



Appeal No. 7 /2008 – NEAA

April 12, 2009

To

1. ✓ Shri Ritwick Dutta, Advocate
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 Dr. P.B. Rastogi Director, MoEF)
3. Shri Bhavanishankar V Gadnis
Advocate for Respondent No.2
No.69 E Second Floor, Gautam Nagar,
New Delhi – 110049.
4. Shri Parekh & Co.
Advocates for Respondent – 3
134, Lawyers Chambers
Supreme Court of India,
Tilak Marg, New Delhi – 110 001

Sub: Appeal No. 7/ 2008 (Mr. Sushant S Naik Vs. Ministry of Environment and Forests & Others)

Sir,

As directed, the order dated 2nd April, 2009 the National Environment Appellate Authority in the above appeal is enclosed. Please acknowledge the receipt of the same.

Yours faithfully,


Court Master
NEAA



BEFORE THE NATIONAL ENVIRONMENT APPELLATE AUTHORITY
NEW DELHI

DATED THE 2ND APRIL, 2009

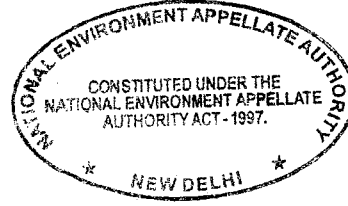
APPEAL NO. 7 OF 2008

CORAM:

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

BETWEEN

Mr. Sushant S Naik
H. No. 103, Costi, Kaley,
Sanguem Taluk, Goa.



APPELLANT

AND

1. Ministry of Environment and Forests
Through the Secretary,
Government of India,
C.G.O Complex, Lodhi Road,
New Delhi - 110003
2. Goa State Pollution Control Board,
Dempo Towers, Patto,
Panjim, Goa.
3. M/s Mandovi Pellets,
A Division of M/S Chougule and Co. Pvt Ltd,
Near Borim Bridge,
Shiroda, Goa.

RESPONDENTS

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

Counsel for Respondent(s)

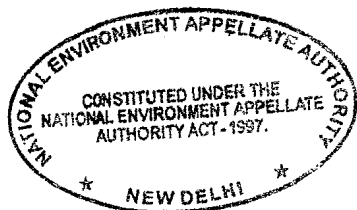
Respondent - 1(MoEF) : Dr. P B Rastogi, Director, MoEF

Respondent - 2 : Shri Bhavanishakar V. Gadnis, Advocate
(Goa state Pollution Control Board)

Respondent - 3 : Shri P. H Parekh, Senior Advocate
(M/S Mandovi Pellets) Ms. Shakun Sharma Advocate,
Shri Sumit Goel Advocate
Ms. Yashodhara Advocate
Ms. Pallavi Advocate

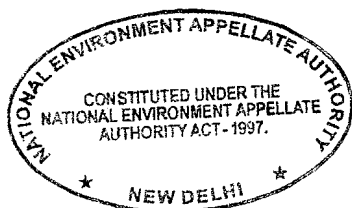
ORDER

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-11011/485/2006-IA.II(I) dated 03.07.2008, Ministry of Environment and Forests (MoEF) for setting up the High Grade Iron Ore Plant (500,000 TPA) at village Santona & Dudhal, Costi, Taluka Sanguem, District South Goa, Goa by M/s. Mandovi Pellets, near Borim Bridge, Shiroda-403103, Goa.
2. The above appeal was filed on 17.09.2008 i.e after a delay of 46 days from the date of expiry of 30 days period. The National Environment Appellate Authority (NEAA) registered the Appeal and notices were issued to the concerned parties by listing case for hearing on the application for condonation of delay on 27.11.2008. Both the parties were heard on the application for condonation of delay. The Authority condoned the delay in filing the Appeal and admitted the Appeal for hearing on merit by directing the parties to file rejoinder, if any. The Appellant did not press for stay of the Environmental Clearance Order. All the parties filed their statements of objections / rejoinder / para-wise comments to the Appeal. The case was taken up for hearing on 11.12.2008, 07.01.2009, 04.02.2009, 12.02.2009, 18.02.2009, 03.03.2009 and finally on 04.03.2009. Based on the points raised in the Appeal / Arguments made by the learned counsels for the Appellant and the Respondents, the Appeal was considered and the same is discussed in the succeeding paragraphs.



