

**BEFORE THE NATIONAL GREEN TRIBUNAL  
(WESTERN ZONE) BENCH, PUNE  
APPEAL No. 170/2013(WZ)**

**CORAM:**

**Hon'ble Mr. Justice V.R. Kingaonkar  
(Judicial Member)**

**Hon'ble Dr. Ajay.A.Deshpande  
(Expert Member)**

**B E T W E E N:**

Mr. Nicholas H. Almeida,  
Almeida House,  
Church Pakhadi Road No.2,  
Sahar Village, Vile Parle (East)  
Mumbai 400 099

**.....Appellant**

**A N D**

1. M/s. Lenzing Modi Fibres India Pvt. Ltd.,  
2<sup>nd</sup> Floor, Bhulabhai Institute,  
89, Bhulabhai Desai Road,  
Mumbai-400 026.
2. The Secretary,  
Ministry of Environment & Forests,  
Paryavaran Bhawan,  
New Delhi – 110 003
3. Chairman,  
Maharashtra Pollution Control Board,  
Kalpataru Point, 3<sup>rd</sup> and 4<sup>th</sup> floor,  
Op. CineMax Theatre, Sion (E)  
Mumbai 400 022

4. The Chairman,  
National Board For Wildlife,  
Wildlife Division, ParyavaranBhavan,  
C.G.O. Complex, Lodi Road,  
New Delhi 110 003

5 Maharashtra Industrial Development  
Corporation, Its office at  
UdyogSarathi, MIDC,  
Mahakali Caves Road, Andheri (E)  
Mumbai-400 093

6 Government of Maharashtra,  
Mantralaya,  
Madam Cama Road,  
Mumbai 400 032

.....**Respondents**

**Counsel for Applicants:**

**Mr.A.P. Akut.**

**Counsel for Respondents:**

**Mr.Amar Gupta, Adv for Respondent No.1**

**Mr.MayankMisra, Adv.**

**Mr. Krishna D.Ratnaparkhi, Adv. for Respondent No.2 & 4.**

**Mr.D.M.Gupte Advocate for Respondent No.3 & 6,**

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**DATE : 28<sup>th</sup> November, 2013**

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**J U D G M E N T**

1 The present application has been filed by the Applicant under section 18(1) read with section 14, 15, 16 and 17 of National Green Tribunal Act 2010. The applicant has raised certain issues related to Environment Clearance and consent to Establish granted to M/s. Lenzing Modi Fibre India Ltd.

(Respondent No.1), who has proposed a project for manufacturing of Viscose Fibers (80,000 TPA) with Captive Power Plant (16 MW) at plot No.M-1, M-2 of Maharashtra Industrial Development Corporation (MIDC) Additional Patalganga Industrial Area, village Sarsai, Tq. Panvel, District Raigad, Maharashtra.

2 The applicant submits that the Government of Maharashtra (Respondent No.6) has issued a Government Resolution in July 2000 which was further revised by a Government Resolution dated 13<sup>th</sup> July 2009 wherein the State Government has laid down a Policy (RRZ Policy) for location of Industries, in certain river catchments, specifying a particular distance to be maintained from river, based on category of the industry.

3 The applicant submits that the Maharashtra Pollution Control Board (MPCB) (Respondent No.3) has granted Consent to Establish the said industry vide letter dated 24<sup>th</sup> July 2013 under the provisions of the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 alongwith authorization under the Hazardous Waste (Management Handling and Trans Boundry Movement) Rules 2008, in non-compliance of the said Government Resolution. The applicant further states that Maharashtra Industrial Development (MIDC) (Respondent No.5), has also allotted the Plot No.M-1 and M-2, MIDC, Additional

Patalganga to the said industry i.e. Respondent No.1 in violation of the above said Government Resolution.

