



Appeal No. 11 /2008 – NEAA

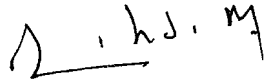
03.06.2009

To

1. ✓ Shri Rahul Choudhary,
Advocates for Appellant
C-86, L.G.F, East of Kailash,
New Delhi – 110 065
2. The Secretary to Govt. of India
Ministry of Environment and Forests,
Paryavaran Bhawan, CGO Complex, Lodhi Road, New Delhi
(Representative Ms. Renu Aggarwal, Legal Assistant, MoEF)
3. Shri Bhavanishankar V Gadnis
Advocate for Respondent No.2
No.69 E Second Floor, Gautam Nagar,
New Delhi – 110049.
4. Shri Dhruv Mehta,
Advocate for Respondent -3,
33, Lawyers Chambers,
Supreme Court, New Delhi – 110 001

Sub: Appeal No. 11/ 2008 (Mrs. Willuna D' Silva and Others Vs. Ministry of Environment and Forests & Others)

As directed, the order dated 31st May, 2009 the National Environment Appellate Authority in the above appeal is enclosed. Please acknowledge the receipt of the same.


Court Master
NEAA



जहाँ है हरियाली ।
वहाँ है खुशहाली ।।

BEFORE THE NATIONAL ENVIRONMENT APPELLATE AUTHORITY
NEW DELHI

DATED THE 31ST MAY, 2009

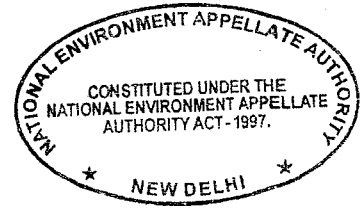
APPEAL NO. 11 OF 2008

CORAM:

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

BETWEEN:

1. Mr. Chandrakant Kavelekar,
M.L.A, Quepem Constituency,
Chairman Goa, I.D.C.
Betul-Quepem-Goa.
(Deleted from the array of parties on 07.01.2009)
2. Mrs. Willuna D'Silva,
Sarpanch V.P Naqueri -Betul,
Betul, Goa.
3. Mr. Kushali Velip
Ex.Sarpanch, Morpila,
Quepem-Goa
4. Manuel Colaco
H.No.4, Cusmane,
Quepem - Goa



APPELLANTS

AND :

1. Ministry of Environment and Forests,
Government of India, Through its Secretary,
Paryavaran Bhawan,
CGO Complex, New Delhi - 110 003
2. Goa State Pollution Control Board,
Through its Member Secretary,
Dempo Towers, First Floor,
EDC Plaza Patto, Panaji, Goa.
3. Shri Pravin Kumar Gosalia,
3rd Floor, Garden View Phase -II,
Margao, Goa - 403 601.

RESPONDENTS

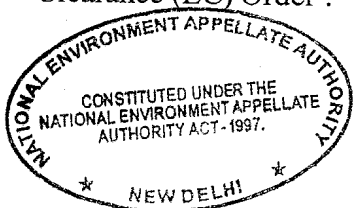
Counsel for Appellant (s) : Shri Rahul Choudhary, Advocate,
Counsel for Respondent(s)
Respondent No. 1 (MoEF) : Ms. Renu Aggarwal, LA, MoEF
Respondent No. 2 : Shri Bhavanishankar V. Gadnis,
(Goa State Pollution Control Board) Advocate
Respondent No. 3 : Shri Dhruv Mehta, Advocate
(Praveen Kumar Gosalia) : Shri Mohit Abraham, Advocate
for M/s. K.L Mehta & Co.

ORDER

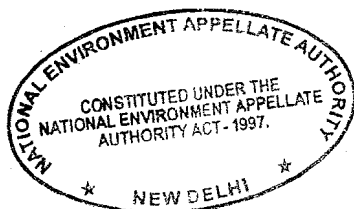
1. This is an Appeal filed under section 11(1) of the National Environment Appellate Authority Act, 1997 against the Order No. J-11015/553/2007-IA.II (M) dated 08.09.2008 of Ministry of Environment and Forests (MoEF), Government of India granting Environmental Clearance (EC) for expansion of Shakti Bauxite Mine (ML area 826.1580 ha) from 0.10 MTPA to 1.0 MTPA, at village Betul, Naqueri, Morpila, Velim, Fatorpa, in Salcete & Quepem Taluk, South Goa District Goa by Shri Pravin Kumar Gosalia, Garden View, Phase -II, Third Floor, Margao, Goa -403601.
2. The above appeal was filed on 10.11.2008 i.e. on the 63rd day from date of grant of Environmental Clearance. The said Appeal was registered on 11.11.2008. Notices were issued to the concerned parties by listing the case for hearing on the application for condonation of delay. Heard the parties on the application for condonation of delay on 11.12.2008 and 07.01.2009. The National Environment Appellate Authority (NEAA) condoned the delay in filing the Appeal. The Appeal was admitted for hearing on merit by directing the parties to file objections, rejoinder etc., after exchanging the copies before 04.02.2009. Parties to the Appeal filed objections, rejoinder etc., The matter was taken up for hearing on merit on 04.02.2009, 12.02.2009, 19.02.2009 and finally on 04.03.2009. Based on the points raised in the Appeal / Arguments made by the learned counsels for the Appellants and Respondents, the Appeal is considered in succeeding paragraphs.

