

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA**

.....

ORIGINAL APPLICATION No. 40/2015/EZ

IN THE MATTER OF:

1. Satyanarayan Banchhor
At-Banchhor Pali,
PO-GS Dungurpalli via Chudapali
Dist. Bolangir, Odisha-767024
2. Balkrishna Sandha,
At Mahada, PO Luthurbandh,
PS-Titlagarh,
Dist. Bolangir, Odisha-767033

.....Applicants

Versus

1. Union of India
Through the Secretary,
Ministry of Environment, Forest
& Climate Change,
Indira Paryavaran Bhawan,
Jor Bagh Road,
New Delhi-110003
2. State of Odisha,
Through the Principal Secretary,
Water Resource Department,
Govt. of Odisha,
At PO Secretariat Building,
Bhubaneswar, Odisha-751001
3. Engineer-in-Chief
Water Resource Department,
Sech Sadan, Unit-VII, Keshari Nagar
Bhubaneswar-751001.

.....Respondents

COUNSEL FOR APPLICANTS:

Mr. Sankar Pasad Pani, Advocate

COUNSEL FOR RESPONDENTS :

Mr. Gora Chand Roy Chowdhury, Advocate, Respondent No. 1

Mr. Surya Prasad Mishra, Ld. Advocate General and Mr. Pravat Kumar Muduli, Addl. Standing Counsel, Respondent No. 2 & 3

JUDGMENT**PRESENT:**

Hon'ble Mr. Justice S.P.Wangdi, Judicial Member

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

Reserved On: 24.05.2016

Pronounced On: 01.06.2016

1. Whether the Judgment is allowed to be published on the net?

Yes

2. Whether the Judgment is allowed to be published in the NGT Reporter?

Yes

Hon'ble Mr. Justice S.P.Wangdi, JM :

This application was filed by (1) Shri Satyanarayan Banchhor, the Secretary of Lower Suktel Budi Anchal Sangram Parishad of District Bolangir, Odisha, who is also one project affected person, an informal body of twenty nine project affected villages and (2) Mr. Balkrishna Sandha, a social activist and convener of Odisha State Unit of National Alliance of

Peoples Movement engaged in campaigning for the rights of the marginalized and weaker section of the population in Odisha.

2. The applicants have challenged the validity of Environmental clearance granted by the Ministry of Environment and Forests, Govt. of India (in short, MOEF), the Respondent No.1, in terms of Environment Impact Assessment Notification, 1994 (in short, EIA 1994) to the Respondent No.2, the State of Odisha, for construction of Lower Suktel Project (in short the Project) at Bolangir, Odisha. It is alleged *inter alia*, that the validity of the Environmental Clearance granted to the Project Proponent which was for a period of five years lapsed in 2003 due to non-commencement of construction work which, as per the applicants, stands established by the fact the Project Proponent have, by their own admission, informed the MoEF in their letter dated 27.07.2013 (Annexure-2 to the OA) that “after facing lot of problems the construction work of the project is started during April 2013” (vide Annexure-I(1)). It is primarily on this ground, as being in violation of EIA Notification 1994, that the applicants have prayed for the following :-

- a. Direct the respondent 1 to take necessary legal action against the respondents No. 2 and 3 including the criminal proceeding for

wilfully violating the provisions of Environmental Protection Act, 1986.

- a) Direct the respondent No. 1 to take necessary action against the persons in Ministry of Environment & forest, Government of India, responsible for breach of their duties in not taking necessary action against the illegal activities of Respondents No. 2 and 3.
- b) Hold and declare that the construction activity carried out by the Respondents No. 2 and 3 is illegal.
- c) Direct the Respondents No. 2 and 3 to restore the forest and agricultural land to its original conditions. “

3. From the document Annexure-2 filed by the Applicants i.e., the letter of Executive Engineer, L.S.R.R.C & B Division, Bolangir to MOEF, we find that Lower Suktel Irrigation Project is a major irrigation scheme proposed across the river Suktel at Magurbeda of Bolangir Sub-Division about 22 Kms away from Bolangir Town. It includes construction of 1410 M long and 30 M high earth dam with a spillway of 177 M long to be located across the river. There are two proposed main canals, right and left, on either side of the dam with 10.76 Kms and 23.84 kms length respectively. The gross storage capacity of the project is 32028 ha with a total cultivable command area of 31830 ha in 189 villages of Bolangir and Sonapur districts of Odisha. The project will supply 17.89 M Cum of drinking water to Bolangir town. It is the submission of the applicants that a total of 583 ha forest land, 3,847 hectares of private land and 786 hectares of Govt. land will be submerged along with 16 villages fully and 10 villages partly.

