

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

.....

ORIGINAL APPLICATION No. 25/2014/EZ

IN THE MATTER OF:

1. Rohit Choudhury,
S/o Shri D.P. Agarwal
P.O- Lokhujan, Village- Garmur,
Bokakhat-78561, Dist-Golaghat,
Assam

.....Applicant

V e r s u s

1. Union of India,
Through Secretary,
Ministry of Environment, Forest and Climate Change,
Indira Paryavaran Bhavan,
Jor Bagh Road
New Delhi- 110003
2. State of Assam,
Through Chief Secretary,
Assam Sachivalaya Complex,
Dispur, Guwahati, Assam-781006.
3. National Tiger Conservancy Authority,
Through Member Secretary,
First Floor, East Tower, NBCC Place,
Bhishma Pitamah Marg,
New Delhi 110003.
4. Department of Forest, Government of Assam
Through Principal Chief Conservator of Forest (WL),
Basistha, Guwahati-781001.
5. Department of Water Resources, Government of Assam
Through Principal Secretary,

Assam Sachivalaya Complex,
Dishpur, Guwahati- 781006.

6. Bodoland Territorial Council,
Through Principal Secretary,
BTC, Secretariat,
BODOFA Nwgwr, Kokrajhar- 783370,
Assam.

.....Respondents

COUNSEL FOR APPLICANT:

Mr. Sankar Prasad Pani, Advocate, Mr. Atindriya Chakraborty, Advocate,
Ms. Preeta Dhar, Advocate, Mr. Rahul Ganguly, Advocate

COUNSEL FOR RESPONDENTS:

Mr. Gora Chand Roy Choudhury, Advocate, Mr. Somenath Bose, Advocate,
Respondent No.1

Mr. Debajit Kr. Das, Advocate, Mr. Nirmalya Dhara, Advocate, Mr. Pinaki
Ranjan Chakraborty, Advocate, Mr. Gautam Chaudhury, Sr. Advocate, Mr.
Asit Hazra, Advocate, Mr. Neelu Joshi, Advocate, Respondent No. 2

Mr. S.K. Ghosh, Advocate, Respondent No. 3

Mr. Debajit Kr. Das, Advocate, Mr. Biswajit Goswami, Advocate,
Respondent No. 5

Mr. Anil Sharma, Advocate, Mr. Sukanta Chakraborty, Advocate, Mr.
Sakadba Roy, Advocate, Mr. Anindya Halder, Advocate, Respondent No. 6

JUDGMENT

PRESENT:

Hon'ble Mr. Justice Pratap Kumar Ray, Judicial Member

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

Reserved On 17.02.2016

Pronounced On 07.03.2016

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

JUSTICE PRATAP KUMAR RAY (JUDICIAL MEMBER)

1. The instant application was filed under Section 18 (1) read with Section 14 and 15 of the National Green Tribunal Act 2010 (in short NGT Act) by Shri Rohit Choudhury, who claims to be a social activist involved in Forest & Wildlife Conservation, of the village Garmur, PO. Lukhujan, Bokakhat, Dist: Golaghat of Assam. In the application the applicant challenged the work undertaken by the Government of Assam for “ Training of river Beki on L/B and activation of river Manas and Hakua at Mathanguri” (in short project) within the Manas National Park (in short Park), an UNESCO natural heritage site, in violation of

the provisions of the Section 2 of the Forest (Conservation) Act, 1980 (in short FC Act) as well the direction of the Hon'ble Supreme Court dated 14.02.2000 in the I.A. No. 548 in CWP No. 202/1995.