3. Grounds of Appeal

The Appellants have raised the following grounds of Appeal against the said Environmental Clearance (EC) Order :



- (i) The lease area of the mine covers forest land, community land as well as private land.
 - (ii) All the Appellants are affected by the existing and proposed expansion of project. The Appellants along with other residents and social groups working in the area raised their objections to the proposed expansion project;
 - (iii) None of the issues raised by the Appellants, social groups and villagers during the course of Public Hearing held on 31.01.2008 was answered or taken into consideration while granting EC;
 - (iv) The MoEF granted the EC to the expansion project without considering the fact that the project proponent has failed to comply with any of the conditions imposed by Respodnent-1 in their EC letter dated 15th June, 2006;
 - (v) Rapid Environment Impact Assessment Report (Rapid EIA Report) prepared for the Project contains misleading data, wrong information, important information missing and it is full of infirmities apart from being inadequate and incomplete;
 - (vi) The MoEF has granted the EC without proper application of mind and without considering the opposition for the project from more than 1000 people of the area;
 - (vii) The Expert Appraisal Committee(EAC) (Mines) have failed to indicate the reasons for overlooking the objections from them; and
 - (viii) The recommendations of EAC (Mines) have been arbitrary in nature and lacking in fairness in the process of decision making, thereby going against judgments of Hon'ble Supreme Court on the subject.
4. In the light of the above facts and circumstances, the Appellants have prayed for the following orders:
- (i) Pass an order quashing the EC granted for Expansion of Shakti Bauxite Mine from 0.10 MTPA to 1.0 MTPA by Respondent-1 by letter dated No.J-11015/553/2007-IA.II(M) dated 08.09.2008;
 - (ii) Pass an order to stay the operation of the Clearance letter till the matter is decided by this Hon'ble Authority; and



(iii) Pass such other or further order, as this Hon'ble Authority may deem fit and proper in the facts and circumstances of the case.

5. The following issues arise out of the above grounds of Appeal.

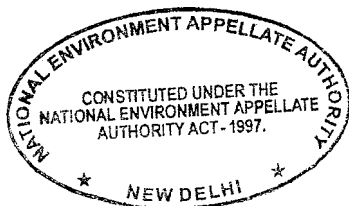
- (1) **Whether Rapid EIA Study done for the project is inadequate and based on misleading data and wrong information?**
- (2) **Whether the Public Hearing conducted by the Respondent -2 on 31.01.2008 is defective? and**
- (3) **Whether Environmental Clearance granted by Respondent -1 has been issued without proper application of mind and without following the due procedure prescribed in EIA Notification 2006?**

These issues are discussed in the following paragraphs.

6. The **First Issue** taken up for consideration of this Authority is whether the Rapid EIA Study done for the project is inadequate and based on misleading data and wrong information.

6.1 Arguments of the Appellants: The Appellants have contended that Rapid EIA Study done for the project is inadequate as it is based on misleading data, wrong information and put forward the following arguments in support of their contention:

- (i) Rapid EIA Report contains wrong data on forest land (25.99 hectares), the villages falling under core zone of mining has been shown in Buffer Zone, wrong identification of Buffer Zone etc., ;
- (ii) It has failed to indicate
 - (a) period of study and monsoon data of project area;
 - (b) existence of nullahs, passing through the Project Area for more than 15 kms. which is an important drainage system during monsoon season;
 - (c) Betul and surrounding area blessed with natural streams of drinking water sources through out the year like Pongira Zor, Marakond Zor, Tanlaval Zor etc., which have dried up due to mining; and
 - (d) transportation of Bauxite and its impact on environment, air pollution, noise pollution increase in traffic and its impact with reference to the capacity of the road – the increase in vehicular traffic will give rise to road accidents.



