

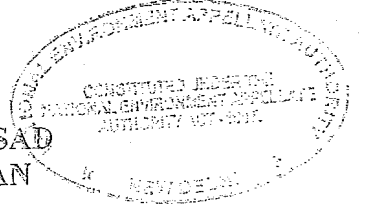
BEFORE THE NATIONAL ENVIRONMENT APPELLATE AUTHORITY
NEW DELHI

DATED THE 24th FEBRUARY, 2009

APPEAL No. 1 / 2008

CORAM:

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



BETWEEN

Shetkari Sangarsh Samiti,
Through its Secretary,
Village : Pezari, Post Poyanand, Tal. Alibag,
Dist. Raigad, Maharashtra

APPELLANT

AND

1. Ministry of Environment and Forests
Through the Secretary,
Government of India,
C.G.O Complex, Lodhi Road,
New Delhi - 110003
2. Maharashtra Pollution Control Board,
Through its Member Secretary,
Kalpatru Point (3rd and 4th Floor),
Sion Matunga Scheme,
Sion East, Mumbai-400 022.
3. Maharashtra Energy Generation Limited,
Reliance Energy Centre,
Santacruz East, Mumbai -400 055
4. National Environmental Engineering Research Institute,
Nehru Marg, Nagpur -440 020

RESPONDENTS

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

Counsel for Respondent(s)

Respondent - 1(MoEF) : Shri Om Prakash, Deputy Director, MoEF

Respondent - 2 : Shri Vivek Vishnoi, Advocate for
(MPCB) : Shri Mukesh Verma, Advocate

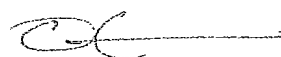
Respondent - 3 : Shri J.J Bhatt, Sr. Advocate
(Mharastra Energy General Ltd) : Ms. Anjali Chandurkar, Advocate
: Ms. Smietaa Inna, Advocate

Respondent - 4 : Not Present
(NEERI)

ORDER

1. This is an appeal filed under section 11(1) of the National Environment Appellate Authority Act, 1997 against the Environment Clearance Order No. J-13011/71/2006-IA.II (T) dated 21st November, 2007 of Ministry of Environment and Forests (MoEF), for setting up a 4000 MW Natural Gas & Coal based Power Project at Shahapur, District, Raigad by M/s. Maharashtra Energy Generation Ltd., Reliance Energy Centre, Santacruz, Mumbai - 400 055 . The Project will be implemented in two phases. The total land requirement is 919 ha. A portion of this is reported to be in CRZ, which will be used only for the foreshore facilities required for the plant. An area of 200 ha is earmarked for greenbelt. The cost of the project is Rs. 12000 crores which includes Rs. 218.00 cores for environmental protection measures. The proposal has been considered in accordance with para 12 of the EIA Notification dated 14th September, 2006 read with para 2.2.1(i)(a) of the Circular No. J-11013/41/2006-IA.II (I) dated 13.10.2006.

2. The above appeal was filed on 15th February 2008. The National Environment Appellate Authority (NEAA) registered the Appeal and notices were issued to the concerned parties by listing the case for hearing on the application for condonation of delay on 25.02.2008. Both the parties were heard on the application of delay. The Authority condoned the delay in filing the Appeal by order dated 4th of April 2008 and admitted the case for hearing on merit. All the Respondents filed their statements of objections / rejoinder / para-wise comments on the appeal. The case was taken up for

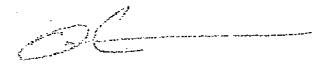


hearing on 08.07.2008, 19.09.2008, 12.09.2008, 15.10.2008. At the request of the Counsels for the Appellant and Respondents 2 & 3, the Authority clubbed the Appeal No. 1 and 4 /2008 on 19.08.2008. On 15.10.2008, the Authority ordered to de-link Appeal No. 4/2008 from Appeal No.1/2008 at the request of Respondent -3 because of delay in arguments in Appeal No. 4. Based on the points raised in the Appeal / Arguments made by the learned counsels for the Appellant and Respondents, the case in Appeal No. 1/2008 is considered in succeeding paragraphs.

3. GROUNDS OF APPEAL AND PRAYER

3.1 The Environment clearance order (EC) is being challenged on the grounds that –

- (a) It has not taken note of Environment Protection Act, National Environment Policy, Coastal Regulation Zone notifications and the recommendations of expert committee chaired by Dr Swaminathan to review these notifications;
- (b) It has not taken into consideration the Public Hearing held on 4th August 2007 as ordered by the Hon'ble High Court, Bombay, which is a serious violation of procedure as per EIA notification, 1994;
- (c) The impugned order is based on misleading information that no homestead land is involved in the project and as such there will be no displacement of population and there will be only land oustees;
- (d) The tens of adjoining villages will have to face acute water logging problem leading to displacement of huge jobless population on account of land filling activity of proposed thermal power plant since Raigarh district is flood prone as per Disaster Management Plan of Government of Maharashtra drawn as per Disaster Management Act, 2005;



- (e) The gas based thermal power plant is unviable without standby fuel while the order permits only two types of fuels namely, coal and gas; and
- (f) The acute potable water problem is envisaged in Alibag Taluka because of the proposed thermal power plant besides smog, respiratory diseases and corrosion of process equipments and metallic structures on account of its pollution.