2. It is also alleged that the Department of Water Resources, Government of Assam, the Respondent No.5, commenced the work relating to the project which is within the limit of Manas National Park & Manas Tiger Reserve in the State without obtaining Forest Clearance as required under FC Act and Forest (Conservation) Rules 2003 (in short FC Rules) as also no permission has been obtained from the National Board for Wildlife (in short NBWL) which are mandatorily required before the commencement of the Project. In his averment the applicant has presented the ecological importance of the Park and the Manas Wildlife Sanctuary (in short Sanctuary) with six national and international recognitions such as World Heritage Site, National Park Manas Tiger Reserve (core), Manas Biosphere Reserve, Chirang-Ripu Elephant Reserve and an

important bird area. He would further submit that the Park and Sanctuary harbours by far the greatest number of India's Schedule I mammals of any protected area in the country and the Sanctuary provides habitat for 22 of India's more threatened species of animals like elephant, tiger, one-horned Rhino, Clouded Leopold, Sloth Bear etc. and some endemic species like Pygmy Hog, Hispid hare, Golden langur. Even its wetlands provide habitat for around 310 birds species including the endangered Bengal Florican. Being a critical site with respect to the large biodiversity, the Applicant sought intervention of the Tribunal by way of directing the Department of Water Resources, the Respondent No. 5 to stop all activities of the Project and restore the area to its original position.

3. The Respondent No. 5, in their affidavit in opposition, while admitting the commencement of the Project, would submit that the river Beki takes the entire load of water rush during the monsoon season due to the collection of debris at

the mouth of the Manas and Hakua river resulting in drying up of many water holes without being replenished for the winter season along the stretch of Manas and Hakua rivers in the Manas National Park while the river Beki has witnessed unprecedented floods for which there is a threat to wildlife as well as human beings, which has prompted the Government of Assam to undertake the Project. He would further state that the Park is presently undergoing an artificial change due to the man-made disaster starting in the year 2004 when Bhutan released water from the Kurichu Dam and completion of the Project will enable the Park to regain its natural and original status. On the issue of mandatory prior forest clearance under FC Act the answering respondent while denying the requirement of such clearance, would further submit that the completion of the Project will directly benefit the Park as the Manas and Hakua rivers will be activated which will reduce the flow and water current of Beki river resulting in reduction/stoppage of Land erosion and trees felling.

4. In their averments, the Respondent No. 6 would further state that the Project is ancillary to conservation of forest and wildlife having the effect of providing relief to downstream settlements which doesn't require approval of the Central Government. The Project has been examined by the Central Water Commission and recommended for acceptance by the Planning Commission (Water Resource Division) as reflected in the letters dated 17.04.2011 & 25.07.2011 and administrative approval by the Government of Assam in Memo No. WR(C) 139/2011/9-A dated 17.08.2011. With regard to interpretation of Apex Court's order dated 14.02.2000 passed in I.A. No. 548 in W.P (C) No. 202 of 1995, the applicant would state that such interpretation is totally misconceived and misconstrued.
5. While the O.A. was being heard, the Applicant filed one M.A. No.17/2014/EZ with a prayer for an order of stay on all ongoing work of the Project as the project proponent was using large machinery like JCBs & Hitachis etc. within the ecologically sensitive area thereby posing a direct threat to the wildlife as

well as biodiversity of the area and any diversion of the river will be detrimental to the world heritage site. Giving adequate opportunity to the opposite parties and after hearing the arguments of the applicant as well as Respondents No. 1, 5 & 6, we allowed the MA and passed an order of injunction on 09.01.2015, restraining the concerned respondents including Respondent No. 5, the project proponent not to proceed with the work of the Project. The order dated 9th January 2015 reads as such:

“M.A. No. 17/2014/EZ

Heard the learned advocate appearing for the applicant and the learned advocates appearing for the respondent nos. 1, 5 and 6, MoEF, Department of Water Resources, Govt of Assam & Bodoland Territorial Council respectively.

This is a Miscellaneous Application praying for an order granting stay on all activities of the project **“Training of river Beki on L/B and activation of river Manas and Hakua at Mathanguri”** situated within the Manas National Park and Manas Tiger Reserve. The land in question is coming under the purview of Forest(Conservation) Act 1980. Section 2 sub section (ii) and (iv) of FC Act 1980 is reproduced as under:

“ 2. Restriction on the dereservation of forests or use of forest land for non forest purpose-

Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing,-

Xxx xxx xxx xxx xxx

(ii) that any forest land or any portion thereof may be used for any non-forest purpose;

xxxx xxxx xxxxx xxxxx xxxx

(iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation.”