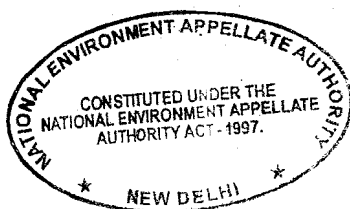
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- (iii) It has failed to study impact of the project on coastal ecosystem and mangroves of the area;
- (iv) It has not disclosed the mitigation measures for people living in about 16 ha area of the core zone. The Report does not give any details of persons employed in the mining activities for the last 30 years nor does it assess the number of jobs the proposed expansion project will generate;
- (v) The Rapid EIA Report has been prepared without Public Consultation or involving local population;
- (vi) It suffers from many basic defects - All the figures and the plans are not supplied in the documents. Location map does not have figure no., land use plan, geological plan and working pit plan have no page number. The Management Plan and Conceptual Plan are not part of the Rapid EIA Report. Further the project description 2.1.2 (page 6 of Rapid EIA Report) mentions of Plate 2 in the First Para Plate 4 and Plate 5 on page 7 but these plates are missing and in the same way chapter of 2.2 of project details Page 7 Plate 4 is also missing.

6.2 Arguments of the Respondents:

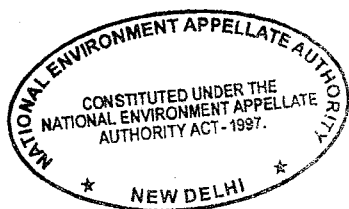
Respondent – 3 has denied the claims/ aspersions of the appellants on Rapid EIA study and vigorously rebutted the above arguments and submitted that the report has been prepared by experts in the field, data have been collected from local people and agencies. The study includes preparation of various maps and plans .The Appellants have made vague and baseless allegations without even referring to any contrary expert opinion on the subject. Important arguments are: -

- (a) The names of the major villages, as provided in the list, include small villages around and the data produced in the tables are for Core Zone and Buffer Zone villages of the lease area. They have already offered to surrender the entire forest area to the State Government. This was explained during Public Hearing as well.
- (b) Paragraph 2 of 3.1.1 sub – topic (Climate and Meteorology) deals with the period of study and periodicity of data collection. The period of study is “ Post – monsoon 2005”, which is also shown in the table under the topic “ Salient features of the Project” in the Executive summary as well as in Annexures I to VII to statistics of the environmental parameters. The data for rainfall are given for ten years prior to 2005. The month during which air samples were collected are indicated. The noise levels were noted on hourly basis throughout the season.



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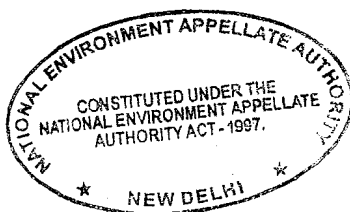
- (c) Paragraph 3.3 of the report and plans at pages 28 & 29 show the natural drainage in the lease area and in the buffer zone. The seasonal water course flow in the lease area is at least one km away from working place. The said water course gets dry within few hours after a spell of rain. Bauxite working is in the form of shallow pit (maximum depth – 6m) on the flat plateau portion. Rainwater gets collected in the pit. It partially seeps into strata. Not a single gram of silt from the mine flows to this water course.
- (d) Biological environment has been described in paragraph 3.5 of Base Line Environment. The distance of the sea/river is at least 3.5 km from the working area. The nearest water course will not be affected at all as far as quality of water and sedimentation is concerned. Mining has been going on for more than 30 years but no point of river or coast or coastal ecosystem has been slightly affected.
- (e) The area covered by settlement is far away (about 16 km) from the actual mining area. All the drinking water wells and natural water streams are far away from the working area. It is stated at page 49 of the study that no ground water is likely to be encountered in the working pits as the levels of water in nearby wells is much below the bottom of the pit. The impact on environmental parameters will be very much within the permissible limits in the working pits and there will be no impact felt in the settlement area.
- (f) All the material from the strata is utilized for production purpose. Even if some waste material gets generated, it is backfilled in the exhausted portion of the pit. Transport from the mines to destination will be done by buyers. They will be subject to various regulations. The impact of transportation on various environmental parameters is described in chapter – 11 of the report. The impact will be well within the permissible limit.