4 The Applicant further submits that the Ministry of Environment and Forest have accorded Environment Clearance to this project of the Respondent No.1 vide letter dated 30<sup>th</sup> January 2013 subject to certain specific conditions, which are stipulated below :

*i) The project proponent shall obtain prior CRZ clearance for disposal of treated effluent into saline water Zone of Patalganga River/Marine outfall.*

*ii) The project proponent shall follow guidelines and policies of the respective State Government w.r.t. the river regulation zone for conservation of river.*

*iii) Environmental clearance is subject to their obtaining prior clearance from the Standing Committee of the National Board for Wildlife as applicable regarding Kamala bird sanctuary. Grant of environmental clearance does not necessarily implies that wildlife clearance shall be granted to the project and that their proposals for wildlife clearance will be considered by the respective authorities on their merits and decision taken. No work at the site shall be started without prior permission. The investment made in the project, if any, based on environmental clearance so granted, in anticipation of the clearance from wildlife angle shall be entirely at the cost and risk of the project proponent and Ministry of Environment & Forests shall not be responsible in this regard in any manner and all the recommendations shall be implemented in a time bound manner.*

5 The applicant made following prayers :-

*A. Hon'ble Tribunal be pleased to restrain Respondent No.1 from carrying out any activities at Plot No.M-1 & M-2 MIDC, Additional Patlganga Industrial Area, Village Sarai, Tehsil Panvel, District Raigad, Maharashtra, in breach of the various provisions of the Environment (Protection) Act, 1986 and the guidelines dated 9<sup>th</sup> February 2011 issued by MoEF and consequently pass appropriate orders to*

*prevent further deterioration of the environment of the areas complained off.*

*B. Hon'ble Tribunal be pleased direct Maharashtra Industrial Development Corporation to withdraw the allotment of the industrial plot by them to Respondent No.1.*

*C. Hon'ble Tribunal be pleased to direct Maharashtra Pollution Control Board to withdraw the Consent to Establish granted to Respondent No.1 and submit all the action taken reports which they were supposed to submit to Central Pollution Control Board within one month of every quarter.*

*D. That the EC granted and if any permission to start site preparation work was granted illegally may be summarily withdrawn.*

*E. The matter may kindly be got investigated by a third party as to how the permission to start site preparation work was granted prior to grant EC and without prior clearance under Wildlife Protection Act.*

*F. Both the project proponents and the MoEF should be proceeded against as per the law.*

*G. For interim relief in terms of prayer(a) and (b).*

6 The Respondent No.9 in response, raised objection regarding maintainability of the Application on the ground that it is barred by limitation. The Respondent No.9 submits thus :

Firstly, the Applicant on his own showing has been complaining about the project to the authorities since March, 2012 and therefore, the period goes beyond the stipulated six months as prescribed under Section 14 of the NGT Act 2010. The EC has been granted on 30<sup>th</sup> January 2013, and the project proponent has also given news paper advertisement immediately, the present application filed much beyond 30 days and as such is barred under Section 16 of the National Green Tribunal Act

2010. The Respondent No.9 further submits that the Consent to Establish granted by the State Pollution Control Board (Respondent No.3) cannot be directly challenged under Section 17 of the NGT Act, 2010 and the Appellant should have exercised more caution by approaching the designated Appellate Authority constituted under the respective Acts, before coming to the Tribunal.

7 The Respondent No.2 and Respondent No.3 have submitted their affidavits, justifying their decisions of granting EC and consent to operate (C to E) respectively. It is submitted by MoEF that the application of the industry has been appraised with due care and therefore the specific conditions have been imposed. The MPCB also submitted that the Board has considered various regulations, including RRZ, before grant of the consent/EC. Respondent No.5 i.e. MIDC also submitted that the original land allotment is prior to year 2000 and hence objected maintainability of the application on ground of limitation, submitting that the said industrial plot is not affected by the said RRZ notification of Govt. of Maharashtra, nor by the MoEF Notification of 2006.

8 Considering the above pleadings and the documents on record, the Tribunal is of the opinion that following points need to be addressed for disposal of this application :

- a) Whether the application is barred by Limitation ?
- b) Whether there is any violation of the EC granted to the project by Project proponent by starting construction ?

- c) Whether such conditional EC is valid under the Law ?