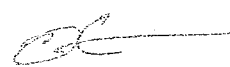
3.2 Based on above grounds, the Appellant has prayed for

- (a) Quashing the clearance granted by Respondent 1 dated 21-11-2007 to Thermal Power Plant of Respondent 3; and
- (b) Pass any such order as this Authority feels fit in the facts and circumstances of the case.

4. Following issues arise out of the grounds of Appeal and the supporting arguments of the Appellant:-

- (i) Whether the Environment Impact Assessment prepared by the Project Proponent is comprehensive enough to enable Respondent -1 (MOEF), to take a decision to grant Environmental Clearance?
 - (ii) Whether the Expert Appraisal Committee / MoEF has failed to take into consideration the minutes of the Public Hearing held on 4th August 2007 as ordered by the Hon'ble High Court, Mumbai and thereby caused a violation of procedure prescribed in EIA Notification, 1994?
- and
- (iii) Whether the EC is against the letter and spirit of Environment (Protection) Act, 1986, National Environment Policy, 2006 and Rules and Regulations framed thereunder and it has ignored the apprehensions of population displacement owing to flooding and the impacts of pollution?

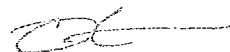
These issues are taken up for detailed examination in the following paras.



5. The First Issue is taken up for consideration is whether the Environment Impact Assessment prepared by the Project Proponent is comprehensive enough to enable Respondent -1 (MOEF) to take a decision to grant Environmental Clearance.

5.1 The Counsel for the Appellant has contended that the EIA Report prepared by NEERI for Respondent -3 does not conform to the guidelines of MoEF and it provides deliberately misleading data and false information. He has cited the following points in support of his contention.

- (a) Respondent -3 has prepared only the Rapid EIA and not a comprehensive EIA Report for the Project. The data collected by him relates to only 3 months covering October – November, period. The EIA Report prepared on the basis of mere 3 months data is not enough for critical appraisal of the Project of 4000 MW with reference to its impact. Neither EAC nor higher officials of MoEF have given any categorical reasons as to why the requirement of a comprehensive EIA was dispensed with.
- (b) In preparation of EIA Report, a mathematical model has been used for scientific predictions for assessing the impact of the Project on air quality. For scientific predictions by any mathematical model, the concentrations during the worst scenario vis-a-vis turbulence and inversions etc., have to be used. No mathematical model can predict this without unacceptable error. Further, this method ignores the amount of SO₂ emission into the ambient temperature due to the proposed project. High levels of concentrations of SO₂ in the atmosphere will cause acid rain, respiratory diseases and corrosion of equipments and structures of vital industries around. Nor has the effect of such pollution on smog formation has been discussed. While the report of NEERI deals with Maximum Credible Accident (MCA) of Risk Assessment, it has not dealt with ill effects of coal based power plants;
- (c) The area covered by the study undertaken by the Tata Institute of Social Sciences and the project area share the same sea coast and the same



underground water table and it is sensitive and also critically polluted as defined under Environment (Protection) Act, 1986. It suffers from setbacks in respect of drinking water, fish catch and health of fishermen and local population. This has been ignored by NEERI. Further, EIA has been restricted to a radius of 10 Km as against 25 Km. stipulated under "Thermal Power Plant Schedule- I under head Utility Projects";

- (d) Para 2 of the impugned order mentions that "No homestead land is involved in the project and as such there will be no displacement of population; there will be only Land Oustees". This information is far from reality and misleading. The fact is that approximately one hundred families have their home on the proposed Thermal Power Plant Layout and they will be rendered homeless. Besides, the area has 250 private lakes and 4 big public lakes apart from thousands of acres of rice cultivation. Thus the source of earning bread i.e. rice cultivation and fish farming will be taken away from thousands of residents and they will be rendered jobless. 1800 registered boats are used for fishing today in the coastal area which will have access to seashore and will be out of job; and
- (e) As per the Disaster Management Plan of Government of Maharashtra, drawn as per Disaster Management Act, 2005, Raigad district is flood prone and for last three to four years, the whole district is battling with floods in every monsoon. The Coastal villages have to battle on two fronts, namely getting rid of heavy rain water and obstructing the high tide sea water from entering their farm and water bodies. The coastal villages in Raigad have developed indigenous cheap methods on their own to get rid of these two sources of flooding. Once the leveling and land filling activity of the proposed thermal power plant is taken up, tens of adjoining villages will face acute problem of water logging as the presently available water outlet routes based on the present contour and gradient of the land will be obstructed. Thus, there will be displacement of huge jobless population.



