ‘A’ and category B-1 projects or activities shall undertake Public Consultation, except the following:-

(a) xxxx xxxxx xxxx xxxx

(b) all projects or activities located within industrial estate or parks [item 7(c) of the Schedule] approved by the concerned authorities, and which are not disallowed in such approvals.

(c) xxxx xxxxx xxxx xxxx

30. As pointed out by the learned Senior Counsel, concept of ‘public hearing’ in the Environmental Clearance, under the EIA Notification mandating ‘obtaining of prior EC,’ was first promulgated on 27th January, 1994 as amended in 1997, and underwent several amendments till 2004. The notification listed down thirty (30) odd industrial categories which required prior EC. The EIA Notification, 1994, (amended till 2002), did not mandate industrial estates/areas, to obtain prior

EC before same being established. We have gone through the affidavits dated 21st November, 2013, and 13th March 2014 wherein different interpretation of exemption clause is stated by the MoEF.

31. The Legislature has given utmost importance to ascertain the public views in the entire EC procedure by making provision of public hearing and consultation before appraisal of specified development projects for grant of EC. Similarly, reverse flow of dissemination of information about grant of EC and the conditions stipulated therein, are described elaborately in the EIA Notification, 2006. The intention of legislature is very clear, which aims to improve public consultation before grant of EC and information dissemination about decision taken on grant of EC, which has resulted in increased focus on public hearing mechanism under the 2006 Notification. We have carefully perused Clause of the relevant part (b), which reads “all projects or activities located within industrial estates or parks [Item 7(c) of the Schedule] approved by the concerned Authorities and which are not disallowed in such approval.” It is, therefore, necessary to interpret this particular category for clarity on the issue. We are aware, as mentioned by learned Senior Counsel for the Respondent No.5 that MoEF, has considered such exemption for several

projects across the country either through itself or through State Level Environment Impact Assessment Authority (SEIAAs) for grant of EC. We are also aware that change of stance of MoEF, if accepted, will change entire course of implementation of the EIA Notification. The Tribunal is competent and authorized to deal with disputes related to “*substantial question relating to environment (including enforcement of any legal right relating to environment)*” to implementation of Acts listed in Schedule -I of NGT Act, 2010 and the EIA Notification squarely falls within domain of the scope of NGT as the same has been notified under Environment (Protection) Act, 1986, which is the Act listed in Schedule-I. The ‘public hearing’/consultation is undisputedly a legal right endowed by the EIA Notification, 2006 to the people in the project area and also public at large. The Tribunal, therefore, will endeavor to settle this dispute on the requirement/exemption granted under Rule-7 (i)(III) (b) of the EIA Notification, 2006.

32. The plain and proper reading of this clause brings focus on two components of the sentence, namely; “within industrial areas and parks [Item 7(c) of Schedule]” and “approved by the concerned Authorities”.

33. The Hon'ble Principal Bench of NGT, in the case of **Wilfred J. Vs MoEF** (Original Application No.74 of 2014) decided on July 17, 2014, has observed:

132.”It is also a well-known rule of construction that a provision of a statute must be construed so as to give it a sensible meaning. Legislature expects the Courts to observe the maxim *ut res magis valeat quam pareat*. The Supreme Court, in the case of **H.S. Vankani v. State of Gujarat**, (2010) 4 SCC 301, stated that “it is a well-settled principle of interpretation of statutes that a construction should not be put on a statutory provision which would lead to manifest absurdity, futility, palpable injustice and absurd inconvenience or anomaly.

133. In **Navinchandra Mafatlal v. CIT**, AIR 1955 SC 58, the Supreme Court stated the law that “the cardinal rule of interpretation is that the words should be read in their ordinary, natural and grammatical meaning subject to this rider that in construing words in a constitutional enactment conferring legislative powers the most liberal construction should be put upon the words so that the same may have effect in their widest amplitude.”

34. Interpretation of any ‘statute’ can be done in various methods like literalism, original intent, doctrinal approach and structuralism. A plain and elaborate reading clearly indicates that the legislature had considered ‘industrial estates and parks’ as listed in Item 7(c) of Schedule of the EIA Notification, while granting such exemption. It also includes the term “approved by

the concerned Authorities” and, therefore, two (2) phrases; Industrial Estate or Parks and approved by concerned Authorities, are linked with “Item 7(c) of Schedule,” necessarily interpreting that both these terms need to be read in context of only provisions of the EIA Notification, 2006. Another question that arises is whether concerned Authorities have been notified in the EIA Notification? The Schedule attached to EIA Notification categorizes various projects/activities in the category of threshold limits of ‘A’ and ‘B’ category. Regulation-2 of the EIA Notification, clearly prescribes the concerned Regulatory Authority for implementation of rules. Regulation-2 is reproduced as under:

“ 2. Requirements of prior Environmental Clearance (EC).- The following projects or activities shall require prior environmental clearance from the concerned Regulatory Authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for matters falling under Category 'A' in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category 'B' in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity:

- (i) All new projects or activities listed in the Schedule to this Notification;*
- (ii) Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity*

beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization;

(iii) *Any change in product-mix in an existing manufacturing unit included in Schedule beyond the specified range. ”*

35. Further, we may also note the specific emphasis placed on the purpose of public hearing as mentioned in Regulation 7(i)III which is as follows:

“ ‘Public Consultation’ refers to the process by which the concerns of local affected persons and others who have plausible stake in the environmental impacts of the project or activity are ascertained with a view to taking into account all the material concerns in the project or activity design as appropriate.”

This provision clearly indicates that public hearing intends to ascertain all material concerns in the project or activity design is appropriate. And therefore, the public hearing under the EIA notification has a specific mandate and the public in general is expected to be informed about the project or activity design to solicit their views and concerns. This public hearing is different in nature, scope and process from other public hearing like under Land Acquisition Act etc.

36. Therefore, we have no hesitation in agreeing to the stand taken by the MoEF in their affidavit dated 13.3.2014 that *“exemption from public consultation, as provided for under Para 7(i) III. Stage (3) (i)(b) of EIA Notification 2006, is only available to the projects or activities located within the industrial estate or parks which have EIA Notification 2006 as provided for under item 7(c) of the Schedule”*. The ‘concerned Authorities’ for interpreting this Clause are already well defined in Regulation-2 of the Notification. This provision only exempts such projects located in Industrial area or park, which are already appraised on cumulative basis for their environmental impacts, for activity inside the entire industrial area/park.

37. Now, in view of above discussion, it is pertinent to discuss applicability of such stand taken by the MoEF, as now endorsed by this Tribunal. During hearing on 21st April, 2014, the officers of MoEF were present and had informed the Tribunal that they are informing all the concerned about the stand taken by the MoEF for immediate implementation of the Regulation-7, as stated above. The compliance of such assurance is not placed on record. We are aware that the MoEF and SEIAA have granted ECs to numerous projects granting an exemption based on earlier view of the MoEF. We are aware that

many of these projects have already commissioned and a large scale investment must have been made pursuant to the ECs granted by the concerned Authorities. In view of above, we are of the considered view that public hearing can only be exempted for all the projects located within industrial estates and parks which have been granted necessary EC by the concerned Authorities specified under EIA 2006 notification and which are not disallowed in such approval. We also hold that such a proposition shall be applicable with immediate effect, prospectively in view of the said projects which have been granted EC being now protected by principle of *'fait accompli'* and it would be difficult to make the entire process reversible. The MoEF shall issue immediate directions to all the concerned Authorities and also issue necessary orders in this context, bringing this Judgment, to the notice of all concerned.

38. In the light of foregoing discussions, the Application is disposed of with following directions.

- (I) We hold that *"exemption from public consultation, as provided for under Para 7(i) III. Stage (3) (i)(b) of EIA Notification 2006, is only available to the projects or activities located within the industrial estate or parks which have obtained environmental*

clearance under EIA Notification 2006 as provided for under item 7(c) of the Schedule”.

(II) The industries which are being appraised as on today and hereafter shall be appraised for Environmental Clearance based on the above criteria by the MoEF and respective SEIAA.

(III) The MPCB, shall take necessary action as mentioned in earlier paras, in view of its Expert Committee’s report, which highlighted need of improvement in sampling and monitoring mechanism of the Board in future.

(IV) The MoEF shall conduct inspection of Respondent No.5 – industry in next three (3) months to ascertain comprehensive compliance of EC granted to the Respondent –Industry and in case of any non-compliance, suitable action be initiated. MoEF shall also ascertain cumulative impacts related to thermal power plants in the surrounding areas in this appraisal process. A status report

including action taken, if any, shall be submitted to Tribunal in 3 months.

(V) The MoEF and MPCB shall regularly inspect the compliance at Respondent-5 industry, and are liberty to take suitable action in case of non-compliance.

(VI) The Application is disposed of. No costs.

....., **JM**
(Justice V. R. Kingaonkar)

....., **EM**
(Dr. Ajay.A. Deshpande)

Date : August 8th , 2014.

NGT



NGT