It is further provided in the said statute that any other purpose other than reafforestation is permissible but does not include any work relating or ancillary to conservation, development and management of forests and wild life, namely, the establishment of check post, fire lines, wireless communication and construction of fencing, bridges and culverts, waterholes etc.

It is alleged in the original application that the respondent no. 5 has started execution of work of **“Training of river Beki on L/B and activation of river Manas and Hakua at Mathanguri.”** This project was referred for necessary approval from the Planning Commission and Water Commission. It appears from the Annexure A-11 at page -37 of the original application relating to detail estimate projected by the respondent no. 5 under item no. 4 that the work cost includes estimate for cutting and clearing of light jungles and trees up to 50cm girth including uprooting roots and stumps and removing them from the site of work.

From the Annexure- A9 at page 34 of original application, it appears that Wild Life Division under Ministry of Environment and Forest had informed the applicant of this application and M.A. that no proposal was received by the Wild Life Division of the Ministry from Govt. of Assam for diversion work of Manas river at Mathanguri, Manas National Park and Tiger Reserve in Assam and that no site inspection was done by the Ministry to that effect and no correspondence/letter was received in the Wildlife Division of the Ministry from Govt. of Assam. Letter reads as follows:-

**“ To Shri. Rohit Choudhury
N-71, Lower Ground Floor
Greater Kailash Part-I
New Delhi - 48.**

Sub: Online application under the provisions of the RTI Act 2005 – reg.

Sir,

Kindly refer to your online application Reg. No. MOEAF/R/2014/60370 dated 13.05.2014 received by the undersigned on 22.05.2014 seeking information under RTI Act, 2005. In this context, the following are mentioned:

(1) No proposal has been received in the Wildlife Division of the Ministry from Government of Assam for diversion work of Manas River at Mathanguri, Manas National Park & Tiger Reserve in Assam.

(2) No any site inspection has been done by the officials of the Wildlife Division of the Ministry in this regards.

(3) No any correspondence/letter etc. have been received in the Wildlife Division of the Ministry from Government of Assam in this regard.

In case you are not satisfied with this reply, you may file an appeal before the First Appellate Authority, Dr. S. K. Khanduri, Inspector General of Forests (WL), Ministry of Environment and Forests, Paryavaran Bhawan, CGO Complex, Lodhi Road, New Delhi- 110003 withinb a period of one month.

Yours faithfully,

Sd/-

(Dr. Vivek Saxena)

Deputy Inspector General(WL)”

In the reply as filed by the respondent no. 5 who had undertaken the work of diversion by cutting the trees and plants in the forest land has not denied the contention made in this letter annexed in the original application. In the reply there is no whisper that the approval of the central government was taken in writing from the competent authority being the delegatee of the central government in terms of the statutory provision of section 2 of the Forest (Conservation) Act 1980. Further there is no whisper in the reply that in terms of the judgement passed by Supreme Court in the case of I.A. No. 548 in CWP No. 202/1995, permission/approval of the National Board of Wildlife was taken. In Section 2 of the said ForestAct 1980 regarding conservation of forest, since the provision starts

with a non-obstante clause, it is mandatory upon the respondent no. 4 to proceed with the work as already started thereof on obtaining the prior approval of the Central Government and the National Board of Wildlife. It is significant that under section 2 the word 'approval' is prefixed with the word 'prior'. Thus any post facto approval is not permissible and no work would proceed without having any approval prior to the proceeding with the job. The distinction of two words 'prior approval' and 'post approval' has been discussed in the following judgements:-

(i) 2010(3) SCC 616 in the case of **Ashok Kumar Das and Ors. Vs. University of Burdwan and Ors.**, wherein two judgments of the Apex Court as delivered earlier were relied upon viz. **U.P. Avas Evam Vikas Parishad & Anr. Vs. Friends Co-operative Housing Society Limited & Anr.**, reported in 1995 (Supp) 3 SCC 456 and **High Court of Judicature for Rajasthan Vs. P.P. Singh** reported in 2003(4)SCC 239 and in the case of **Ashok Kumar Das (supra)** in paragraph 12 and 13 the court defined difference of the meaning of the words 'approval', 'prior approval', and 'permission' by holding that word 'approval' is in contradiction to 'prior approval' and 'permission. It is further held that 'approval' can be post facto and action taken before 'approval' stands invalidated only if 'ex-post facto' approval is not granted by competent authority.