5.2 The Project Proponent vehemently argued against the above contentions and denied the various averments made by the Appellant. He has submitted the following arguments on the various specific points raised on Rapid EIA Report :-

- (a) The claim of the Appellant that only Rapid and not a comprehensive EIA Report has been prepared is based on a mis-appreciation of facts. The EIA Notification dated 27th January, 1994 as amended from time to time provides for submission of Rapid EIA Report based on one season data (other than monsoon) for the examination of the project; Comprehensive EIA Report may be submitted later if so asked for by Impact Assessment Authority. Rapid EIA is a speedier process requiring inclusion/coverage of all significant Environmental Impacts and their mitigation and that this would be acceptable if it does not compromise on the quality of the decision making. This is clear from the EIA Manual (Components of EIA) issued by Respondent-1. Further, more than 100 Power Projects including a number of Ultra Mega Power Projects have received Environmental Clearance based on Rapid EIA Report. For this Project, Rapid EIA Report has been prepared by NEERI, a well known organization in the field. The claim of the Appellant that a four season data and studies should have been conducted before issue of Environmental Clearance is contrary to EIA Notification. In fact report of Indian Maritime Department for one authentic post monsoon season (October-November 2005) was considered by NEERI for preparation of Rapid EIA Report. Further, as desired by EAC of Respondent-1, additional one season Ambient Air Quality data covering complete summer season (March-April-May 2006) were submitted to Respondent-1. A Marine EIA has been carried out by National Institute of Oceanography, Mumbai and its report covering modeling tides and currents, present status of the Dharamatar Creek / Amba Estuary, project impact on fishery wealth in estuary and suitable location for effluent discharge into the above Creek/Estuary was presented to the Expert Appraisal Committee of Respondent-1 in its meeting held in August, 2007. As the Rapid EIA Report covers all significant environmental impacts and their



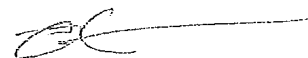
mitigation, it should be acceptable in all respects. A perusal of minutes of EAC held on 12-14th February, 2007, 9-10th April, 2007, 11-13th June, 2007 and 13-14th August, 2007 shows that EAC has critically analyzed the data originally submitted by the Project Proponent, called for additional data wherever recovered then only made its recommendations for grant of Environmental Clearance.

- (b) Respondent-1 has averred that the Mathematical modeling for Maritime EIA Report was considered by the Expert Appraisal Committee and on that basis, EAC has recommended the project. The apprehensions raised by the Appellant have not been substantiated with supporting data. As regards emission of SO₂ and its adverse impact on ambient temperature, Respondent -3 has explained that out of the 4000 MW capacity of the plant proposed here, 2800 MW plant would use gas as fuel of SO₂ would be nil. The prediction results relating to Air Quality Impact has been dealt with pages 3.2 to 3.23 of the Report, which takes into account the fact that the maximum ground level impact of SO₂ by utilization of gas as well as coal remains within the prescribed National Air Ambient Quality (NAAQ) standards, and under the given design details and operational conditions of the proposed project, there is no possibility of unacceptable concentration of SO₂ at the ground level. Further, the impact of the project on the air quality has been predicted including the worst scenario with reference to turbulence and inversion, which is evident from the micrometeorological data used as input to the mathematical model. Besides, maximum ground level impacts of Suspended Particulate Matter, SO₂ and NO_x remain within NAAQ standard. The risk involved due to storage of chlorine, sulphuric acid and hydrochloric acid has been considered in Maximum Credible Accident Analysis in chapter 3 and the Risk Mitigation in Chapter -4 of the Rapid EIA Report.
- (c) The claim of the Appellant that the project area is a "critically polluted area" and therefore a sensitive area is devoid of any materials or basis. His claim based on Executive Summary of Study undertaken by Tata Institute of Social



Studies relates to social impact assessment of the Maha Mumbai Special Economic Zone which is not identical to the Project. NEERI has conducted a study of the impacts of the water environment which area an inherent part of development and operation of a major Thermal Power Project. An in-depth study in this regard was made by NEERI which is found in paragraph 2.3 of the said Report and NEERI has also envisaged the impact due to the proposed project on the ground water regime in paragraph 3.35 page 3.39 of the Report. NEERI study has been carried out on the base land Environmental quality and assessed within 10 km radial distance around the project area while air quality impact is predicted upto 25 km radial distance around the project area as is apparent from the Chapter-4 relating to the prediction of impacts more particularly.

- (d) There is no involvement of homestead land, and none of residential sites is covered by the project site and therefore none of the families will be rendered homeless. Further, no fishing activity will be taken away as the project site is on the banks of Dharamtar creek and Amba estuary with a navigational channel to carry out navigational activities for existing Ispat and PNP jetties and the fishing activities are regulated under Maharashtra Minor Ports Navigational channel Rules, 2000. In any case MEGL has signed a MOU with Government of Maharashtra under the provisions of Maharashtra Project Affected Persons Rehabilitation Act, 1999.
- (e) The Project Proponent has explained that EMP and EIA Report prepared by NEERI has suggested that proper Flood Management System shall be designed and implemented for Project Site. M/s. MEGL has entrusted the job of carrying out a detailed study of safe grade elevation and Storm Water Drainage (SWD) system to Central Water & Power Research Station, Pune. Based on the daily and annual rainfall, site contours, highest flood level in the Dharamtar Creek / Amba Estuary, level of inundation and existing drainage pattern, CWRPS has proposed an appropriate safe grade elevation and SWD System for the area. MEGL is bound by EMP suggested by CWRPS to



ensure that there would be no adverse impact of the Project on the existing hydrological conditions of the surrounding area.

Respondent-3 has cited the relevant sections of the EIA Report to reinforce his arguments indicated above and requested this Authority to reject the contentions of the Appellant and uphold the validity of Rapid EIA prepared for the Project.

