

BEFORE THE NATIONAL ENVIRONMENT APPELLATE AUTHORITY
NEW DELHI

DATED THE 15th MAY, 2009

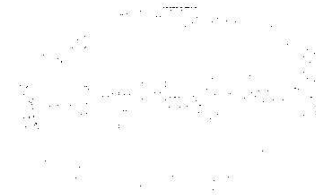
PRESENT

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

APPEAL NO. 8 OF 2009

BETWEEN:

1. Jan Chetna
Through its Member
Shri Ramesh Agrawal,
Satyam Kunj, Naya Ganj,
Raigarh, Chhattisgarh – 495 001.
2. Shri Rajesh Tripathi,
159, Kelo Vihar Colony,
Raigarh (C.G), 496 001



APPELLANTs

AND:

1. Ministry of Environment and Forests,
Through the Secretary,
Paryavaran Bhavan, C.G.C Complex,
Lodhi Road, New Delhi – 110 003
2. Chhattisgarh Environment Conservation Board,
Through the Member Secretary,
1-Tilak Nagar, Shiv Mandir Chowk,
Main Road, Avanti Vihar, Raipur,
Chhattisgarh.
3. M/s. Scania Steel & Power Ltd.,
Post Punjipatra,
22 Kms Charghoda Road,
District Raigarh (Chhattisgarh)

RESPONDENTs

Counsel for Appellants : Shri Rahul Choudhary, Advocate

Counsel for Respondents

Respondent -1 (MoEF) : Shri P.R Saklace, RO, MoEF
Ms. Renu Aggarwal, LA, MoEF

Respondent – 2 : Not Present
(Chhatisgarh Env. Conservation Eoard)

Respondent – 3 : Shri Ashwini Mata, Sr. Advocate
(M/s. Scania Steel & Power Ltd) Ms. Kanika Agnihotri, Advocate
Mr. Vaibhav Agnihotri, Advocate

ORDER

1. This is an Appeal filed under section 11(1) of the National Environment Appellate Authority Act, 1997 against the Order F. No. J-11011/1267/2007 –IA-II(I) dated 05.11.2008 of the Ministry of Environment & Forests (MoEF) granting Environmental Clearance(EC) for expansion of Integrated Steel Plant & Captive Power Plant (WHRB 8 MW; AFBC 17 MW) at Village Punjipatra, District Raigarh, Chhatisgarh by M/s. Scania Steel & Power Ltd, Post Punjipatra, 22 Kms. Gharghode Road, District Raigarh, Chhatisgarh.

2. The said Appeal has been received in the National Environment Appellate Authority (NEAA) on 02.02.2009. On preliminary scrutiny it was noticed that the Appeal was presented on the 90th day from the date of issue of EC Order dated 05.11.2008 and was not filed in Form –A specified in NEAA (Appeal) Rules, 1997. A notice was issued to the Appellants intimating to remove the defects by 26.02.2009 in accordance with Rule 6 of the NEAA (Appeal) Rules, 1997 by the Registry of NEAA for registration of Appeal. The Appellants removed the defects by presenting the Memorandum of Appeal on 26.02.2009. Accordingly, the said appeal was registered and listed for hearing on the application for condonation of delay on 31.03.2009. Parties were heard on the application for condonation of delay.

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3. The counsel for the Appellant put forth the following arguments in support of the application for condonation of delay:

- (i) The EAC recommended the proposal for grant of EC to the said project in its meeting held during 23-25.09.2008 but information about final clearance was not made available on Ministry's website. The Appellants vide letter dated 19.12.2008 & 20.12.2008 requested the Respondents- 1 & 2, Regional Office CECB, Raigarh to share the information about clearance and sought clearance letter if issued. The Regional Office, CECB informed the Appellants vide letter No. 1029 dated 27.12.2008 that EC was not available with his office. The Appellants repeatedly tried to get the information about the clearance letter but it was not available on Ministry's website till 19.01.2009. The Appellants on 19.01.2009 took the print out of the list from Ministry's website approved for EC for Industrial Projects as per 2006 Notification. Only on 29.01.2009 Appellants came to know about the EC through Ministry's F. No. J-11012/37 & 56/2008-IA II (I) dated 21.01.2009. Thereafter, the Appellants have immediately filed the Appeal before this Authority. The delay in filing the Appeal was not deliberate but due to the reasons which was beyond the control of the Appellants.
- (ii) The Counsel for the Appellants argued that Rule 6 of the NEAA (Appeal) Rules, 1997 provides for removal of defects for registration of Appeal. Therefore the NEAA has given opportunity to remove the defects vide Notice dated 06.02.2009. The Appellants removed the defects and presented the Appeal in time and relied on the order passed by this Hon'ble Authority in Appeal No. 4/ 2006 (Academy for Mountain Environics Vs. Union of India and Others) in which the delay in filing the Appeal was condoned on similar facts and circumstance of the case. The Appellants were not going to be benefitted by filing this Appeal late rather would be at the losing end and that the Respondents will not be affected if the Appeal is heard on merit. The application for condonation of delay may please be viewed in the interest of justice and condone the delay in filing the Appeal.



