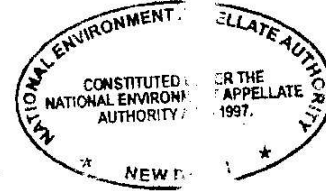


BEFORE THE NATIONAL ENVIRONMENT APPELLATE AUTHORITY
NEW DELHI

DATED 31ST DAY OF [] Y, 2007

PRESENT

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



APPEAL NO. 9/2006 

BETWEEN:

Lok Shakti Abhiyan
Through its President (Orissa Unit)
Prafulla Samantra
Berhampur - 760005

APPELLANT

A N D

1. Ministry of Environment and Forests
Through the Secretary, Government of India
C.G.O Complex, Lodi Road,
New Delhi - 110 003
2. The Orissa Pollution Control Board
Through its Member Secretary
Paribash Bhawan,
A / 118, Nilakantha Nagar, Unit VIII
Bhubaneswar - 751012
3. M/s. Hindalco Industries Ltd.
Century Bhavan,
Dr. Annie Besant Road,
Mumbai - 400 025

RESPONDENTS

Counsel for Appellant :

Shri. Rahul Choudhary, Advocate

Counsel for Respondents

1. Respondent No. 1 (MoEF):
2. Respondent No. 2 (OPCB)
3. Respondent No. 3
(M/s. Hindalco Industries Ltd.)

Shri. Satish C. Garkoti, Addl. Director
MoEF
Not Present

Dr. A.M. Singhvi, Senior Advocate
with Mr. Syed Shahid Husain Rizvi, Advocate
Ms. Hina Rizvi, Advocate




ORDER

1. This is an appeal filed under section 11(1) of the National Environment Appellate Authority (NEAA) Act, 1997 against the order of the Ministry of Environment & Forests No. J-11015/411/2005-IA (M) dated the 7th September 2006 granting Environmental Clearance on the proposal for opening of a new mine i.e. Maliparbat Bauxite Mining Project of M/s. Hindalco Industries Limited located in Village Aligaon- Kankaramba, Tehsil Pottangi, District Koraput, Orissa by M/s. Hindalco Industries Ltd., Century Bhavan, Dr. Annie Besant Road, Mumbai - 400 025.

2. The period of 30 days, which is allowed for filing of appeal, was over on 07.10.2006. The appeal was filed on 5th December 2006 i.e. 89th day from the date of Environment Clearance (excluding the date of issue of Environment Clearance i.e. 07.09.2006). The said appeal was listed for hearing on condonation of delay on 16.12.2006, 05.01.2007, 22.02.2007, 21.03.2007, 12.04.2007, 18.04.2007 and 22.05.2007. Both the parties were heard.

3. The counsel for the Appellant stated that the Appellant was working in the project area, participated in the Public Hearing of the said Project and he came to know that Environment Clearance has been granted to the project without considering the Environmental Impact of the Project. Further, he submitted that he decided to approach Central Empowered Committee (CEC) for the purpose of filing this Appeal, since he had already filed other cases before the CEC, under the impression that the present Appeal also lies before the CEC. He further stated that on 29th November 2006, he was informed that the Environment Clearance order can be challenged before the National Environment Appellate Authority only and no other court has jurisdiction on such matter. He claims that only then he came to know that the Appeal can be filed before NEAA within 30 days of clearance and not beyond 90 days. He added that as soon as he came to know about the right Appellate Forum, he filed this Appeal before this Authority within 90 days period. He, therefore, prayed that the delay in filing the Appeal may be condoned in the interest of natural justice and appeal be admitted.



4. The representative of the Ministry of Environment and Forests (Respondent No. 1) stated that keeping in view Section 11(1) of the National Environment Appellate Act, 1997, the application deserves to be rejected, as the Appellant has not adhered to the time frame prescribed for filing the appeal before the Hon'ble Authority.