These points have been answered in following

Paragraphs :

9 We have heard learned Counsel. The Counsel for the Applicant strongly contends that the Environment Clearance is not a valid clearance as no CRZ clearance for the disposal of treated effluent into saline water zone of Patalganga River is obtained by Respondent No.1 which is a pre-requisite condition for the grant of Environment Clearance. He further contends that the Environmental Clearance in question is subject to obtaining prior clearance from the National Board of Wildlife (NBWL). The Counsel for the Applicant, therefore, argues that such conditional Environmental Clearance is not legal and valid. The Applicant further claims that the Respondent No.1, Industry has started carrying out project activities at the site though the Environmental Clearance clearly stipulates that, without obtaining CRZ clearance and the clearance from the National Board for Wildlife, no project activities shall be carried out. He argued that the EC is bad in law. The Applicant raised serious objections regarding the ongoing project activities and associated damages caused to the environment. The Applicant also raised issue of proximity between the proposed industries, industrial area and Karnala Birds Sanctuary. Looking to nature of the dispute, the Tribunal had formed a Committee vide its Order dated September 13, 2013 consisting of :-

- i) Collector Raigad or his nominee of rank not below the Additional Collector/Dy. Collector;

- ii) Chief Conservator of Forest or his nominee of rank not below D.F.O;
- iii) Head of Department of Civil Engineering I.I.T. Mumbai or his nominee having due experience and knowledge about development issues; the project activities vide Order dated September 13, 2013 to address the issues of allegedly construction activities at the project site.

10 The committee was directed to give report on following aspects :-

1 *The distance between the outer limits of Karnala Bird Sanctuary Lonawala and the site of the project*

2 *The outer limit and length of Karnala Bird Sanctuary, Lonawala site from its commencement from Raigad*

3 *The Committee may also examine the issue about the present position of the land where proposed project is to be made functional.*

4 *The Committee shall also record the distance between the Patalganga river and the proposed project.*

11 The committee filed its report vide letter dated 23<sup>rd</sup> October 2013 wherein the committee has observed as follows :

1. *The distance between outer limit of Karnala Birds Sanctuary and the site of the Project is found to be located in within the buffer zone of 875 m. to 1000 m.*

2. *The outer limit and the length of Karnala Birds Sanctuary on Lonawala side from its commencement from Raigad side are as follows :*

*For transect AA' (Fig.12): 5358.16 m.*

*For transect AB' (Fig.12): 6601.09 m.*

3. *The nearest distance between the boundary line of the project site facing the river and the river Patalganga is calculated as 407.02 m. The proposed project site is located in the buffer zone of 405 m. to 625 m. from the left bank (while viewing Downstream) of the Patalganga river as shown in Fig.13a.*

4. *Based on the Figs.14-19, it can be said that till April 2011, there is no evidence of any construction/land clearing activities. The land appears to have undergone a*



*change from May 2012 onwards. However, the change is very minimal, that too restricted to land levelling and clearing, which is evident from the Google images of May 2012 and Jan. 2013. Based on the given field photographs, it is clearly evident that not much activities have taken place at the project site expect for clearing and levelling to some extent.*

12 The report was made available to all the parties. The Respondent No1 has submitted his response accepting the findings of the report. The report is self explanatory and is drawn by using latest technical tools of Google Earth Imaginary maps to assess the distance. The report has been prepared in the most appropriate, scientific and professional manner. The report and the findings of the report of the Committee are accepted by the Tribunal and taken on record.

13 The Counsel for Respondent no.1 has relied on the provisions of the EIA Notification 2006, regarding the preparatory work, prior to obtaining the Environment Clearance as stipulated in Section 2 of the EIA Notification 2006 which are reproduced as below :

*2. Requirements of prior Environmental Clearance (EC) :- The following projects or activities shall require prior Environmental Clearance from the concerned regulatory authority, 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 - - -*

Considering the findings of the committee referred to above and the provisions of EIA Notification 2006, and the contentions of the Applicant regarding illegal construction We

find it difficult to say that the project proponent has done any illegal construction activity. Mere construction of a compound wall will be permissible activity since it will be to secure the land from transgression or damage.