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6.3 FINDINGS

- (i) The claims and counter claims of the parties to this Appeal have to be scrutinised with reference to the documents and arguments placed by them before this Authority. The exact extent of Forest land and the details of the villages falling under Core Zone and Buffer Zone have been clearly explained by Respondent -3 with reference to the records already produced before this Authority. The details of period of study, monsoon data of the project site are available in Annexure -I of chapter 6 of the Report. There will not be any Impact of the Project on various nullahs specified by the Appellants. This claim of the Respondent has not been rebutted by the Appellants in their rejoinder. Further, the possibility of pollution of ground water through sediments have been analysed in detail in Chapter 3. As regards the possible air pollution and accidents due to increased transportation of vehicles, the Report details various steps in Chapter 4.
- (ii) As Chapter 6 of the Report indicates, the impact of the Report on Biological environment including coastal ecosystem of mangroves would be minimal and well within the norms. Similarly, its impact on water, air, land, noise and vibration, aesthetic environment and human interest has been analysed in this chapter and found to be well within the permissible limits. Regarding the rehabilitation of the local people including employment of local population in a phased manner, the contention of Respondent -3 appears to be reasonable in view of the gradual expansion of the project.
- (iii) The plea for involvement of the local people in preparation of EIA Report requires to be examined to what extent it is possible and reasonable. As the Respondent-3 has already been operating the mine at a lower level they would be familiar with the basic data about the area. For whatever data /information required for explanation of the project, the project officials have consulted the local people. Such involvement of local people is of limited value for the purpose of Impact Assessment on an oral basis. As the impact assessment is highly technical and professional process, the local public lacking in such skills and knowledge cannot be expected to make any contribution to the tasks involved. The claim of the Appellants in this regard has no force at all.



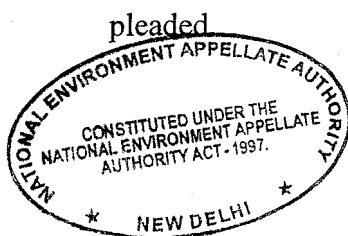
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(iv) The counsels for the appellants have not placed adequate material evidence to prove their contention, whereas the Respondents have very clearly explained all the relevant issues raised by the Appellants and established that Rapid EIA prepared for the project is adequate and free from any misleading data and wrong information. The Authority therefore finds that the EIA Report prepared by the Respondent-3 is comprehensive enough covering all the required environmental data and a comprehensive assessment of the impact of the Project on different aspects of the local environment and the people. **The First Issue is therefore answered in negative.**

7. **The Second Issue is whether the Public Hearing conducted by the Respondent -2 on 31.01.2008 is defective.**

7.1 **Arguments of the Appellants** - In the Public Hearing conducted on 31.01.2008, many issues / objections were raised by the Appellants and other local groups/villagers but none of them was responded to by the State PCB or Project Proponent, though it has been recorded in the proceedings of the Public Hearing that thousand written objections were received by state PCB against the Project. The Public Hearing conducted by the Respondent -2 is therefore defective.

7.2 **Arguments of the Respondents:** Respondent - 2 has not filed any affidavit on this issue. Denying the above contentions, Respondent -3 has submitted that all the objections raised by the participants of the Public Hearing were answered and responded by them. He has added that the purported objections raised and submitted during the course of Public Hearing were stereo typed, which were pre-typed and only the names of the supporters /voters of Appellant -1(since deleted) were inserted. The proceedings of the Public Hearing held on 31.01.2008 notes down the official responses provided by Project Proponent. Further, a detailed note of the proposal and responses to the various objections was submitted to the MoEF (Respondent-1). This can be verified from the minutes of the meeting of EAC (Mines) held during 5-6 August, 2008. The contentions of the Appellants should therefore be summarily rejected, he

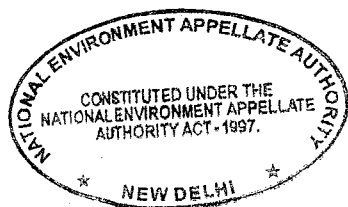


7.3 FINDINGS

- (i) A perusal of the proceedings of the Public Hearing held on 31.01.2008 in this case reveals that the Chairman of the Public Hearing Panel has recorded the views / opinions / representations received during the proceedings. It is also noted that thousand written applications against this projects were received during the said Public Hearing and 625 persons had signed the attendance sheet, with some of the participants having left without signing the attendance sheet. The said minutes also indicate that
- (a) Morpilla land (forest land) will be surrendered by the Project Proponent to the Government;
 - (b) Acacia plantations have been raised in places where other plants do not grow for the purpose of afforestation;
 - (c) the company will comply with all the legal requirements as laid down by the Government and statutory authorities before commencement of mining operation; and
 - (d) the Project Proponent welcomed all the objections and suggestions, and even hinted at settlement between the mine owners and project affected persons.

It is also pertinent to note that the project proponent has provided a detailed report on all issues raised during the Public Hearing, which were considered by EAC (Mines) while arriving at their recommendations to MoEF.