5.3 Inadequacy of the Rapid EIA Report agitated by the Counsel for the Appellant requires a careful consideration. But the real question is whether the Rapid EIA Report is permissible under EIA Notification and if so, whether it compromises with the various environmental standards. A perusal of EIA Notification in the light of the arguments of the Respondent-3 reveals the acceptability of Rapid EIA Report in the place of a Comprehensive EIA Report on the subject. This leads us to the next logical question whether it compromises with any of the environmental standards in project area. It is pertinent to note that the EAC itself has asked for additional data for one more season. Further, apart from the Report of NEERI, NIO Bombay has also submitted a Marine EIA Report on the project area. The level of emission of various pollutants like SO₂, NO_x and SPM fall within the limits of national standards prescribed by the Competent Authority. The ecological sensitivity of the Project Area including the coastal area have been taken care of by the Rapid EIA Report prepared by NEERI and Marine EIA Report of NIO, Bombay. The recommendations of CWPR Station, Pune, take care of the issues relating to flooding, inundation, and drainage aspects etc., Respondent-3 has explained the steps taken to ensure a comprehensive rehabilitation programme for the affected persons under existing statutory frame work of Government of Maharashtra. It is thus clear that even the Rapid EIA Report has been reinforced by various other studies on related aspects, so as to ensure full satisfaction of requirements of various environmental standards in the Project Area. The contention of the Appellant on this issue fails to convince this Authority and the First Issue is accordingly answered in affirmative.



6. The Second Issue is whether EAC has failed to take into consideration the minutes of the Public Hearing held on 4th August 2007 as ordered by the Hon'ble High Court, Mumbai and thereby caused a violation of procedure prescribed in EIA Notification, 1994.

6.1 The Appellant has argued that the Hon'ble High Court, being satisfied that a proper opportunity was not provided by the Public Hearing Panel to the affected people directed that petitioners be heard by the Collector on 4th August 2007. Expert Appraisal Committee of MoEF did not take note of the proceedings of the Hearing held on 4th August, 2007 but based its recommendation on the minutes of Public Hearing held on 27th June 2006.

- (i) The whole purpose of the Second Public Hearing offered to the petitioner is that the concerns and issues of the Appellant were not considered at the time of the Public Hearing held on 27.06.2006 and 23.07.2007 and the Collector was therefore directed by Hon'ble High Court of Bombay through order dated 25th July, 2007 in PIL in Writ Petition 126 /2006 to hear the petitioners on 4th August, 2007. The representation by Bharat Patankar cannot replace the representations of the petitioners heard by the Collector on 4th August, 2007 on the orders of the High Court, Bombay.
- (ii) In his final written submission filed before this Authority, the counsel for the Appellant has pointed out the following variations between the above two documents:-
 - (a) Serial No. 3: The demand of the Hearing held on 4th August, 2007 was that a comprehensive EIA should be prepared. The same was also mentioned in the note by the Scientific Officer of the MoEF. However, without providing any reasons the EAC, MoEF did not insist on a comprehensive EIA.



(b) Serial No.4 (a) of the chart deals with occurrence of respiratory disease. NEERI Report only mentions about the Socio Economic Environment in chapter 3 and not on the rise of respiratory disease.

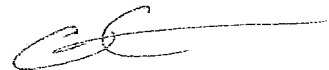
(c) Serial No. 5 Ill-effects of Coal based plant raised during the Public Hearing held on 4th August, 2007 are fundamentally different from the query raised on 27.06.2006. The report of NEERI only deals with Maximum Credible Accident (MCA) of Risk Assessment Report and it has not dealt with the crucial aspect of ill effects of Coal based plants.

The EAC should have considered the above variation and then made its recommendations to MOEF.

This failure on the part of EAC of Respondent -1 constitutes violation of procedure prescribed in EIA Notification 1994.

6.2. The Maharashtra Pollution Control Board, Respondent – 2 has denied the above claim of the Appellant and asserted that the Public Hearing was conducted in accordance with the provisions of the said Notification. Respondent-2 reinforced their argument with the following details:

(a) The Environmental Public Hearing originally scheduled to be held on 29.05.2006 was postponed by due intimation to the local public and held on 27.06.2006 at the office of the District Collect or Alibag. Public Hearing was presided by the Ex-Member Secretary of the Maharashtra Pollution Control Board and attended by a large number of people including the elected representatives of the people. The Project Proponent made a presentation of the project, the likely impact on environment and the mitigation measures proposed by the company. The Project Proponent also tried to answer the questions posed by the people. But, most of the questions/queries raised by the people related to land acquisition, employment, rehabilitation etc. Besides the oral submission, the people present in the hearing also submitted



written representations which were taken on record. The appellant has taken part in the Public Hearing conducted on 27.06.2006;

- (b) As per the orders of High Court, Bombay dated 13.06.2007, the Chairman, Public Hearing Panel fixed up a hearing on 23.07.2007 and provided the petitioner with an opportunity for a hearing. But, the situation created by the petitioner including the officer-bearers of the Appellant organization and the local villagers did not allow smooth conduct of any hearing on that date. No written representations were submitted to Public Hearing Panel;
- (c) In compliance with the direction of the Hon'ble High Court of Bombay in PIL No. 126/2006 issued on 25.07.2007, a personal hearing was offered on 04.08.2007 to 3 representatives of the Appellant, with a liberty to engage the counsel, wherein the petitioners were given full opportunity to file their objections. The various points raised by the petitioners were clarified by the representatives of the concerned organizations. The proceedings of such hearing were also submitted not only to the High Court Bombay but also to MOEF.
- (d) The above hearing extended to the Appellant alone on 04.08.2007 cannot said to be a public hearing in true sense of the term and it could at best be a personal hearing.


