



राष्ट्रीय पर्यावरण अपील प्राधिकरण
NATIONAL ENVIRONMENT APPELLATE AUTHORITY

Appeal No. 11 /2007 – NEAA

September 16, 2008

To

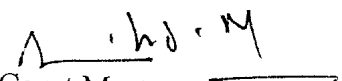
1. ✓ Shri Ritwick Dutta,
Advocate for Appellant
C-86, L.G.F., East of Kailash,
New Delhi – 110 065.
2. The Secretary to Government of India
Ministry of Environment & Forests,
C.G.O Complex, Lodi Road,
New Delhi – 110 003.
(Shri W.Bharat Singh, Dy. Director, MoEF)
3. Shri Sunil Sirsat,
Advocate for Respondent -2,
Shreeyash Chambers, F-7,
First Floor, Behind Mapusa Police Station
Ansabhat, Mapusa – Goa.
3. Shri Bhavanishankar V Gadnis
Advocate for Respondent No.3 & 4
No.69 E Second Floor, Gautam Nagar,
New Delhi – 110049.

Sub: Appeal No. 11/ 2007 (Shri Ramesh S Gauns Vs. Ministry of Environment and Forests & Others)

Sir,

The order dated 16th September 2008 of the National Environment Appellate Authority in the above appeal is enclosed. Please acknowledge the receipt of the same.

Yours faithfully,


Court Master
NEAA



जहाँ है हरियाली ।
वहाँ है खुशहाली ॥

ट्रिकूट-1, दूसरी मंजिल, भीकाजी कामा प्लेस, नई दिल्ली-110066 (भारत)
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BEFORE THE NATIONAL ENVIRONMENT APPELLATE AUTHORITY
NEW DELHI

DATED THE 16TH SEPTEMBER, 2008

APPEAL NO. 11 / 2007



CORAM:

HON'BLE MEMBER KAUSHLENDRA PRASAD
HON'BLE MEMBER DR. I.V.MANIVANNAN
HON'BLE MEMBER J.C. KALA

BETWEEN:

Shri Ramesh S Gauns
Rajwada, Bicholim,
Goa,

APPELLANT

A N D

1. Ministry of Environment and Forests
Through the Secretary to Government of India,
CGO Complex Lodhi Road,
New Delhi - 110 003.
2. M/s. Zantye Private Limited,
Narsinha Prasad (H.No.71),
Father Agnelo Road,
Altinho, Panaji, Goa - 403 001.
3. The State Pollution Control Board,
Through its Member Secretary,
Dempo Tower, Patto, Panaji, Goa.
4. State of Goa,
Through its Chief Secretary,
Secretariat, Porvorim, Goa.

RESPONDENTS

Counsel for Appellant (s) : Shri Ritwick Dutta, Advocate
Shri Rahul Choudhary, Advocate

Counsel for Respondent(s)

Respondent No. 1(MoEF) : Not Present

Respondent No. 2 : Shri Nitin Sardessai, Advocate
(M/s. Zantye Pvt. Ltd.) : Shri Sunil Sirsat, Advocate

Respondent No. 3 : Shri Bhavani Shankar V Gadnis, Advocate
(Goa SPCB)

Respondent No. 4 : Shri Bhavani Shankar V Gadnis, Advocate
State of Goa

ORDER

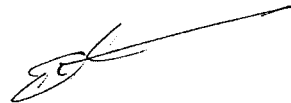
1. This is an appeal filed under section 11(1) of the National Environment Appellate Authority Act, 1997 against the Order No. J-11015/396/2006-IA.II (M) dated 21st August, 2007 of Ministry of Environment and Forests (MoEF), Government of India granting Environmental Clearance (EC) to M/s. Zantye and Co. Pvt. Limited, Narsinhva Prasad (H.No.71, Father Agnelo Road Altinho, Panaji Goa -403 001 for renewal, change of mining method and enhancing the iron ore production to 0.302 million TPA, Sarvona Iron and Manganese Ore Mine (TC No. 28 of 1953, ML are 72.0 ha and 0.302 million) at village Sarvona, Bicholim Taluk, North Goa District.

2. The above appeal was filed on 05.10.2007. The National Environment Appellate Authority (NEAA) registered the Appeal on 01.11.2007 and notices were issued to the concerned parties by listing case for hearing on the application for condonation of delay on 30.11.2007. Heard both the parties and condoned the delay in filing the Appeal. The Appellant also pleaded that the Environmental Clearance is issued without application of mind and it should be stayed pending hearing of the Appeal. The request of the Appellant was not acceded to and the Appeal was admitted for hearing on merit. All the Respondents filed their Statements of Objections / Rejoinder / Counter to the Appeal.

3. The case was heard on 22.01.2008, 18.02.2008, 04.03.2008, 26.03.2008, and finally on 10.07.2008. Based on the points raised in the Appeal / Arguments made by the learned counsels for the Appellant and Respondents, the Appeal is considered in succeeding paragraphs.