4. The learned counsel for Respondent- 3 objected to the application for condonation of delay in filing the Appeal on the following grounds:

- (i) The Appellants have presented this Appeal along with an application for condonation of delay on 26.02.2009 which is much after expiry of 90 days period provided under the NEAA Act, 1997. It was further clear from the affidavit filed in support of application was verified only on 25.02.2009. Therefore, the Authority has no jurisdiction to entertain an Appeal after expiry of 90 days period from the date of grant of EC.
- (ii) The counsel for the Appellants stated during the hearing that they have filed an Appeal in letter form on 02.02.2009 i.e. on the 89th day from the date of impugned order passed in time as per NEAA Act, 1997 and in compliance with the NEAA's notice dated 06.02.2009, the defects were removed by filing a Memorandum of Appeal in Form -A specified in NEAA (Appeal) Rules, 1997. It is clearly mentioned in Rule 5(4) of the NEAA (Appeal) Rules, 1997 that where there is a delay in the presentation of the memorandum of appeal shall be accompanied by a separate application for condonation of delay and the supporting affidavit of such application. It is pertinent to note that the Appellants have not filed separate application along with supporting affidavit, which is required to be filed as per above rule of NEAA along with the appeal filed on 02.02.2009.
- (iii) It is further stated that the Appellants herein are applicants in many cases before the Authority and know the procedure for filing the Appeal very well. Non-filing of the application for condonation of delay along with the Appeal dated 02.02.2009 was not a defect under the NEAA (Appeal) Rules, 1997. Therefore, the question of removal of causes for non-filing of condonation of delay application after expiry of 90 days period does not arise. The Appeal filed by the Appellants before this Authority cannot be considered as Appeal under the NEAA Act and Rules, 1997 and the same may be rejected as time barred.

5. The Authority has perused Rule 5(4) of the NEAA (Appeal) Rules, 1997 which reads as under:

“ where there is a delay in the presentation of the memorandum of appeal before the Authority, such memorandum of appeal shall be accompanied by a separate application for condonation of delay and the supporting affidavit of such application”;

From above Rule, it is very clear that where there is delay in filing the Appeal, the Appeal shall be accompanied by a separate application for condonation of delay with supporting affidavit. It is evident that the present Appeal has been filed before this Authority on 02.02.2007 i.e. on 90th day from the date of grant of EC and without being accompanied by a separate application for condonation of delay. Later on 26.11.2009, the Appellants filed memorandum of Appeal as per Form -A of the NEAA (Appeal) Rules, 1997 with accompanying Affidavit dated 25.02.2009. The Counsel for the Appellants relied on the order passed in Appeal No. 4/2006 (Academy for Mountain Environics Vs. Union of India and Others) for condoning the delay on similar circumstances of the case. In this Appeal the delay was condoned as there was no objection from the Counsel for Respondents, which is not case in the present Appeal. The Authority, therefore, concludes that since the Appeal was not filed as per requirement of rule 5(4) of the NEAA (Appeal) Rules, 1997 i.e. where there is delay in presentation of the memorandum of appeal, such memorandum of appeal shall be accompanied by a separate application for condonation of delay and the supporting affidavit of such application and should be filed within 90 days from the date the impugned order. The plea of the Appellant for the late filing of the appeal is not condonable in view of Rule 5(4) of NEAA (Appeal) Rules, 1997. Accordingly the delay is not condoned. The Appeal is dismissed as time barred.

(J.C. KALA)
MEMBER

(DR. J.V. MANIVANNAN)
MEMBER

(K. PRASAD)
MEMBER