5. The learned counsel for Respondent No. 3 put forward the following arguments:

(i) Ignorance of law cannot be a ground for condoning the delay. He cited the case of Swadeshi Cotton Mills Vs. Govt. of U.P (1995, 4 SCC 378) Civil Appeal No. 2285 of 1969 wherein the Hon'ble Supreme Court had laid down that

"3. Every individual is deemed to know the law of the land. Ignorance of law is not an excuse for not taking appropriate steps within limitation. Therefore the argument that the appellant did not know the true legal position is not one that can be accepted in law. That apart, even after the High Court rendered its decision in Modi Food Products' case the petitioner did not move the High Court for over several months. There is no satisfactory explanation for that delay. That being so, the High Court was fully justified in refusing to exercise its discretion under article 226 of the Constitution in favour of the Appellant".

(ii) A bare perusal of the proviso to section 11(1) of the NEAA Act, 1997 would unambiguously establish that the legislature has clearly made limitation on the question of jurisdiction of this Authority and **given power to entertain appeal up to 30 days but not after 90 days from the date of order, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.** In the present case, the Appellant has not shown any sufficient cause for invoking the discretion of this Hon'ble Authority to condone the delay by approaching the Authority on the 89th day.

(iii) The Appellant has not produced any document except the bald statements that he had enquired from his advocate for filing the Appeal on 07.11.2006. Nor



has he mentioned any event or circumstance for not filing the Appeal before this Authority within time and there is no explanation for the delay of 59 days. The provisions have to be strictly construed.


(iv) As regards the plea of the Appellant that as soon as Appellant came to know that the clearance order can be challenged only before this Hon'ble Authority, he filed this Appeal; the averments of the Appellant are totally false. The counsel for the Respondent No. 3 brought to the notice of the Authority that the same Appellant Mr. Prafulla Samantra, President, Lok Shakti Abhiyan, Orissa Unit, Behrampur - 760005 had filed an Appeal on 14.06.2006 before this Hon'ble Authority (FR No. 7/2006-NEAA) through the same Advocate against the Environment Clearance No. F.No. J11011/141/2004 -IA (I) dated 16.03.2006 granted to Respondent No. 3 for a different project. A perusal of the file of Appeal (FR) No. 7/2006-NEAA establishes the following:

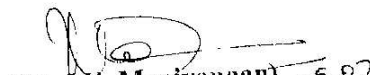
- (a) That the Appellant was very much aware of the existence of the NEAA and its role;
- (b) That the Appellant was very much aware that the Appeal against the Environment clearance would be before this Hon'ble Authority; and
- (c) That any Appeal before this Authority should be filed within 30 days from the date of the Environment Clearance order.

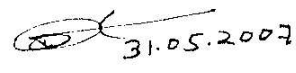
(v) The entire case of the Appellant is based on falsehood. In support of his arguments, he relied on the judgment of Hon'ble Supreme Court in Nathuji Thaware Vs. State of Maharashtra (2005 1 SCC 64) in which the Supreme Court has laid down that a petitioner who comes to court for relief in Public interest must come not only with clean hands like any other writ petitioner but also with a clean heart, clean mind and clean objective. The Court must not allow its process to be abused for oblique consideration by masked phantoms. Therefore, in view of the facts and circumstances, this application deserves to be dismissed with exemplary costs.

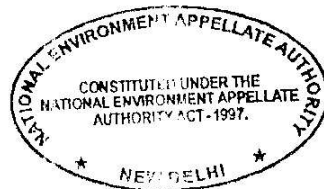
4. Taking into consideration of the arguments made by the learned counsel for the Appellant and Respondents and the records produced before this Authority, it is clear that the Appellant has failed to establish his case that he was not aware of the appropriate Appellate Forum for the purpose of appealing against Environment Clearance granted to the project. The Court finds that the same Appellant had already approached this Hon'ble Authority in another Appeal No. (FR) No. 7/2006-NEAA against the same Respondent No.3. The claim of the Appellant alleging feigning ignorance of the existence of the NEAA as Appellate Forum for cases of this type cannot, therefore, be accepted at any rate. This Authority therefore concludes that there is no sufficient cause put forward by the Appellant for condonation of delay of 59 days after the statutory period of 30 days.

5. The plea of the Appellant for condonation of delay therefore fails and the Appeal is therefore not admitted.

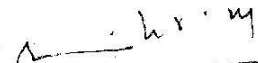

(J.C. Kala)
Member


(Dr. I.V. Maniyannan)
Member 31.05.07


31.05.2007
(K. Prasad)
Member



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