4. Grounds of Appeal and Prayer:

4.1 The Environmental Clearance is being challenged on the grounds of (a) not obtaining the mandatory approval of Panchayat (b) not considering the opinion expressed by the people of the area in the Public hearing and (c) environmental damages on account of mining specially on river Bicholim and other aquifers, fields and forests not properly assessed and no safeguards proposed.



- 4.2 On the above grounds of Appeal, the Appellant has prayed for
- (i) the Environmental Clearance Order dated 21st August, 2007 be quashed and set aside, and
 - (ii) pending hearing and final adjudication, the Environment Clearance Order dated 21.08.2007 be stayed.
5. Considering the various points raised by Appellant, the following issues are framed for consideration and decision of this Authority:-

- (1) **Whether the Respondent -1 is competent to Issue Environmental Clearance for Project without obtaining prior permission under Goa Panchyat Raj Act, 1993 based on the 73rd Constitutional Amendment?**
- (2) **Whether opinion of public during the Public Hearing was considered before grant of Environmental Clearance? and**
- (3) **Whether the EMP proposed by Respondent -2 is adequate to mitigate any adverse impact of the Project on the local environment and whether effective safeguards have been prescribed in the Environmental Clearance?**

6. The **First Issue** taken up for consideration is whether the Respondent -1 is competent to Issue Environmental Clearance for Project without obtaining prior permission of Goa Panchyat Raj Act, 1993 based on the 73rd Constitutional Amendment.

6.1 The appellant has submitted that following the promulgation of Goa Panchayat Raj Act 1993 under 73rd Constitution Amendment Act on Panchayat Raj, it is mandatory for the Government and the parties to obtain the approval of Panchayat before environmental clearance is accorded. He claimed that to this effect, any NOC issued by the Government or waiving the approval will not be valid and that inflicting an undesired and environmentally destructive activity tantamounts to abusing democratic norms and the 73rd constitutional amendment to the constitution of India. The Additional Collector / Chairman of the Public Hearing Panel promised to refer the constitutional issue raised in the Public Hearing to the Government which has not been done before issue of the EC orders.



- 6.2 Respondent 2, the Project Proponent has made the following submission in response to the points raised by the appellant:
- (a) that it is quite surprising that people living in the vicinity of the project area have no objection while the appellant who is not even the resident of the place is against the project;
 - (b) that it is incorrect to state that mining did not take place for over four decades while the fact is that it was suspended after initial surface prospecting for want of demand for low grade minerals;
 - (c) that the Gram Sabha resolution has no sanctity in law, as the Goa Panchayat Raj Act does not specify any requirement of Panchayat's approval for mining as seen from the functions of Village Panchayat specified in schedule I of the said Act.
- 6.3 The Authority has examined the above arguments of both the parties and perused the note file of Goa Government wherein Law department has given the following opinion:

"The issue whether no objection from Panchayat is mandatory for carrying out mining activity was examined in the light of provision contained in Panchayat Raj Act 1994 (Goa Act No. 14 of 1994) and other relevant laws and it is observed that there is no provision either in the Panchayat Act or in the Mines and Mineral (Development and Regulation Act 1957, 67 of 1957) which requires NOC from village Panchayat for carrying out mining activity in the village. Hence NOC of Panchayat is not mandatory for mining activity"

The Authority ^{on} ~~own~~ its own, has also examined the implication of Panchayat Raj Act for mining activity and they would like to go with the opinion expressed by the Law Department of Goa Government. Thus the First Ground

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[Signature]

raised by the appellant does not stand any detailed security. **The First Issue is answered in negative.**

7. The **Second Issue** is that the opinion expressed by people during the Public Hearing was not considered by the competent authority before issuing the EC.
- 7.1 The Appellant has contended that all the 102 participants of the Public Hearing opposed the renewal of the mining operation and Respondent -1 should have considered such wholesale opposition of the local public to the project and rejected the request for the issue of EC.
- 7.2 The Project Proponent (Respondent-2) challenged the contention of the Appellant and submitted that fresh notice was rightly issued for the Public Hearing on 24th March, 2007. It is in-correct to state that all the 102 peoples who attended the hearing unanimously opposed the project. He added that about 130 people living close to the site gave representation to the Additional Collector in support of the proposed mining.
- 7.3 The Respondent-1 in his affidavit has stated that all the objections and apprehensions raised by the public in Public Hearing were considered by the Expert Appraisal Committee before recommending the project and the EC was issued taking into account the recommendations of EAC, the facts provided in the EIA/EMP, the impact of mining on the environment and the apprehensions expressed during public hearing.
- 7.4 The Authority has perused the minutes of the public hearing meeting where all except one (Shri Raju Sawant) have opposed the mining. The objections mostly relate to bypassing Panchayat resolution and on technical omissions in REIA and its effect on flora and fauna. It is also noted that the contents of most of the speakers are repetitive. The Authority has also perused the affidavit submitted by Respondent -1 wherein it is stated that based on EMP/EIA and also the issues raised in Public Hearing. The EAC in its meeting held on July 18-20, 2007, recommended the Project for clearance and the Ministry after considering the impact of mining on the Environment



together with the apprehensions of the Public have accorded the Environmental Clearance.