4. The MOEF accorded Environmental Clearance on 04.12.1998 after Public Hearing as per EIA 1994 subject to strict compliance of the following terms and conditions :-

“ i) Adequate free fuel arrangement should be made to the labour force engaged in the construction work on project costs.

ii) Public hearing of this project was held on 24.10.97, Recommendation made by the Public Hearing Committee should be followed in to.

iii) Year wise Catchment Area Treatment plan should be strictly implemented, as proposed by the Implementing agencies in the action plan i.e.

	<u>Area to be treated by Forest Department</u>	<u>Area to be treated by Soil Conservation Dept</u>
1 st Year	500 hec	858.12 hec
2 nd Year	500 hec	1011.64 hec
3 rd Year	500 hec	623.24 hec
4 th Year	500 hec	-
5 th Year	500 hec	-

Responsibility of complete CAT plan within the time frame mentioned above would lie with the project authority.

(iv) Restoration of construction area would be ensured by levelling filling up of burrow-pits, landscaping etc. The area should be properly afforested with suitable plantation.

(v) 4160 families (1222 ST, 575 SC & 2363 Others) in 26 villages will be displaced due to project Package offered by the project authority (Letter No. DP-SI-FC-39/96/5209/WF dated 19.05.98) for rehabilitation and resettlement of the project oustees should be strictly implemented as proposed in their above mentioned letter i.e. in brief –

- 5 acre of land to each of 1223 ST families
- 2 acre of land to each of 575 SC families
- 2 acre of land to each 2383 families
- 95 bore wells to irrigate the lands.
- 0.20 acre of homestead land per family for 4160 families.

- With all necessary public utility services in 48 model villages (colony) under the Tahasils of Bolangir and Sonapur districts.
- (vi) The health delivery system should be extended to the population in the project impact zone and also the labour force which is going to be engaged in the construction activities. The health delivery system should also ensure screening of the labour force. The scheme prepared by the Directorate of Health to handle the malaria problem should be followed.
- (vii) Financial provisions should be made the total budget of the project for implementation of suggested safeguard measures.
- (viii) A multi-disciplinary committee should be constituted with representatives from various disciplines to oversee effective implementation suggested safeguard measures.
- (ix) Six monthly monitoring reports should be submitted to the Ministry and its Regional office for review.”

The EC further stipulates that any change in the scope of the project will require a fresh approval.

5. From the EC granted by the MoEF, we find that it was accorded for the Project based on the proposal submitted by the Govt. of Odisha for construction of a 36 M high dam across Suktel river with a gross and live storage capacity of 320.28 mcm and 263.49 mcm respectively and, after implementation of the project, 23,500 ha of cultivable command area in 160 villages in the Bolangir district will be irrigated through two canals, right and left of 25.20 Kms and 16.5 Kms respectively. Apart from that, the project also envisaged

drinking water supply of 17.89 M cum to Bolangir Town from the right main canal. The MoEF also accorded approval for diversion of 637.68 hec of forest land for construction of the Project on 10.01.2005 under Section 2 of Forest (Conservation) Act, 1980 subject to fulfilment of certain conditions.

6. Although there is no specific mention about the validity of the EC accorded to the project proponent in the approval letter dt. 4.12.1998, a perusal of the EIA Notification 1994 makes it abundantly clear that the EC clearance granted would be valid for a period of five years for commencement of the construction or operation of the project (vide 2.III(c) of EIA 1994). Therefore, the limited issue before us for adjudication is the validity of Environmental Clearance beyond 4.12.2003 and, the relief sought for by the applicants in prayers 1,2 & 3 would be consequential in case the validity has expired.

7. The Govt. respondents No. 2 and 3 have vehemently opposed the application emphasizing as a preliminary objection that since the construction of the project in question was started since 1999-2000 after obtaining Environmental Clearance and the application was filed only on 21.05.2015, it was barred by the law of limitation in terms of

Sec. 14(3) of National Green Tribunal Act, 2010. We are, however not inclined to accept this argument as the term “cause of action first arose” occurring in Section 14 (3) would require consideration in the context of the facts and circumstances of a case and does not prescribe a straight jacket formula. It is trite that limitation is a bundle of facts. In the present case, if it is a matter of continuing wrong as alleged by the applicant, cause of action would arise every day of the wrong being committed in the event we find that the validity of the EC had indeed expired in the year 2003.