(ii) In **U.P. Avas Vikas (supra)**, the Apex Court relied upon the case of **LIC Vs. Escorts Ltd.**, 1986 (1) SCC 264 where distinction of the meaning of the word viz. "permission", 'special permission' with previous 'approval' or 'prior approval' were discussed in paragraph 63. The relevant portion reads as under:-

"63. We have already extracted Section 29(1) and we notice that the expression used is :general or special permission of the Reserve Bank of India" and that the expression is not qualified by the word "previous" or "prior". While we are conscious that the word "prior" or "previous may be implied if the contextual situation or the object and design of the legislation demands it, we find no such

compelling circumstances justifying reading any such implication into Section 29(1). On the other hand, the indications are all to the contrary. We find, on a perusal of the several, different sections of the very Act, that the Parliament has not been unmindful of the need to clearly express its intention by using the expression “previous permission” whenever it was thought that “previous permission” was necessary. In Sections 27(1) and 30, we find that the expression “permission” is qualified by the word ‘previous’ and in Sections 8(1), 8(2) and 31, the expression ‘general or special permission’ is qualified by the word “previous”, whereas in Sections 13(2), 19(1), 19(4), 20, 21(3), 24, 25, 28(1) and 29, the expressions ‘permission’ and ‘general or special permission’ remain unqualified. The distinction made by Parliament between permission simpliciter and previous permission in the several provisions of the same Act cannot be ignored or strained to be explained away by us. That is not the way to interpret statutes. The proper way is to give due weight to the use as well as the omission to use the qualifying words in different provisions of the Act. The significance of the use of the qualifying word in one provision and its non-use in another provision may not be disregarded. In our view, the Parliament deliberately avoided the qualifying word ‘previous’ in Section 29(1) so as to invest the Reserve Bank of India with a certain degree of elasticity in the matter of granting permission to non-resident companies to purchase shares in Indian companies. The object of the Foreign Exchange Regulation Act, as already explained by us, undoubtedly, is to earn, conserve, regulate and store foreign exchange. The entire scheme and design of the Act is directed towards that end. Originally the Foreign Exchange Regulation Act, 1947 was enacted as a temporary measure, but it was placed permanently on the

Statute Book by the Amendment Act of 1957. The Statement of Objects and Reasons of the 1957 Amendment Act expressly stated, "India still continues to be short of foreign exchange and it is necessary to ensure that our foreign exchange resources are conserved in the national interest". In 1973, the old Act was repealed and replaced by the Foreign Exchange Regulation Act, 1973, the long title of which reads: "An Act to consolidate and amend the law regulating certain payments, dealings in foreign exchange and securities, transactions indirectly affecting foreign exchange and the import and export of currency and bullion, for the conservation of foreign exchange resources of the country and the proper utilization thereof in the interest of the economic development of the country." We have already referred to Section 76 which emphasises that every permission or licence granted by the Central Government or the Reserve Bank of India should be animated by a desire to conserve the foreign exchange resources of the country. The Foreign Exchange Regulation Act is, therefore, clearly a statute enacted in the national economic interest. When construing statutes enacted in the national interest, we have necessarily to take the broad factual situations contemplated by the Act and interpret its provisions so as to advance and not to thwart the particular national interest whose advancement is proposed by the legislation. Traditional norms of statutory interpretation must yield to broader notions of the national interest. If the legislation is viewed and construed from that perspective, as indeed it is imperative that we do, we find no difficulty in interpreting 'permission' to mean 'permission', previous or subsequent, and we find no justification whatsoever for limiting the expression 'permission' to 'previous permission' only. In our view, what is necessary is that the permission of the Reserve Bank of India should be

obtained at some stage for the purchase of shares by non-resident companies.”

(iii) In **P.P. Singh (supra)** in paragraph 40 the issue was discussed as follows:-

“40. When an approval is required, an action holds good. Only if it is disapproved it loses its force. Only when a permission is required, the decision does not become effective till permission is obtained. (See U.P. Avas Evam Vikas Parishad Vs. Friends Coop. Housing Society Ltd). In the instant case both the aforementioned requirements have been fulfilled.”