Many opportunities were thus given to the Appellant and there has been no violation of any provisions of the relevant notification.

6.3 MoEF (Respondent-1) have in their affidavit stated that the Maharashtra Pollution Control Board has conducted the Public Hearing on 27.06.2006 and the proceedings were received by them on 06.12.2006, which were considered by the EAC for taking the decision for granting the Environmental Clearance. In response to the point agitated by the Appellant and the query raised by the Authority thereon, Respondent-1 has orally submitted on 19.08.2008 that they have not received the copy of the proceedings of hearing held on 04.08.2007. This statement confirmed the contention of the Appellant.



6.4 By way of response to this position, the counsel for Respondent -3 filed a chart of various issues submitted on different dates including those submitted during the hearing held on 27.06.2006 and 04.08.2007 and sought to substantiate the claim that the issues raised on 4th August, 2007 were already covered by the representations of various parties during the public hearing held on 27.06.2006 and those points have been taken note of by Expert Appraisal Committee in their meetings held on 12-14th February, 2007, 9-10th April, 2007, 11-13th June, 2007 and 13-14th August, 2007 and that there has been no violation of Principles of Natural Justice and the procedure prescribed in the Notification.


6.5 From perusal of various documents submitted by the parties and in the light of their arguments on this issue, it is clear that though the Respondent -2 has claimed that the Minutes of the hearing held on 04.08.2006 were dispatched to Respondent-1 in addition to other authorities like High Court, Bombay, the minutes have not reached the MoEF. But as claimed by Respondent-3, the issues raised by the representatives of the Appellant organization on 04.08.2007 are the issues already raised during the Public Hearing held on 27th June, 2006 and certain other dates and they have been considered in the reports of NEERI and NIO and in the meetings of EAC held on various dates. It is further seen that the additional details called for by EAC have been furnished by the Respondent -3 to them on various dates. It is therefore crystal clear that all the issues raised by the Appellant have been considered by EAC and then only final recommendation was made by them. In addition, the Authority finds that the opportunity granted in compliance of the orders of High Court Bombay, was only a personal hearing of the Appellant and not a Public Hearing in terms of the relevant Notification. Based on the above facts and circumstances of the case on this issue, the Authority finds that though the minutes of the personal hearing offered by the Chairman, Public Hearing Panel on 4th August, 2007 were not considered by the EAC of the Respondent-1, all the issues raised by the Appellant have been considered by EAC on various dates before making its recommendations to Respondent-1 and that there is no violation of any procedure prescribed in the relevant Notification thereby causing violation of Principles of Natural Justice as claimed the Appellant in this case. The Second Issue is accordingly answered.



7. The Last Issue is whether the EC is against the letter and spirit of Environment (Protection) Act, 1986, National Environment Policy, 2006 and Rules and Regulations framed thereunder, and it has ignored the apprehensions of population displacement due to flooding and the impacts of pollution.

7.1 The Appellant has vehemently argued that the impugned order of Respondent-1 granting Environmental Clearance to the project of Respondent-3 is highly irregular and against the letter and spirit of the Environment (Protection) Act, 1986 and the regulations issued hereunder, National Environment Policy, 2006 as well as Regulations related to Management of Coastal Areas. He has cited the following commissions/omissions on the part of the Respondent-1 to substantiate his argument:-

- (a) Establishment of a Thermal Power Plant in the proposed site is against the allowable limits of concentration of various environmental pollutants including noise for preservation of biological diversity of Karnala Bird Sanctuary (23 Km.) and Reserved Forest (within 10 Km);
- (b) From the study of Tata Institute of Social Sciences, Mumbai and Social Impact Assessment of Maha Mumbai Special Economic Zone, it is clear that the areas covered by these studies and the project areas share the same coast and the same underground water table. The Project site is a sensitive area and also critically polluted one as defined in the EP Act, 1986 with reference to water levels in wells/bore wells, declining fishery wealth, consequential poor health of fisherman, inadequate availability of drinking water and poor quality of potable water etc.,
- (c) Impugned order permits storage of toxic biocides for cooking water, sulphuric acid, Hydro chloric acid, huge quantity amount of fly ash on 200 acres of land, and the sludge generated from raw water treatment and effluent treatment and sewage treatment plants at the rate of 950 M³ per day. The use of sludge for landfill and reclamation of low laying areas coupled with

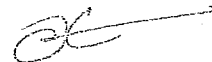


accumulation of about 67 Metric Tonnes Per Annum would severely pollute the environment.