- (ii) Appendix IV of the Notification 2006 detailing the procedure for conduct of Public Hearing describes the procedure to be adopted in this regard with direct reference to the contentions of the Appellant, Para 6.5 of the Annexure stipulates that "A Statement of the issues raised by the Public and the comments of the Applicant shall also be prepared in the local languages and in English and annexed to the proceedings". In this case, the Chairman of the Public Hearing Panel has forwarded all the written petitions along with the proceedings of the Public Hearing to the MoEF. In response to the directions of the EAC, the Project Proponent has submitted a detailed Report to EAC/MoEF covering all the relevant issues. Nothing more than this was expected from the Public Hearing Panel and the Project Proponent. Further, the EAC has examined all the issues raised in Public Hearing, as is clear from the minutes of meeting held on 05.08.08 and then only communicated their recommendation to MoEF. In terms of provisions of the Notification 2006, the claim of the Appellants that the issues raised in



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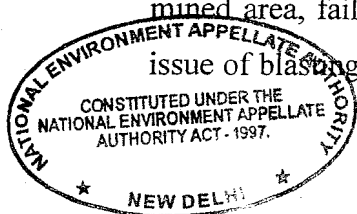
the Public Hearing were not addressed by the Project Proponent is not based on any material evidence.

The second issue is accordingly answered in negative.

8. The Third Issue to be taken up for consideration is whether Environmental Clearance granted by Respondent -1 has been issued without proper application of mind and without following the due procedure prescribed in EIA Notification 2006.

8.1 Arguments of the Appellants: The Counsels for the Appellants have alleged that Respondent-1 has issued Environment Clearance for the Project without application of mind and without following the due procedure prescribed in the EIA Notification 2006, and have submitted the following points in support of their allegations:

- (i) EC has been granted for expansion of Shakthi Bauxite Mines from 45.000 TPA to 1.0 lakh TPA in June 2006. Respondent -3 has failed to carry out plantation of native species around the mining lease area roads, OB dump sites etc., and fulfil the Speical conditions imposed by Respondent-1. In reality, no plantation has been raised with native species, except for a few plants of Acacia around the mining area. The Acacia plants are not native and they are very harmful causing allergic asthma and cold infections to the local people, in addition to depleting the ground water table. Neither there is peripheral fencing along the excavated area nor any plantation has been raised to stabilize the slopes in excavated /void / mine pit. Under para 10 of EIA Notification 2006, the Project Proponent has to submit Half yearly compliance report on conditions attached to Environmental Clearance granted, but he has failed to do so. Instead of withdrawing the clearance already granted on account of the failure, Respondent -1 has awarded Project Proponent with grant of Environmental Clearance for expansion of the project. It makes it clear that that Respondent -1 has not been monitoring the project after issue of Environment Clearance.
- (ii) The EAC (Mines) of Respodnent-1 did not consider the opposition from more than 1000 people of the area. In his additional submission filed on 04.03.2009, the counsel for Appellants elaborated that their representations related to non-compliance of previous order regarding plantation of native species as against harmful acacia plantation in the mined area, failure of the concerned authority to check the compliance of conditions, issue of blasting and explosion caused during mining operations and the harmful effects



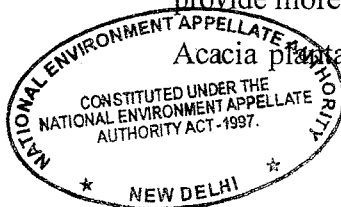
of increased transportation etc. The EAC should have scrutinised in detail many pertinent issues concerning the harmful impact on local environment and the people. Further, the said Committee has neither considered the issues of rise in traffic movement around the villages with its potential for accidents and movement problems for the villagers nor has it addressed the problems of blasting. No reasons has been given by EAC for overruling the view point of the people expressed during Public Hearing. He has cited the verdict of Supreme Court in many cases highlighting the proper recordings of the minutes of Public Authorities, the need for transparency in decision making process, judicious application of mind, recording of reasons for decision arrived at etc.,

- (iii) Respondent 3 has concealed the fact from the MoEF that acquisition proceedings is pending against the same land area which is part of Environment Clearance covered under this Appeal. The case filed against the Land Acquisition proceedings in W.P No.341 of 2008 in High Court of Bombay and Goa has been dismissed by an order dated 29.10.2009. The Environment Clearance granted is required to be quashed on the sole ground of concealment of material fact under para 8(vi) of EIA Notification 2006.

8.2 ARGUMENTS OF RESPONDENTS

In their statement of objections to the Appeal, Respondent – 1 has denied the allegations of the Appellants and stated that the appraisal of the project done by Expert Appraisal Committee (Mines) was based on information submitted by the Project Proponent.