14 The Applicant raised objection to the Consent to Establish granted by the Board on ground of non-compliance of the RRZ Notification 2009. The Applicant should have first approached the designated Appellate Authority constituted under the Water and Air Acts for any grievance regarding the Consent to Establish granted under Provisions of the Water (P&CP) Act, 1974 and Air P&CP Act 1981, before approaching this Tribunal, as per the provisions under Section 17 of National Green Tribunal Act, 2010. He has failed to explain why such alternate remedy is not availed by him.

15 Respondent No.1 has also submitted that as per the RRZ Notification 2009, the Patalganga River basin, beyond the Chowne Wier, is classified as SWZ (Saline Water Zone) by the Government of Maharashtra and therefore, the restrictions envisaged in the River Regulatory Zone, where river stretches have been classified as A-I, A-2, A-3, A-4 are not applicable to the present location of the industry. MIDC has also submitted that as far as Patalganga river is concerned, the RRZ outer limit as per plan of Government of Maharashtra ends at Chowne Wier and the site allotted to Respondent No1 is further downstream of the Chowne Wier. We do not find any

substantial reason to dislodge the submissions made by MIDC regarding location of the industry and therefore, the claim of the Applicant that the location of the industry is against the RRZ Notification is unacceptable and will have to be rejected.

16 We have given our anxious thoughts on the question of validity of the conditional clearance as issued in the instant case wherein conditions related to CRZ clearance and clearance from National Board For Wildlife have been stipulated. The Applicant strongly pleaded that such conditional permissions are illegal as they are not the clearance in legal parlance. When specifically asked, the Counsel for Respondent No.2 has submitted a Office Memorandum dated 2<sup>nd</sup> December 2009 wherein procedure for consideration of proposal for grant of the Environment Clearance in respect of Wildlife Clearance has been specified. The relevant paragraph of the said Office Memorandum is reproduced below :-

*2.(i) The proposals for environmental clearance will not be linked with the clearances from forestry and wildlife angle even if it involves forestland and or wildlife habitant as these clearances are independent of each other and would in any case need to be obtained as applicable to such projects before starting any activity at site.*

*(ii) While, considering such proposals under EIA Notification 2006, specific information on the following should be obtained from the proponent :*

*(a) Whether the application for diversion of forestland involved in the project has been submitted ? If so, what is the status grant of forestry clearance ? It would be essential that in such cases, the application for diversion of forestland has been submitted by the*

*project proponent before they come for environment clearance and a copy of the application submitted for forestry clearance along with all its enclosures should also be submitted by the proponent along with their environment clearance application.*

*(b) Information about wildlife clearance, as applicable to the project should also be obtained. The project proponent should submit their application for wildlife clearance/clearance from standing Committee of the National Board for Wildlife to the Competent Authority before coming for environment clearance and a copy of their application should be furnished along with environment clearance application.*

The Counsel for Respondent No.2 has also drawn our attention to the Section 8(v) of EIA Notification 2006 on this subject related which is reproduced as under :-

8(v) Clearances from other regulatory bodies or authorities shall not be required prior to receipt of applications for prior environmental clearance of projects or activities, or screening, or scoping, or appraisal, or decision by the regulatory authority concerned, unless any of these is sequentially dependent on such clearance either due to a requirement of law, or for necessary technical reasons.

The Counsel for Respondent No.3, therefore, submits that there is a specific provision in EIA notification 2006, under which such a condition for obtaining wild life clearance has been specified in the EC

17 When posed with the query related to CRZ clearance neither the Counsel for Respondent No.1 nor the official present on behalf of MoEF could give any satisfactory reply, nor they could provide any document to show the procedure in such a case.

18            However, on perusal of the CRZ Notification 2011, a specific provision is found in Section 4 and 4.2 which is reproduced as below :-

Section 4(i)(b) : For those projects which are listed under this Notification and also attract EIA Notification 2006, for such Projects clearance under EIA Notification only shall be required subject to be recommended by the concerned State or Union territory, Costal Zone Management Authority.

Further, para 4.2 elaborately defines the procedure for processing by the respective Costal Zone Management Authorities. It is evident from the above provisions of the CRZ Notification 2011 read with Section 8(v) of the EIA Notification 2006 that the said Environment Clearance should have been granted after appraising the same for the CRZ considerations.