- (d) The power of granting EC has been used by Respondent -1 in an arbitrary manner. The permission granted to Thermal Power Plant at Jaigad, Ratnagiri is imposed with a condition that 100% of the generated fly ash will be utilized by the Project Proponent thus avoiding chance of accumulation, whereas such condition has not been imposed in the present case.
- (e) The grant of EC is based on wrong and misleading statement of Respondent-3 about land use in Form-II of the Application wherein Respondent-3 has said "yes" to a query on whether the site conforms to the stipulated land use plan. Factually, the Project site falls under Special Green Zone -II (G-2) wherein only such activities as Farm Buildings, Agricultural and allied activities and agro based industries, rice mill, poha mill, saw mill, cold storage, horticultural project, poultry farms, cattle stables, piggeries and sheep farms, quarrying of stones, murmur or earth including mechanized stone crushing or stone dressing and temporary housing of laborers etc., are allowed, subject to the prior approval of MMRDA. The thermal project does not fall under the stipulated activities of the Specified Zone. The claim of Respondent-3 in this regard is a misleading one, contrary to actual facts. He has cited the decisions of the Hon'ble Supreme Court reported in (2007) 4 SCC 410, (2005) 7 SCC 177, & (2005) 6 SCC 149 in favour of his arguments.

The Environment Clearance granted by Respondent -1 should therefore be quashed as it is against the letter and spirit of various Environmental Acts, Regulations and procedure and it ignores the impact of pollution on various sectors and the apprehension of the population displacement.

7.2 Denying the various contentions of the Appellant, Respondent-1 has claimed that none of the statues, regulations etc. dealing with protection of Environment has been violated or deviated while granting Environmental Clearance for the Project MoEF has



issued Environmental Clearance in accordance with recommendations of EAC for thermal Power and Coal Mine Projects, after critically appraising EIA Reports submitted by the Project Proponent. EAC had called for certain additional details from Respondent -3, examined the received data and then only recommended for issue of Environmental Clearance. Environmental Clearance is subject to certain strict special and general conditions stipulated therein. Respondent-1 has also denied arbitrary use of their power to grant Environmental Clearance. Further, various Environmental norms and standards prescribed under different regulations including Fly Ash Notification, 1999 have been strictly followed, and MoEF has requested the Authority to reject the arguments of the Appellant in this regard.

7.3 Reinforcing the arguments of Respondent-1, Respondent -3 has forcibly argued against acceptance of the plea of the Appellant as indicated below:

- (a) The emission of various pollutants from Thermal Power Plant is well within the permissible limits. As may be seen from Chapter 3 of NEERI Report, the maximum ground level impact of SO₂ by utilization of gas as well as coal remain within the prescribed National Air Ambient Quality Standards and there is no possibility of high and unacceptable concentrations of SPM and NO_x at ground level as per the prediction results. It is further evident that the Report has studied the impact of the project in the area within a radius of 25 km as against 10 km claimed by the Appellant.
- (b) Reliance of the Appellant on the executive summary of the studies by TISS is misplaced as much as the same refers to the social impact of assessment of Maha Mumbai SEZ, which is not identical to the case of the Project Proponent. The Project area is neither critically polluted nor is it a sensitive area. The allegation about lakes and ponds are baseless. The fishing activities are regulated inside the navigational channel of Dharmatar Creek under Maharashtra Minor Ports Navigational Rules, 2000.

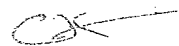


- (c) The alleged risk involved in storage of Chlorine, Hydrochloric acid, Sulphuric Acid etc., has been analyzed in Chapters -3 and 4 of the Report. Their storage as well as that of bottom sludge etc. would be managed with reference to statutory clearances accorded by Maharashtra Pollution Control Board. Fly ash generated from the Project would be treated strictly in accordance with Fly Ash Utilization Notification 1999 as amended subsequently in 2003.
- (d) The Fly Ash Utilization Notification, 1999 as amended subsequently in 2003 has prescribed utilization of fly ash in phased manner and the Project Authorities have to implement these orders. The conditions stipulated therein are based on the data submitted by the Project Proponent for Fly Ash Utilization Plan and considered by EAC in the Eyes of Fly ash Utilization Notification 1999. The Fly Ash Utilization Plans proposed by the Thermal Power Plants may not be same and the conditions for utilization of Fly Ash cannot therefore be stipulated uniformly for all the Thermal Power Plants. There has been no such arbitrary exercise of power in the matter of grant of EC as alleged by the Appellant.
- (e) As regards the alleged misleading statement about the land use, it is submitted that they have not made any wrong and misleading statement which has resulted in any benefit to the Respondent -3 based on such a statement. Respondent-3 has cited the following points in support of his argument:-
- (1) Paragraph 3.4.1 of the Rapid EIA Report of NEERI clearly and unequivocally states that the proposed land requires necessary notification by the State Government for change of land use to industrial developments. The fact that the change of land use is required was thus categorically stated;
 - (2) The question of land use was raised by Respondent-1 in their letters dated 11/13.03.2007 and 01.05.2007, and it was replied by Respondent-3 accordingly. Same issue was also discussed during the EAC meetings held on 10.04.2007 and 12.06.2007. The Expert Appraisal Committee specifically



asked Respondent-3 to clarify the objections that the part of the land is in Green Zone -2.