(iv) The meaning of the word “with the approval”, “prior approval”, implicit ‘approval’ and implied ‘approval’ were discussed with reference to the provision stipulated in Mines and Minerals (Development and Regulation) Act, 1957 in the case of **Monnet Ispat and Energy Limited Vs. Union of India and Ors.** reported in 2012(11) SCC 1.

In present case there is no prior approval by the Central Government to proceed with the work of the project, as such, question of post -facto approval is not at all an issue.

Having regard to statutory provision as couched under section 2, more particularly having regard to the words “notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government” it becomes a mandatory provision which requires to be obeyed and in instant case, admittedly respondent no. 5 has not followed it. Hence the job as has been undertaken by them is illegal as per section 2 of the aforesaid act.

Having regard to such, we allow this M.A. passing an order of injunction restraining the concerned respondents including respondent no. 5 not to proceed with the work of “Training of river Beki on L/B and activation of river Manas and Hakua at Mathanguri” situated within the Manas National Park and Manas Tiger Reserve in any manner whatsoever. Chief Secretary of Assam is directed to take steps in the matter and to ask all its subordinate officers to make

necessary compliance of the order, and all endeavours for compliance, submit the report accordingly on that issue on the next day.

M.A. No. 17/2014/EZ is thus allowed.”

6. In compliance to our order granting interim stay the Respondent No. 2, 5 & 6 submitted on affidavit that all work relating to the project has been totally stopped in obedience to the order of the Tribunal. In the affidavit filed by the Chief Secretary, Government of Assam, the Respondent No. 2, while denying the allegations of the applicant and supporting the averments made by Respondent No. 5, has also raised the issue of maintainability as the applicant does not fall in the category of persons etc. authorised to maintain the petition under Section 16 of the NGT Act and same is time-barred as it is not filed within 6 months of the cause of action first arose. We simply reject their contention in view of the fact that the instant petition is not an appeal u/s 16 of NGT Act but under Section 18(1) read with Section 14 & 15 of NGT Act and the applicant belongs to Assam and is a social activist involved in the conservation of forest and wildlife. Reliance may be placed

upon judgements pronounced by the Apex Court as well as by the Principal Bench of NGT, vide *Mumbai Kamgar Sabha vs. Abulbhai Faizullabhai* in AIR 1976 SC 1455, *Francis Coralier vs. Delhi* in AIR 1981 SC 746, *Intellectual Forum, Tirupati vs. State of AP* in 2004, 35 SCC 549 and *Vimal Bhai vs MoEF*, order by Principal Bench, NGT dated 14.12.2011 wherein the terms 'Locus Standi' & 'aggrieved' have been liberally interpreted in environmental jurisprudence. Regarding the other issue of 'time-barred', the activity of the Project has a continuous cause of action in the absence of statutory clearance. Therefore, we are not inclined to accept their points on maintainability.

7. The MoEF&CC, the Respondent No. 1 who failed to file their reply affidavit despite several reminders finally filed their affidavit-in-opposition after imposition of cost. The MoEF&CC, while discussing the provision of FC Act would submit that they have not received any proposal for diversion of forest land from Government of Assam and recommendation of National Board of Wildlife is essential under Wildlife (Protection) Act

1972 and the NBWL has not received any proposal from the State of Assam nor any site inspection has been conducted. Another affidavit jointly filed by Respondent No. 1 and Respondent No. 3, the National Tiger Conservation Authority categorically have stated that the Project requires the following approval.

- “
- a. Section 29 of Wildlife (Protection) Act, 1972, from the Chief Wildlife Warden
 - b. Section 38 O 1(b) of Wildlife (Protection) Act, 1972 from the National Tiger Conservation Authority.
 - c. Section 2 of Forest (Conservation) Act, 1980.
 - d. Approval of the Apex Court vis-a-vis its directives dated 25.11.2005 in I.A. 1220 (Interim Report of the CEC in I.A. No. 548) and I.A. No. 994.”