3. GROUNDS OF APPEAL AND PRAYER

- 3.1 The Environment Clearance Order (EC) is being challenged on the grounds that –
- (i) villagers of Kaley, Sanguem, which would be affected by pollution from the plant, conducted a Gram Sabha meeting and passed a resolution opposing the Project. Appellant together with other members of villages surrounding the plant opposed the setting up of the plant on environmental grounds. Written objections were also filed by 93 villagers. It is also alleged that several issues raised during the Public Hearing did not find place in the Minutes of Meeting;
 - (ii) the project was originally proposed for Shiroda, Costi village as can be seen from the Minutes dated 12-14, May 2008, of Expert Appraisal Committee (EAC) meeting. EAC did not know that Shiroda and Costi villages are several Kilometers apart. However, Public Hearing was held for the plant now proposed at Santona which is two villages away from Costi and this location will affect Kaley village and also the adjoining Wildlife Sanctuary through its pollution load. EIA/EMP for Santona would be different from EIA/EMP for Shiroda or Costi which formed the basis for EAC to accord its recommendation to the Ministry for Environmental Clearance;
 - (iii) the EIA report prepared by the Respondent-2 does not conform to the guidelines of MoEF and provides misleading data and false information. EC granted is against the letter and spirit of Environmental (Protection) Act, 1986, Wildlife (Protection) Act, 1972 and the Forest (Conservation) Act, 1980 and the orders of the Apex Court;
 - (iv) the EIA has completely ignored the impact of pollution on the surrounding water bodies specially Kaley river which is hardly 50 meters away from the plant while EIA shows it 10 Km away. River Kaley is major source of Khandepar river, the feeder of Opa water works which supplies water to city of Panaji and Ponda;



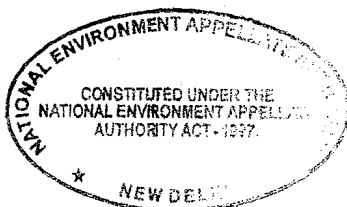
- (v) the EIA has ignored the impact of proposed plant on Bhagwan Mahavir Wildlife Sanctuary which is just 560 meters away from the plant while it was shown as 3 km away. The Sanctuary is a protected area under Wildlife (Protection) Act 1972. It has a variety of flora and fauna including endangered species. The Apex Court in its order dated 04.08.2006 passed in Writ Petition No. 202 of 1995 has prohibited location of mining industry within one kilometer safety zone, as protective measure of the Sanctuary;
- (vi) the Zoning Atlas of Goa State Pollution Control Board demarcates certain zones that are unsuitable for setting of Industries. These Environmentally Sensitive Zones include Wildlife Sanctuaries, Reserve Forests, Protected Forests and Public Water Supply areas etc. In all such cases, the atlas has banned locating polluting industries at a minimum of 2 Kms. from Environmentally Sensitive Zone. The Hon'ble High Court of Bombay has issued orders on the implementation of above Zoning Atlas;
- (vii) the Government of Goa, in the year 2003, during 42nd High Powered Co-ordination Committee Meeting, has decided not to accept applications for setting up of melting units, casting units, Ferro Alloys units, Sponge Iron units, or any activity in manufacturing with iron products or working on their projects.

4. Based on the above facts and circumstances the Appellant has prayed for

- (a) quashing the EC order dated 03.07.2008;
- (b) grant an immediate stay of above EC; and
- (c) action against Environmental Consultant for furnishing wrong and false information.

5. Following issues arise out of the grounds of appeal and the supporting arguments of the Appellant:-

- (i) **Whether the Environment Impact Assessment Report prepared for the Project Proponent is based on incorrect data including details/location of the Project which makes the Environment Clearance Order defective.**



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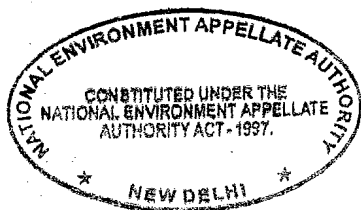
- (ii) Whether the grant of EC without obtaining the NOC from the Village Panchayat is in order?

These issues are taken up for detailed examination in the following paragraphs:

6. The first issue is whether the Environment Impact Assessment Report prepared for the Project Proponent is based on incorrect data including details/location of the Project which makes the EC Order defective.

6.1 The Appellant has argued that the EIA report is based on incorrect data with reference to the location of Project site which has resulted in non consideration or incorrect consideration of environmental impact of the proposed plant on the area specially the Bhagwan Mahavir Wildlife Sanctuary and the flora and fauna of the adjoining area, the Kaley river that flows hardly 50 meters away and non compliance of the requirements of Zoning Atlas including the violation of Government of Goa's policy decision based on the recommendation of 42nd High Powered Committee not to allow registration of new industries manufacturing with iron products. The Survey Numbers 55,59,60 and 61 of Dudhal village forms part of Government Forest requiring clearance under the Forest (Conservation) Act, 1980.