- (3) By way of reply to the query raised by Dr. Bharat Patangar and the Appellant, Respondent-3 categorically stated that the Appellant had submitted an application to the Government of Maharashtra on 17th October, 2005 (much prior to its application to MoEF for Environment Clearance) for conversion of Green Zone to Industrial Zone for setting up this Project. It should therefore be clear that even prior to grant of EC, MoEF and EAC were aware that the land in question was in Green Zone -2 and that the Appellant had already applied for conversion;
- (4) Moreover a number of power projects have been accorded Environment Clearance by MoEF for which zone conversion was applicable, and the proposal was either pending or were being processed at the time of consideration of Environmental Clearance by MoEF. These projects include 000 MW Power Project at Sasan, Madhya Pradesh, 4000 MW Project at Krishnapuram, A.P, and 7480 MW Power Project at Dadri, U.P.
- (5) In any event, the Environmental Clearance granted cannot be straight away implemented prior to conversion of the land. By itself, the grant of Environmental Clearance does not operate, and cannot in law operate as conversion of land. The implementation of the Environmental Clearance would be subject to all applicable laws; and
- (6) The judgments cited by the Appellant reported in (2007) 4 SCC 410, (2005) 7 SCC 177, & (2005) 6 SCC 149 are cases which are based on a misstatement and undertaking in the form and the concerned persons had obtained an advantage. These judgments are not applicable to this case as the question of land has been specifically addressed by all the relevant parties before the clearance is granted.



The contention about the alleged wrong /misleading statement about the land use may be rejected straight away by the Authority.

- (f) Regarding the comprehension that the affected people would be rendered jobless, R-3 has submitted that Maharashtra Energy Generation Limited has signed a Memorandum of Understanding with Government of Maharashtra on 18th May, 2007 and taking into account the provision of Maharashtra Project Affected Persons Rehabilitation Act, 1999 and the National Rehabilitation Policy, 2007, they have proposed a Rehabilitation Package for all the Project Affected Persons residing and /or cultivating and/or working and /or doing business and /or having rights of ownership in or in respect of the land under consideration. Government of Maharashtra has already engaged the Yeshwantrao Chavan Academy of Development Activities (YASHADA) in October, 2007 to carry out the socio economic survey of the farmers affected by the process of land acquisition. The apprehensions expressed by the Appellant are therefore baseless.

The Appellant is merely attempting to delay a project of national importance for extraneous reasons. As no issue of environmental importance has been raised by the Appellant, his contentions on this issue may be rejected on merit.

7.4 The claims and counter claims have been made by the parties to the Appeal on crucial aspects of environmental standards and their satisfaction by the Project Proponent. The need for verifications of these aspects necessarily takes us to the EIA Reports prepared for the Project:

- (a) Adverse Impact of Emissions in ambient Temperature:

Chapter-3 of the EIA Report has made detailed analysis have shown that the ground level impact of SPM, NO_x and SO₂ from the proposed project would be within the prescribed NAAQ standards. It has acknowledged the emission of CO₂ which is categorized as Green House Gas contributing to Global Warming / Climate Change phenomena for which there is no regulation in

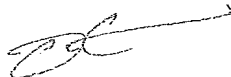


India. The net increase in the noise level on account of the project is likely to be 1.7- 2.8 dB(A) over the baseline status. Further the occupational exposure to noise and vibration will be maintained well within the standards prescribed by OSHA, MOEF to mitigate its impact on health of the workers.

(b) The impact of the project on the various components of ecology has also been dealt with in detail;

(i) Water Environment - The waste water generated from different sources of the project will be treated at ETP for removal of oil, grease and suspended solids to comply with regulatory standards and the treated water will be reused for green belt development, ash handling, coal dust suppression and service water etc., and the balance quantity of water will be discharged in to Amba estuary zone / Dharamatar Creek after complying with limits prescribed for coal based and gas based Thermal Power Plants. As the proposed project will have re-circulating cooling water system and central monitoring basins to hold the cooling tower blow down prior to final discharge, there will no final impacts envisaged on receiving water body. The stress on underground water table will be minimum as the water requirements will be down from river sources and stored in large scale storage reservoir.

(ii) Land Environment - Ash content in indigenous coal would be 41 - 42% (w) while that of imported coal would be 12% by weight. The estimated generation of ash will be collected in dry form and supplied to the ash utilizers according to the demand. The balance ash will be disposed of using High Concentration Slurry Disposal Technology. The industrial solid wastes in the form of sledges will be used for land filling / reclamation of low laying areas. The hazardous waste generated by the Project will be managed under Hazardous Waste Management Rules; the impact on surrounding agricultural fields would be insignificant during normal operation. The proposed Green Belt in and around the project site would contribute towards attenuation of Air



and Noise impact in addition to improving the aesthetics in the project area.

- (iii) **Biological Environment** - As the banks of Creeklets and Amba Estuary will be excluded from development activities, the project will not have any effect on existing inter tidal eco-system. The impact on aquatic ecology would be negligible, as the treated effluents will meet the prescribed standards prior to final discharge

Thus the claim of the Appellant on the possible adverse impact of the project on the ecology of the project area falls flat.

- (c) **Risk in Storage of hazardous chemicals**

Chapter-4 of the EIA Report recognizes certain hazards involved in Fire and Explosion Index for Natural Gas Pipeline from battery limits till the combustion chamber of GTGs, HSD Storage Tank, Hydrogen Cylinders, Chlorine Tonners, Storage Tanks of HCL and Sulphuric acid, and it has made specific recommendations for management of any eventualities.

The contention of the Appellant in this aspect also not acceptable.