- (i) Regarding the compliance with the Specific Condition on plantation work in mining area, Respondent -3 has denied any violation of the prescribed conditions necessitating withdrawal of that Environment Clearance order. Respondent -3 has submitted that 2000 saplings have been planted along the road and on the backfilled portion. Dumping has already been discontinued. Further, the old dump has been thoroughly afforested. The Forest Department has suggested that Jatropa species may be planted and accordingly saplings have been purchased (copies of receipts have been filed before the Authority). The Forest department has further suggested to provide more space (at least 10 sq.mtr per sapling) for saplings. He has added that the Acacia plantation referred to by the Appellants already existed on ground. Further,



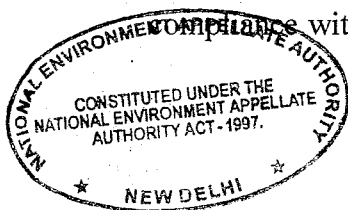
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the existing working pit is under expansion and no fencing can be erected around it. Claiming full compliance with the said condition, Respondent -3 has filed copy of his report dated 19.03.2008 to Respondent -1. In this connection, Respondent-1 has submitted that the monitoring of compliance with the condition attached to the Environmental Clearance Order is carried out by the Regional Office of MoEF. In case of non-compliance, action is taken under the provisions of Environmental Statutes.

- (ii) As regards the alleged failure of the EAC to scrutinise the issues concerning the impact of the project on the local area and its people, Respondent -1 has submitted that the issues raised during the Public Hearing were deliberated in detail, and point wise issues and responses of the Project Proponent were taken into consideration by the EAC (Mines) before they finalised their recommendations for Environmental Clearance. This is reflected in the 24th Minutes of the Meeting of the EAC (Mines) held 05.08.2008.
- (iii) Suppression or concealment in order to vitiate the clearance has to be of a material fact which is germane to the enquiry by the Expert Committee under the Environment Notification dated 14.09.2006 (2004 (7) SCC 166). In other words, it has to have relevance to the issue of Environment Notification dated 14.09.2006 and it does not require the Project Proponent to specify or provide information regarding ownership of land. The reasons why it is not required is clear from the statutory scheme under the MMDR Act, 1957 and Mineral Concession Rules, 1960 read with the lease document which obliges the State Government to ensure that the mine lessee is in a position to extract mineral from its leasehold area by paying compensation to the surface right owner. There is no suppression or concealment of any fact which is germane to the enquiry by Expert Appraisal Committee under the EIA Notification dated 14.09.2006.

8.3. FINDINGS

- (1) The crux of the question is whether EC has been issued without application of mind and without following due procedure prescribed in EIA Notification, 2006. The Appellants have cited at least 3 important points in support of their argument-failure to check the compliance with conditions regarding plantation programme of the previous EC order,



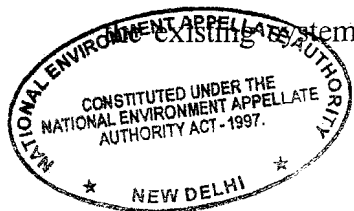
failure to address certain serious issues having a direct bearing with local environment, and concealment of Land Acquisition proceedings.

- (2) As regards the alleged failure to check the compliance with specific conditions on plantation programme, condition (vi) of (A) Specific conditions of EC order dated 15th June, 2006 reads

“ After exhausting the first mine pit and before starting mining operations in the next pit, reclamation and plantations works in the exhausted pit shall be completed so as to ensure that reclamation, forest cover and vegetation are visible during the first year of mining operations in the next pit. This process will follow till the last pit is exhausted. Adequate rehabilitation of mined pit shall be completed before any new ore bearing area is worked for expansion”.

On this point, Respondent-3 has submitted an elaborate account of steps taken by them to fulfil this particular condition. The extenuating circumstances under which the existing acacia plantation has been allowed to continue have been explained. It is also seen that Respondent-3 has filed a copy of compliance Report dated 19.03.2008 to Respondent-1. The Authority notes these steps taken by Respondent-3 to fulfil the relevant condition of the previous EC order dated 15th June, 2006.