19            Faced with this difficulty, the Counsel for the Respondent No1 submits that a small component of their project i.e. effluent disposal system only falls in CRZ area and attracts CRZ Notification. He further submits that they have made the necessary application to the Maharashtra Costal Zone Authority well in advance who in turn have already recommended the project of effluent disposal system vide letter dated 10<sup>th</sup> January 2013 to MoEF, prior to grant of Environment Clearance on 30<sup>th</sup> January 2013. He, therefore, submits that though it might be a procedural irregularity, if a purposive construction of legal provisions is made, it has not affected the Environment which is the basic intent of both the

CRZ and EI Notifications as the project has not yet started. This irregularity can be cured by the authorities if the Tribunal directs them to do so. This irregularity may not be the cause for quashing the EC merely on the ground of procedural flaw. The Counsel for Respondent further claims that he has already raised objection on ground of limitation because the EC has been granted on 30<sup>th</sup> January 2013 and the said application which is not even an appeal under the provisions of NGT Act is filed on 29<sup>th</sup> July 2013 which is beyond mandatory period of 90 days from the date of communication stipulated under the National Green Tribunal Act. Therefore, he submits that the EC cannot be challenged at this stage by the applicant but at the same time, he undertakes that unless the necessary CRZ clearance and also clearance under Wildlife Act is received the Project proponent will not commence any project activities at the site.

20 The National Green Tribunal is mandated to work on the principles of Sustainable Development and Polluters pay principle and therefore, in the instant case, as no project activities have commenced so far, no actual environment damages have been proved at this particular time, therefore, based on Sustainable Development principle, the Tribunal is of the opinion that this procedural regularity can be cured by the authorities within eight (8) weeks, as the project proponent has already applied to MCZMA for the CRZ clearance and the MCZMA has already recommended the project vide letter dated

10<sup>th</sup> January 2013. It is on record that the Karnala Wildlife Sanctuary is only about 1000 m. from this proposed industry. This industry has been categorized as red category industry by SPCB and likely to cause emissions of various pollutants including dust and CS<sub>2</sub>. The Tribunal, therefore, finds it necessary that the MoEF need to review the air emission standards, considering the air dispersion in the area and impact thereof on the Wildlife, more particularly birds, by conducting specialised study through reputed agency. The MoEF is accordingly directed to complete the procedural formalities for granting or otherwise Environmental Clearance as per CRZ Notification 2011 and EI Notification 2006 within eight (8) weeks. In the meantime MoEF shall enquire how such procedural lapse has happened.

21 We also gave our anxious thoughts to the submissions made by the Maharashtra Pollution Control Board (MPCB). It is submitted by the counsel of State Pollution Control Board on November 12, 2013 that the role of MPCB is not activated so far, as it would trigger only after the unit becomes functional and the effluent treatment plant is commissioned. We do not agree to this contention. As per the provision of Water Act and Air Act the State Board is required to ascertain the appropriateness of the Industry location before grant of consent under Section 25 read with provisions of the Section 17 of these Acts. The provisions of the CRZ Notification 2011 are also important, as the section

3(v)(a) highlight the role of SPCB in deciding the permissible activities under the CRZ Notification. The said proviso is reproduced as below :-

3. Prohibited Activities within CRZ - The following are declared as prohibited activities within CRZ. :-

(v) Setting of an expansion of units or mechanism for disposal of waste effluents except facilities required for.

(a) Discharging treated effluent into the water course with approval under the Water (P&CP) Act 1974.

22 This provision clearly demonstrate that the role of MPCB and its permission starts much before the CRZ or Environment Clearance is sought in this case. On perusal of the consent to establish granted by the Board, it is noted that no reference has been made to NIO report on effluent disposal facilities and it is not clear, whether the project proponent has made copy of the said report available to SPCB. The said consent which is issued in June 2012 is also subject to grant of EC. We, therefore, direct the project proponent to submit the NIO report to MPCB in next 7 days. We also note that the MPCB has not considered the location of the said unit from the wildlife sanctioning while fixing the air emission standards as required under Section 17 of Air CP&CB) Act, 1981. There is no reference in the consent to establish granted by MPCB to demonstrate this consideration.