8. Having held so, we may now proceed to consider on the primary contention raised in the application that the Environment clearance granted on 3rd December, 2003 which was for a period of five years in terms of the EIA Notification, 1994, having lapsed, commencement of the construction works of the project on 8th April, 2013, was illegal being in conflict with the object of EIA Notification, 1994. In support of this contention, the applicant has relied solely upon letter dated 27/05/2013 (Annexure A-2 to the application) written by Executive Engineer, LSRRC & B Division, Bolangir submitting to the MoEF half yearly compliance reports as required under the EIA Notification, 1994 particularly, the

portion which reads “After facing lot of problems the construction work of the project is started during April, 2013.”

9. Had the matter rested there, we may have accepted the applicant’s contention. However, by filing an additional affidavit , the state Respondents have averred that the aforesaid statement was made due to oversight and was an inadvertent mistake which had been clarified by the Executive Engineer in his letter to the MoEF dated 07.08.2015 filed as Annexure-E/2. For convenience and for better appreciation we may reproduce below the relevant portion of the letter:-

“ Sir,

In continuation to this office Lr.No.976/WE dt.27.07.2013, it is to clarify that the SI-3 (i) of Annexure-I may be substituted as follows :

“The preliminary works such as infrastructure development like construction of staff quarters, office buildings, land acquisition in the submersed areas of the dam based villages, construction of infrastructures & Periphery development of rehabilitation and resettlement colonies and details survey & investigation for construction of major works such as Dam, Spillway & Canal have been started since 1999. However, the execution of Dam & Spillway work have been taken up from April 2013 & free fuel (fire wood) are being provided to the labourers engaged in the project”.

This is for your kind information & necessary action ”.

10. It would thus appear from the above and is also the contention of the State Respondents that the construction

activities of the project had in fact commenced during 1999-2000. It is their stated case that while the survey of alignment and providing infrastructural facilities to the staff started in the year 1999, construction of the site office, rest shed, staff quarters, approach road, trial borings were commenced in the year 2002 and that the constructions undertaken during April 2013 were in continuation of the works which had already started since 1999-2000. In the Annexure-A/2 of their affidavit, the Govt. respondents have highlighted the various works executed under lower Suktel irrigation project from 1998-1999 to 2003-2004 and, we find that the works at Serial Nos. 1,2,3,6,12,13,19,20 and 21 executed during 2002-2003, actually relate to the construction activities in the project site.

11. The Respondent No.1 the MoEF in their affidavit has also confirmed this in stating that the record submitted by the project proponent to Regional office, MOEF & CC, Bhubaneswar shows that the project work had been initiated during 1999 for which requirement of fresh EC/revalidation of EC was not required.

12. Apart from the above the change in the scope of a project has also been alleged by the applicant as the height

of the dam was lowered to 30 mt. which involved acquisition of two more villages. Rebutting this, it is stated, on behalf of the state Respondents that there is no change in the scope of the project which, is to irrigate 23,500 hectares of cultivable land and supply of 17.89 M.Cum of drinking water to Bolangir Town. It is further stated that reduction of the height of the dam did not change the scope of the project and that Full Reservoir Level, Top Bank Level, Reservoir capacity and the area of the submergence remains unchanged.

13. Mr. Sankar Prasad Pani, Ld. Advocate stressed that if the EIA report based on which the EC was granted is called for, the impact of the project and activities appraised by the Expert Appraisal Committee could be understood.

14. However, in view of the explanation given on behalf of the Respondents, we are of the view that there is no necessity to call for such report and the prayer is accordingly rejected by us. That apart the applicants, in the garb of a composite rejoinder, sought to expand the scope of the application by alleging violation of some other EC conditions. However, as those are beyond the scope of the Original

Application, we have deemed it appropriate not to go into those.

15. In view of the fact, that the work in the project had commenced in the year 1999-2000, by undertaking peripheral construction activities of the project which was before the year 2003 and the categorical submission of MoEF that EC granted to the project proponent in 1998 is valid and no fresh EC or revalidation of the EC is required, we are of the considered opinion that the application is not well founded and is devoid of merit.

In the result, the application is dismissed.

No order as to costs.

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Mr. Justice S.P.Wangdi , JM

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Prof.(Dr.) P.C. Mishra , EM

**Kolkata,
Dated 1st June, 2016**