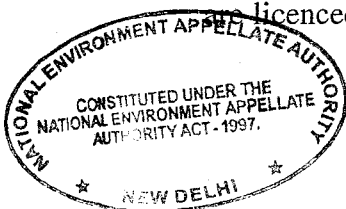
The Authority however notes that there is a gap of 2 years between the issue of previous order and the present one covered under this Appeal, and at least 4 Half Yearly Reports should have been submitted by the Project Proponent to the concerned Regional Office of MoEF on the progress of plantation programme. But, only one Progress Report has been submitted to the Bangalore Regional Office of Respondent-1. The nature of action taken on this report has not been filed before this Authority by Respondent-1. This takes us to a conclusion that MoEF (Respondent-1) is not paying adequate attention on Monitoring of compliance with conditions imposed by them as part of this EC as alleged by the Appellants. It goes without saying that mere incorporation of such conditions in EC Order does not take us anywhere, unless strict implementation of such conditions is ensured. Such a situation will be achieved only when the Monitoring mechanism is effective in its functioning. In this case, the Authority does not find any effectiveness in monitoring of the compliance with conditions imposed in EC Order. In other words, the monitoring system of MoEF appears to be rather weak, pointing out the need for reinforcement and strengthening of



1986. But this Administrative weakness in monitoring system would not, the Authority considers, vitiate the decision taken by Respondent-1 in the present case.

(3) The Second point relates to the alleged failure of EAC to undertake a detailed scrutiny before arriving at their recommendations to the Ministry. It is seen that EAC(Mines) had scrutinised the proposal during 19-21.09.2007 and on 05.08.2008. It is clear from the minutes of their meeting held on 05.08,2008 that the committee took note of the specific issues raised in the Public Hearing, along with the EMP submitted by the Project Proponent. It is further clear that as directed by the Public Hearing Committee, the Project Proponent has subsequently submitted to Respondent- 1 a detailed response statement on the issues raised in the Public Hearing. The Committee was satisfied that the issues raised in the Public Hearing have been adequately clarified / addressed by the Project Proponent and then only they recommended for grant of EC subject to 33 specific conditions, in addition to 16 general conditions. The Specific Conditions cover a wide range of critical and sensitive issues relating to the ecology and environment of the area. It has also suggested periodical monitoring and continuous follow up on many critical aspects. It is obvious that had not the EAC applied its mind and undertaken a detailed scrutiny of the large number of representations received during Public Hearing, it would not have suggested these conditions to grant of EC. As the Hon'ble Supreme Court has held in the case of **Systopic Laboratories (Pvt) Ltd. Vs. Dr. Prem Gupta (1944 Supp (1) SCC)**, this Authority does not interfere with the evaluation made by the EAC (Mines) consisting of technical and scientific experts. Further, the EIA Report itself has been made by experts in the field. But, on their part, the Appellants have not produced any specific issues that have not received the detailed scrutiny of the said Committee. The argument of the Appellants on this issue is not based on any material evidence and it fails convince this Authority.

(4) Regarding the alleged concealment of the Land Acquisition Proceedings from the knowledge of Respodnent-1, it should be noted that the details alleged to have been concealed from the knowledge of Respodnent-1 should be relevant to the issue having direct impact on the decision making process. The allegation of the Appellant revolves around the omission on the part of Respodnent-3 to indicate the ownership of the land involved in the Project. As far as the Mining Projects are concerned, the lessees and the owners of the land are mostly different. As claimed by Respodnent-3, the lessees licenced to prospect the mineral wealth beneath the surface area of the land and the



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lease does not change or affect the ownership of the surface land. The omission on the part of Respondent-3 does not amount to material omission having a direct impact on the decision making process of Respondent-1. This has been amply clarified by Hon'ble Supreme Court in a similar case in **2004 (7) SCC 166**. The contention of the Appellants on this point also fails to convince this Authority.

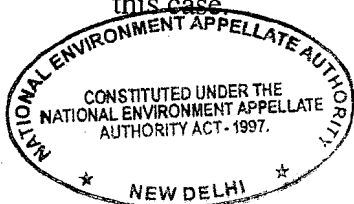
- (5) In fine, the Authority finds that the allegation of the Appellants relating to non-application of mind in the process of decision making, violation of the prescribed procedure and issues relating to concealment of details of ownership of land falls flat for want of adequate and direct material evidence in its favour. **The last Issue is also accordingly answered in negative.**

9. CONCLUSION AND JUDGMENT

9.1 The Appellants have raised at least 3 major issues questioning the validity of the impugned order of Respondent-1. The learned counsel for the Appellants have forcefully argued citing the judicial decision of Hon'ble Supreme Court and furnishing data in support of their arguments. They have criticised the role of EAC (Mines) of Respondent-1, alleging arbitrariness and lack of transparency in arriving at their recommendation to MoEF. They have cited the decisions of Hon'ble Supreme Court in many cases emphasising the need for speaking nature of the minutes of the meeting held by Public Authorities, importance of justice, equity and fair play transparency in decision making based on consideration of probity and the need to exclude the chances to reach arbitrary, whimsical or capricious decision or conclusion, application of mind in arriving at decisions on matters of public interest etc., and pleaded for quashing the impugned order of Respondent -1.