23 While parting, with this judgment, we would like to place on record our appreciation of the sincere and scientific



role done by the Committee Members who have submitted a detailed scientific report in a very short time, without much resources made available to the Committee, which was helpful in resolving the contentions raised in this application.

24 Cumulative result of the foregoing discussion is that the application is barred by limitation and therefore, will have to be dismissed. Secondly, the application is not merit-worthy for the reason that the proposed industrial unit is being established in the MIDC area which is not within the prohibited limits of RRZ Policy in as much as the location is beyond Patalganga River Weir. Respondent No.1 cannot start the project activities without obtaining CRZ clearance and compliances of other conditions as enumerated in the EC granted by the MoEF. The Applicant has not proved that the project would cause any environmental damage and as such restoration of the environment is necessary. Hence, the application is dismissed. No costs.

25 We deem it proper to issue following directions to the authorities concerned :

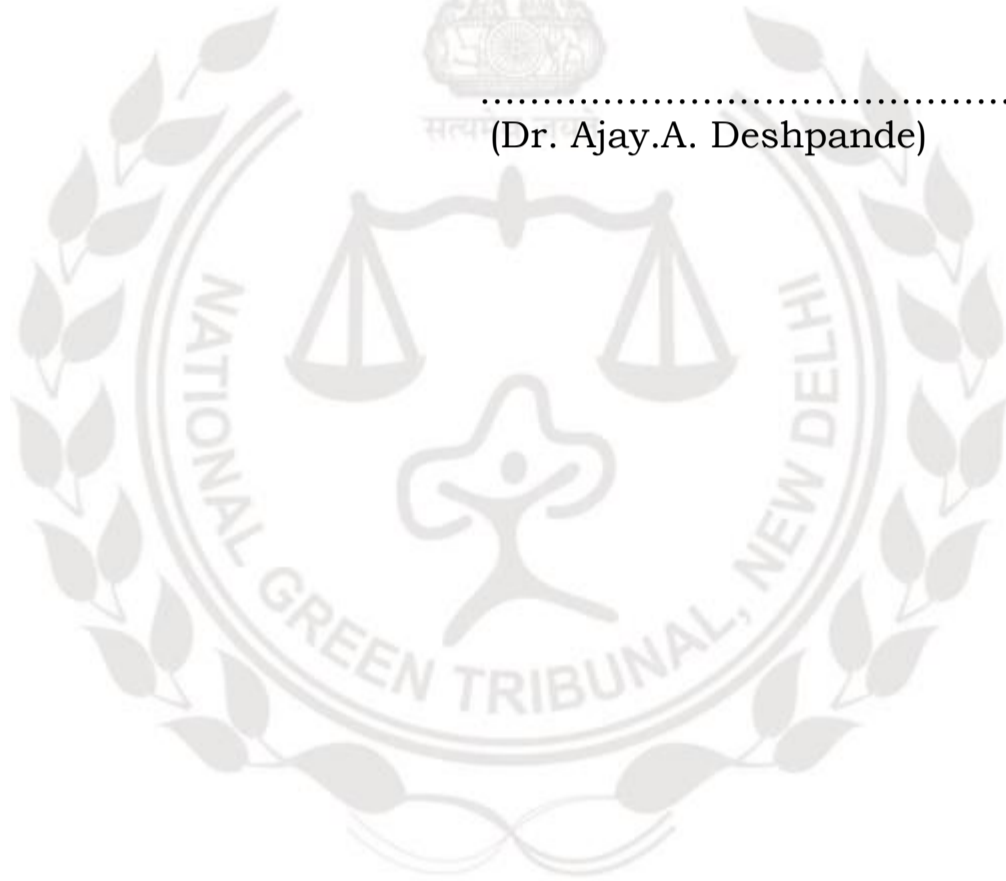
- a) The MoEF shall study the industrial air emissions and Air dispersion, in the area of the proposed industry and Karnala Bird Sanctuary, in order to satisfy itself whether establishment of the industry is ecologically sustainable.

b) The issue of permission under CRZ notification 2011 and EIA Notification of 2006 shall be duly considered and decided within period of 8 weeks hereafter independently, on merits thereof.



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

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



NGT