6.2 In response to the location of project site, Respondent-3 has submitted that initially on 02.12.2006, they have applied for and submitted the pre-feasibility report about the proposed project mentioning the site to be at Costi and alternate site at Shiroda. The project site was later changed to Shiroda vide their letter dated 29.01.2007. This was again changed to Costi Mines site of the Company vide letter dated 19.04.2007 (exact location being Santona and Dudhal). They prepared revised EIA/EMP reports for area in the vicinity of Costi Mines as per TOR. The proposed Project Site is also indicated in the location map (Fig. 1.1) with salient features including villages and taluka in Table 1.2 of the EIA Report (at pages 51 & 52 of their reply). The Public Hearing notice published in Hindustan Times on 27.10.2007 provide the exact survey numbers of the site. The Appellant a resident of Costi village was present in the Public Hearing ✓

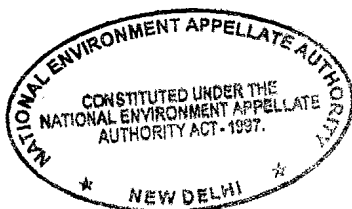


understood the correct location and raised no point/objection to this effect. The specific site was also indicated in letter dated 21.12.2007 by the Respondent-3 to MoEF.

6.3 MoEF in its reply affidavit dated 12.02.2009, has also expressly mentioned that after changes the final location of the project is at village Santona and Dudhal. Although Terms of Reference was issued for Shiroda Site but the Respondent-3 carried out all the studies within 3 km of the villages Santona and Dudhal site as is evident from EIA/EMP Report. Site with Survey Numbers (exact location) is clearly mentioned in Public Hearing Report. The EIA /EMP was appraised by Expert Appraisal Committee in its 81st meeting held during 12-14.05.2008 and the EAC recommended the proposal for Environmental Clearance. Though in the Minutes of the 81st meeting, the location has been shown as Shiroda yet the Environmental Clearance order dated 03.07.2008 was issued for the Plant at villages Santona & Dudhal. Mention of Shiroda in Minutes of Meeting is a typographical error.

6.4 Respondent-3 also cited that at para 6.0 A (xi) of EC wherein specific Condition has been imposed to refer to Chief Wildlife Warden regarding impacts of the Plant on Bhagavan Mahavir Sanctuary situated at 3 km distance and adopt mitigation measures. Condition 6.0 A(X) deals with the corporate responsibility for the benefits of plants. Orders of Hon'ble Supreme Court dated 21.01 2002 with regard to notification of area within 10 Kms of the boundaries of National Parks and Sanctuaries to be considered and notified as eco-sensitive area was duly complied with by the Government of Goa. The Government of Goa accepted the Expert Committee Report that there was no need to have eco-sensitive area around Bhagwan Mahavir Sanctuary.

6.5 Respondent-3 has further submitted that the distance of the proposed plant from Kaley river is around 250-300 meters and not 50 meters which is clear from the proceedings of the Public Hearing. Mention of 10 Km in EIA was a typographical error which was corrected at the time of Public Hearing. No water will be drawn from the river and water will be sourced from mine pits through rain water. All the liquid effluents will be treated at site and no waste will be discharged outside the premises and ✓



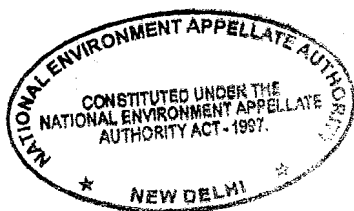
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thus Kaley river will remain unaffected. A rigorous condition to this effect has been imposed at para 6.0 A (vi) & B (v) & (vi) of the EC Order dated 03.07.2008.

6.6 Respondent-3 argued that the Zoning Atlas does not apply to the Project in question since its impact potential has been considered without pollution control equipments in operation while in the present project, various pollution control equipments are in place. The proposed plant does not fall in any of the categories mentioned in the Appeal. Annexure 2 of Zoning Atlas makes no mention of 'High Grade Iron Project' which is different from 'Integrated Iron and Steel' industry. Proposed Plant would however, attract general emission standard as per Schedule VI, Part D of the Environment (Protection) Act, 1986. The project is bound to keep emission levels below 100 mg/Nm³ through stack monitoring facility as provided under condition no. 6.0 A(i) of EC order.