8. In view of the discussion made in the preceding paragraphs we are of the view that obtaining prior approval from the Union Government under FC Act and Wildlife Protection Act 1972 is a mandatory requirement and the Government of Assam has violated the environmental norms by undertaking the Project in the absence of prior approval. This is definitely a bad practice and if the Government departments will disregard the laws framed by the parliament,

then it may be a difficult task to check the violation by private parties. Although we were considering to impose penalty for such violation by the Government of Assam, it appears prima facie that the Project is intended for a good cause for which we restrained ourselves from imposing penalty.

9. Having regard to aforesaid observation and findings, thus we allow the application and confirming the interim order of stay direct the party respondents not to undertake any work relating to the Project till the requisite prior approval is granted by the statutory agencies. Liberty is granted to the Applicant to approach the Tribunal in accordance with law if he feels aggrieved against any approval granted to the project proponent on the issue.

In view of action of State of Assam on breach of environmental law and considering the fact that Applicant, a public spirited person has approached the tribunal for relief; a litigation cost should be imposed. Hence we quantify it to the

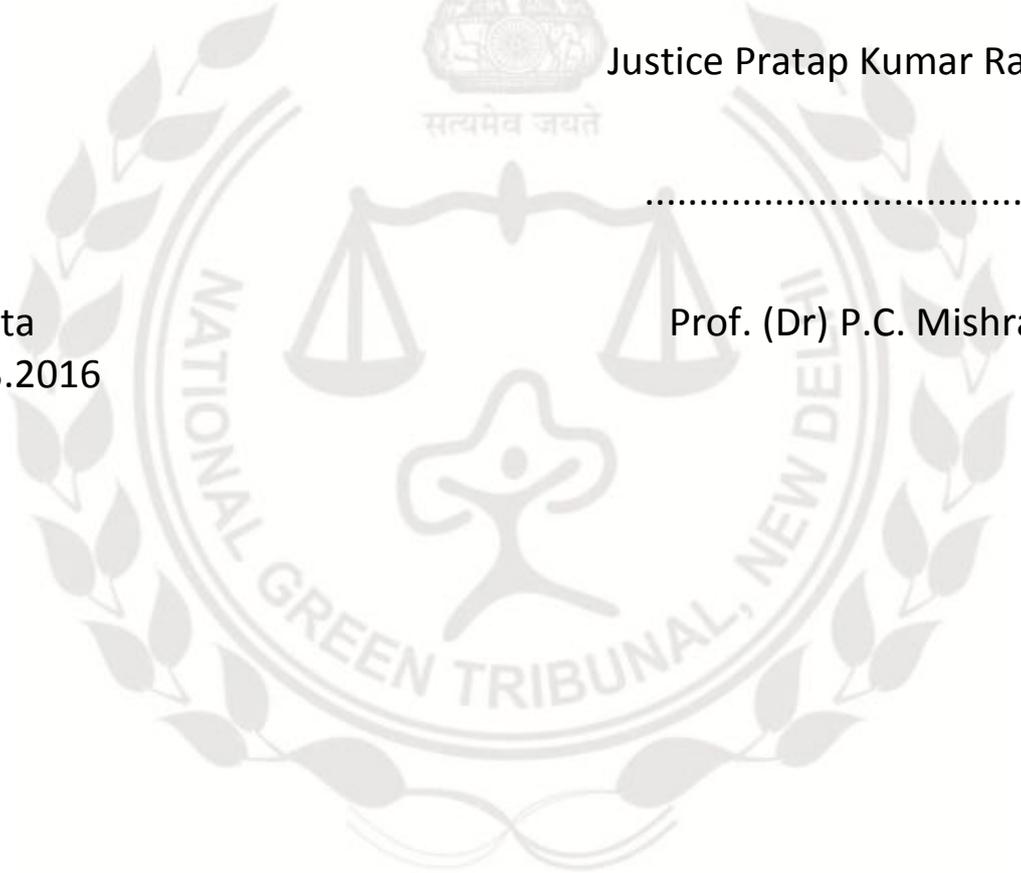
extent of Rs. 50,000/- to be paid by State of Assam to the Applicant by A/c payee cheque within 8 weeks.



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Justice Pratap Kumar Ray, JM

Kolkata
07.03.2016

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



NGT