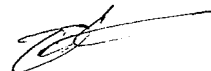
The Authority is therefore, convinced that the contents of public hearing meetings were duly considered by the EAC and the Ministry before issuing Environmental Clearance. **The Second Issue accordingly answered in negative.**

8. The Last Issue relates to the adequacy of the EMP proposed by Respondent -2 to mitigate any adverse impact of the Project.

8.1 The Appellant has argued that EMP proposed by Respondent-2 is not adequate enough to mitigate the adverse impact of the Project on the local environment. He has also alleged that effective safeguards have not been prescribed in the EC Orders issued by Respondent -1. He added that the lease (never operated for decades) being adjacent to Bicholim river which is drinking water source to a large number of people and irrigation, no environmental safe guards have been laid out in the Environment Clearance(EC) order against the damage the mining will cause on it nor any Disaster Management Plan submitted for possible flooding which this river is prone to. The vegetation/forest cover in the area is also undermined and the effects of mining in destroying the ground water source and aquifers and 1 lac sq. meters of arecanut plantation have also not been considered. Mining by open cast method will destroy Sarvona village and its environment and is bound to affect the rights of the villagers under article 21 of the Constitution of India and that no mitigating steps to control the damages are listed in EC order.

8.2 Respondent -2 challenged the contention of the Appellant and argued that

- (a) the list of species including areca nut cultivation annexed to the appeal is incorrect and that the forestry experts of the company have made

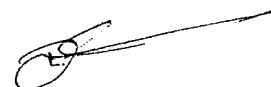


management plan for conservation of flora and fauna based on the species available in the area duly approved by the Department for which a sum of Rs. 10 Lakhs has been set apart besides Rs. 22 lakhs for awareness generation, medicinal plant and MFP planting and harvest etc. The site contains little vegetative cover and there are no private forest in the area as alleged and that the map furnished by the appellant to this effect is not even authenticated. **The letter dated 29th January 1998 issued by the Conservator of Forests is self explanatory.**

- (b) the Rapid EIA and Environment Management Plan takes in to account the safe distance of mining from the river based on CRZ regulations Hydrological studies conducted by the experts have cleared all the doubts raised by the appellant including flooding and compared it with mining practices being undertaken elsewhere under similar hydrological conditions in Goa. He added that the Disaster Management Plan prepared and submitted by the Respondent -2 is comprehensive to mitigate any adverse impact of the Project on local environment.

8.3 The Authority has perused the affidavit of the Ministry and its EC order dated 21st August 2007 and found that several of the concerns of appellant have been included and safeguards provided which, interalia, include bench marking of top level of mine and the river Bicholim, prescribing safety zone of working; dewatering of pits & supply to farmers; drainage pattern and mapping of ML area; wild life conservation plan; other conservation measures; catch water drains/retaining walls; back filling and planting of OB; ban on drilling and blasting etc. besides a host of general conditions. The environmental clearance is liable to be revoked and action under EP Act initiated in the event of violation of any of the conditions.

8.4 The Authority has also perused the letter on record from the Deputy Conservator of Forests, North Goa Division, Ponda, Goa, stating that there is no vegetation in the area which is forest in nature nor it is part of working plan

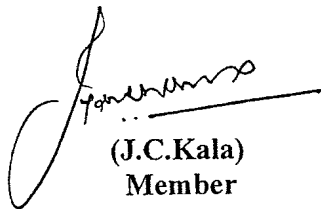


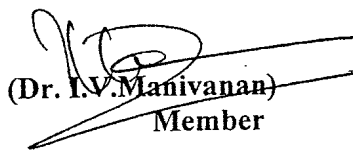
and it does not attract Forest Conservation Act 1980. In view of this information the Appellant has withdrawn his ground relating to forest area.

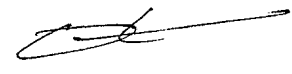
8.5 The Respondent-1 in his affidavit dated 6th August, 2008 has submitted that based on final EIA/EMP and issues raised in public hearing, the Expert Appraisal Committee (mining) in its meeting held on July 18-20, 2007, recommended the Project for environmental clearance. Based on the recommendations examining the facts provided in the EIA/EMP and duly considering the impact of mining on the environment and also the apprehensions expressed during public hearing have accorded the Environmental Clearance.

8.6 The Authority has weighed the arguments of Appellant and Respondents on the adequacy of EMP proposed by Project Proponent. Further, the Authority finds the Respondent-1 has prescribed adequate and stringent safeguards in their EC Order with a view to protect the fragile environment of the Project area. **The Third Issue is also answered in negative.**

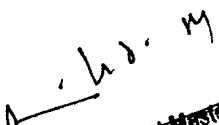
9. In fine, all the Three Issues framed for consideration of this Authority have been answered in negative. The Authority is convinced that the Ministry has applied its mind and imposed condition that are necessary to maintain a judicious balance between the demands of environment and pressure of development. **The Appeal is therefore disallowed for want of merit. No Cost.**


(J.C. Kala)
Member


(Dr. I.V. Manivanan)
Member


(K. Prasad)
Member

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Court Master
National Environment Appellate Authority
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