9.2 The Counsel for the Respondent-3 has referred to the law of the land as laid down by the Hon'ble Supreme Court in **Goa Foundation Vs. Diksha Holdings (2000) Supp. 4 SCR 502** which emphasizes on sustainable development and the need to attain a proper balance between environment and development. Respondent-3 has argued that they have been strictly complying with all environmental regulations and taking mitigating measures to eliminate adverse effects on the environment. This is in perfect consonance with the principle of sustainable development. He has pleaded for outright dismissal of the Appeal in

this case.



9.3 As regards the arguments of the Appellant relating to the recommendations of the EAC (Mines), the Authority notes the details of the action taken by the said Committee, as seen from para 8.3(4) above. A careful perusal of the minutes of the meeting of EAC (Mines) and its recommendations along with numerous general and specific conditions should point out the concentrated application of mind by the said Committee and the earnestness of MoEF to preserve the ecology and environment of the mines area.

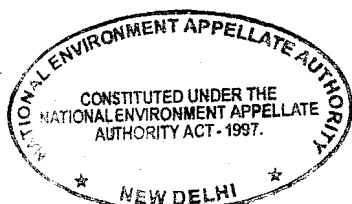
9.4 The concept of the sustainable development emphasized by the Counsel for the Respondent-3 needs some elucidation here in this case. In Vellore Citizens Welfare Forum Vs. Union of India the Supreme Court has described some of the salient principles of sustainable development as culled out from Brundtland Report and other international documents. These salient features include Inter Generational Equity, Use and Conservation of Natural Resources, Environmental Protection, the Precautionary Principle, the Polluter Pay Principle, obligation to assist and cooperate, eradication of poverty and financial assistance to developing countries. The Precautionary Principle is thus an integral part of sustainable development.

9.5 Again as enunciated by the Hon'ble Supreme Court in above case, the Precautionary Principle in the context of the Municipal Law means:

- (i) Environmental measures – by the State Government and the statutory authorities – must anticipate, prevent and attack the causes of environmental degradation.
- (ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.
- (iii) The 'Onus of proof' is on the actor or the developer/industrialist to show that his action is environmentally benign.

9.6 Applying this Precautionary Principle to this case, the decision of this Authority would depend upon

- (i) Whether the MoEF (GOI) has anticipated the causes of environmental degradation likely to be caused by the Project?
- (ii) Whether the MoEF has provided adequate safeguards in their order to protect and conserve the local environment of the project?
- (iii) Whether the Project Proponent has shown that his action is environmentally benign?



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Our discussion and findings in paras 6 to 8 above provides affirmative answer to these questions. Putting the decision of the Respondent-1 and action of Respondent -3 together the Authority sees no violation of the Precautionary Principle.


9.7 Before we conclude, it is necessary to point out the weakness in existing monitoring system in practice in the MoEF. As highlighted in para 8(2) above, the Monitoring Mechanism as practised in MoEF, as on date, appears to be rather weak. It has many pit falls such as lack of effective follow up on compliance with conditions imposed in EC Order. This weakness has been correctly highlighted in this Appeal. It is imperative that the existing Monitoring System is examined, so far as it relates to implementation of conditions attached to the EC Order, pit falls identified and necessary remedial action taken so as to achieve the broad objectives of the Environment (Protection) Act, 1986.

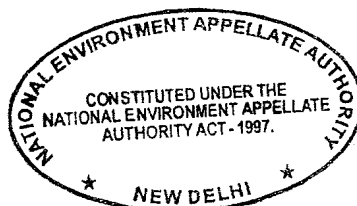
9.8 In short the Authority finds that based on various documents and record filed by all the parties to the Appeal and the arguments and counter arguments put forward during final hearing of the case, **all the 3 Issues framed and discussed in this Appeal have been answered in negative.** The Authority does not find any reason / justification to interfere with the orders of Respodnent-1 granting Environmental Clearance for the Project in favour of Respondent-3. **The Appeal is therefore dismissed on merit with direction to Respondent-1 (MoEF) to review the existing Monitoring System in respect of implementation of various conditions imposed in cases of Environmental Clearance Orders granted during the 2nd half of the calendar year 2008.**

No cost.


(J.C Kala)
Member


(Dr. I.V. Manivannan)
Member


(K. Prasad)
Member



11 True copy
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