- (d) **Disposal of Fly Ash**

Para 4.5 of the Report gives a detailed account of the precautions to be taken for controlling the pollution by providing Dust Extraction and Spray type dust suppression arrangement in different transfer points and stockpile to contain the dust under adverse wind condition. Ventilation system will also be provided for underground tunnels, transfer points and bunker level. The Fly ash generated by the project will be finally disposed off under the Fly Ash Utilisation Notification, 1999 as amended in 2003. The contention of Respondent-1 that uniform conditions cannot be imposed for the projects, has



considerable force. The element of arbitrary exercise of power on the part of Respondent is not apparent on the face of the records.

- (e) As regards the contentious points on statement of the Appellant on the nature of classification of land included in the Project area, it is clear that the Respondent-3 has committed a mistake in saying "Yes" to the column relating to the stipulated land use Form II of the Application. But as explained by Respondent -3 in para 7.3(e)(2) above, the project proponent has informed both EAC and MoEF about the real nature of the land concerned as well as their request to Government of Maharashtra for change of classification from agricultural zone to industrial zone. It is also noted that the Government of Maharashtra has published a Preliminary Notification in August 2006 proposing change of classification of the land and inviting objections thereto. The project cannot be commenced until the proposed change of classification of the land is confirmed by the Government of Maharashtra. But, Respondent-1 is however entitled to issue this Environmental Clearance order under clause 8(v) of Environment Impact Assessment Notification dated 14.09.2006, according to which clearance from other regulatory bodies or authorities shall not be required prior to receipt of applications for prior Environmental Clearance of the projects or activities or scoping etc., by 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. Under the facts and circumstances of the case, the Authority finds that the Project Proponent has not obtained any undue benefit in the form of clearance order. The contention of the Appellant on this point is not acceptable.
- (f) There is no dispute about the efforts of the Respondent-3 to formulate a detailed Rehabilitation Package for the affected people under the existing frame work of Acts and Rules on the subject. The YASHADA has been engaged to undertake to carry out a detailed Socio Economic Survey of the affected people. Most of the land covering about 3490 acres for the

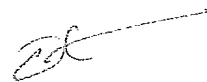


proposed project will be acquired from the private owners and number of Project Affected Persons (PAP) is estimated at 1950. The Impact Assessment Report envisages not only beneficial impact but also adverse impacts. The adverse impacts include permanent change in land use pattern affecting agricultural production, change in occupational pattern and influx of workers with their family creating stress on local infrastructure. The beneficial impacts includes the increase in availability of the electricity in the project area as well as the State, better job opportunities for local people during construction and operational phases, increase in infrastructural resources and civic amenities as well as improvement in quality of life.

The Authority does not find any justification in the apprehension of the Appellant over the Rehabilitation package for the project affected people.

Thus, the contentions of the Appellant on various points mainly relating to environmental standards, ecological sensitivity of the area, storage risks, disposal of fly ash, land use pattern and rehabilitation package do not carry much weight and is therefore not acceptable. Based on records produced by all the parties and in the light of their arguments, the Authority holds that the Respondent -1 has not ignored the apprehension of population displacement due to flooding and environmental pollution and it further holds that the Environment Clearance Order issued in favour of the Project has not gone against the letter and spirit of the Environment (Protection) Act, 1986, the National Environment Policy, 2006 and other relevant acts Rules and Regulations framed hereunder. The Third and Last Issue is also answered in negative.

3. As may be seen from the above paragraphs, the Appellant has harped on inadequacy of Rapid EIA, alleged failure of EAC to take into account the minutes of the hearing offered to the Appellant on 4th August, 2007 and alleged failure of Respondent-1 to follow the letter and spirit of Environment (Protection) Act, 1986, National Environment Policy 2006 & Various related Rules and Regulations, as well as arbitrary use of power to grant Environmental Clearance in favour of Respondent -3. The counsel for the Appellant has put forward many points and pleaded for quashing of the Impugned



order of Respondent-1. Based on the records and evidence produced by parties to the Appeal, the decision of the Authority on the three issues raised in this case have gone against the Appellant.

9. The Respondent -1 and Respondent -3 have argued their points of view with equal force, if not with more force. Respondent-1 has succeeded in proving the legality of the order within the framework of Environmental Policy, Acts and Regulations etc., as well as absence of arbitrary exercise of their power to grant Environmental Clearance in favour of Respondent-3. The Counsel for Respondent-3 has produced the relevant data and materials to strengthen the case of the Project Proponent. The realization and admission on the part of Project Proponent that the Project would be operational only when the Government of Maharashtra issued favorable orders on the proposed conversion of portion of the project site from agricultural Green Zone-2 to industrial Zone, is also noteworthy. The 4000 MW Power Project covered in this Appeal would no doubt, on its successful completion, contribute to partial quenching of the power hunger of State of Maharashtra. But in the process, the Respondent -3 is bound to strictly implement various rigorous general and specific conditions imposed by Respondent-1 as part of their Environmental Clearance Order and safeguard the environment of the Project area with reference to dictates of National Environmental Policy and various statutory Rules and Regulation framed thereunder.

10. Based on the records placed and arguments made by the parties to the Appeal, and for the reasons indicated above, the Appeal is accordingly dismissed on merit.

No order on cost.

[Signature]
24/11/09
(J.C Kala)
Member

[Signature]
(Dr. I.V. Manivannan)
Member

[Signature] 24/02/09
(Kaushendra Prasad)
Member

"certified to be true
copies"

[Signature]
Gourt Master 27/3/09
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2nd Floor, Bhikaji Cama, Pla
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