6.7 The Respondent-3 also reaffirmed that as per 81st Minutes of EAC (Mines) meeting, the proposed project for manufacture of High Grade Iron which falls in a category of pig iron is different from Ferro Alloys/ sponge iron, with superior and environment friendly technology and does not come under the purview of Cabinet decision cited by the Appellant. Respondent-1 has also affirmed in their counter affidavit that they have taken note of the above clarification of Respondent 3.

6.8 Respondent 3 has denied that the EAC discussion proceeded on the basis that the Project was 'High Grade Iron Ore'. They have stated that the application for prior Environmental Clearance; the presentation before MoEF, the Public Hearing proceedings, the TOR, the EIA Report, the minutes of 81st EAC meeting all mention the project as 'High Grade Iron Plant'. Even the appellant in his objection has referred this as 'High Grade Iron' project. The typographical error in the EC certificate dated 03.07.2008 was corrected by issuing corrigendum dated 16.10.2008



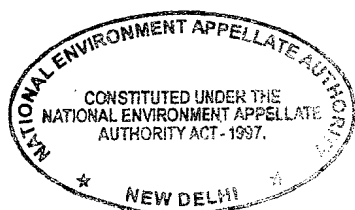
6.9 The Respondent-3 stated that as per Revenue Records, land bearing in Survey Numbers 55,59,60 & 61 in Dudhal village is not forest land. Even if it is assumed to be so, the Forest or concerned Department will initiate action against the Respondent-3 who will apply for clearance under Forest (Conservation) Act, 1980. Prior clearance under Forest (Conservation) Act, 1980 is not a pre-condition for grant of Environmental Clearance.

7. The Authority has perused relevant documents and is convinced that the EIA, the Public Hearing and the consideration of the project by the EAC was for Santona and Dudhal only. Mention of Shiroda in the subject of 81st EAC meeting was merely a typographical error which did not make material difference. It is also seen that the Environmental Clearance is not violative of Apex Court orders, the Goa Government's decision on Zoning Atlas, the High Powered Coordination Committee decision. The EAC has examined all pollution related matters of the project and the Ministry has issued EC with necessary safeguards. **The Authority, therefore, feels that EC on above counts is not defective**

8. The **Second Issue** now need to be seen whether the grant of EC without obtaining NOC from the Village Panchayat is in order.

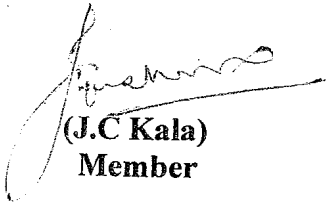
8.1 The Appellant has produced letters from village Panchayats Kaley dated 11-09-2008 and village Panchayat Sanvordem dated 14-10-2008 signed by their Secretaries to the effect that they have not received any document nor issued any NOC for the proposed Project. He also questioned the annexure of Respondent-3, at page 215 of the latter's affidavit containing the resolution dated 24.02.2008 by stating that no approval was granted by the Kaley Panchayat.

8.2 The Respondent 3 has, however, stated that various documents concerning the proposed project were submitted to the village Panchayat before the Public Hearing took place. The NOC from village Panchayat Sanvordem was issued as early as on 17.01.2007 by the Sarpanch. Relevant copy of the NOC were obtained and submitted to the Authority.

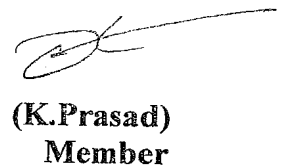


9. Notwithstanding the above position put forth by the Appellant and the Respondent, the Authority feels that concurrence (NOC) of Panchayat is not a mandatory requirement for Environmental Clearance under EIA Notification, 2006.

10. In view of above, the Authority finds no reason to interfere with the EC issued by the Respondent-1. The Appeal is therefore dismissed being devoid of merit and there is no need for any action against Environmental Consultant. However, the Authority feels that the confusion about location of plant arose because of mention of location of Plant at Shiroda in the Minutes of the 81st meeting of the Expert Appraisal Committee held on 12-14.05.2008. Though it was a typographical error, it reflects the casual approach on the part of the person signing the proceedings. Ministry should ensure that such mistakes do not take place in future.


(J.C Kala)
Member


(Dr. I.V. Manivannan)
Member


(K. Prasad)
Member



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13/4/09

Court Master
National Environment Appellate Authority
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New Delhi-110066