

BEFORE THE NATIONAL ENVIRONMENT APPELLATE AUTHORITY
NEW DELHI

DATED 17TH NOVEMBER, 2008

PRESENT

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

APPEAL NO. 6 / 2008

BETWEEN:

Shri Mahesh Pandya, Co-coordinator,
Paryavaran Mitra,
Janvikas, Ahmedabad,
502, Raj Avenue, Bhaikakanagar Road,
Thaltej, Ahmedabad -380059



APPELLANT

AND

1. Ministry of Environment & Forests
Through its Secretary,
Government of India
C.G.O Complex, Lodhi Road,
New Delhi - 110 003
2. Dr. P.L Ahujarai, Director,
Ministry of Environment & Forests
Government of India
C.G.O Complex, Lodhi Road,
New Delhi - 110 003
3. The Managing Director,
Indian Rayon Industries Ltd.,
Veraval, Gujarat

RESPONDENTS

Counsel for Appellant : Shri Ritwick Dutta, Advocate
Shri Priyabrata Satapathy, Advocate

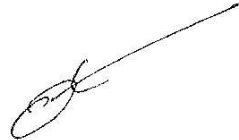
Counsel for Respondents

1. Respondent No. 1(MoEF) : Shri H.S. Malviya, Joint Director, MoEF
2. Respondent No. 2
(Director, MoEF) : - do -
3. Respondent No. 3 : Shri Sayed Shahid Husain Rizvi, Advocate
(Indian Rayon Industries Ltd)

ORDER

1. This is an Appeal filed under Section 11(1) of the National Environment Appellate Authority (NEAA) Act, 1997 against the orders of the Ministry of Environment & Forests No. J-11011/445/2008-IA.II (I) dated 18.07.2008 granting Environmental Clearance for Expansion of production capacity of viscose filament Rayon form 1300 MTPM & Caustic Soda Plant from 200 TPD to 400 TPD at Veraval, Dist.Junagarh, Gujarat by M/s. Indian Rayon, a unit of Aditya Birla Nuva Ltd., Dist: Junagarh, Veraval -- 362 266, Gujarat.

2. The said Appeal was preferred on 18th August, 2008 before the NEAA. The Appeal was registered on 19.08.2008 and listed for hearing on admissibility for 30.09.2008. The parties were heard on 30.09.2008. The Appellant has sought the permission of NEAA to engage an Advocate to present his case, which was allowed with a direction to file a short ground on admissibility under Section 11(2) (c) of the NEAA Act, 1997 and adjourned the case for hearing on 16.10.2008. Shri Ritwick Dutta, Advocate has filed Vakalathnama on behalf of the Appellant on 16.10.2008. Both the parties have filed their objections, reply to the Appeal. The Counsels for the Appellant and Respondents put-forth their points in respect of admission of the Appeal on 21.10.2008.



3. The counsel for the Appellant has submitted the following points in favour of his case:

- (i) The Appellant has filed this Appeal before this Hon'ble Authority within the stipulated period of 30 days from the date of Environmental Clearance Order No. J.11011/445/2008-LA II (I) dated 18th July, 2008 in the capacity as Co-ordinator, Paryavarn Mitra (Janvikas), Ahmedabad, Gujarat;
- (ii) The Appellant is an Environmental Engineer and working with voluntary organization Paryavaran Mitra in Gujarat as Co-ordinator;
- (iii) Paryavaran Mitra was started with objective of creating network of grass root organizations working for environment, setting up of monitoring and watchdog on developmental activities and creating awareness about environmental issues. The main organization of Paryavaran Mitra was Janvikas. Janvikas is registered under the Bombay Public Trusts Act. The Annual Report (2007-2008) of Janvikas shows that the participation of the Appellant organization in a number of Environment Public Hearings;
- (iv) The various institutions have invited the Member of the Appellant Organization to participate in various environmental activities. There is no Public Hearing in the present case. Therefore, the Appellant and members of the Association were not in a position to participate in the Public Hearing and express their views;
- (v) The NEAA admitted the Appeal in No.4/2006 and decided on merits vide order dated 19th December, 2007 which is similar to the present case;
- (vi) The Appellant satisfies criteria laid down by the Hon'ble High Court of Andhra Pradesh in W.P No. 5742 of 2006 (Capt. J. Rama Rao Vs. Union of India & Others) with respect to "any person aggrieved" and falls within the meaning of 'persons' as defined by Section 11 (2) (c) of NEAA Act, 1997. The Authority may consider that the expression "any person aggrieved" appeared in Section 11 of the NEAA Act, 1997, is of wide import; and



- (vii) On the complaint from Shri Kharva Sanyukta Machhimar Boat Association, Veraval Port, the present Appellant wrote a letter to the Chairman, GPCB on which a closure order was given to M/s. Indian Rayon industries Ltd under the Air & Water Act. The Appellant herein is also shown keen interest in protecting environment and his organization has participated in a number of Public Hearings as expressed by the Andhra Pradesh High Court above.

Keeping in view the impact of the project on the general public at large and likely adverse impact on the fisherman activities, the Appeal filed by the Appellant herein should be admitted for consideration on merit under Section 11(2) (c) of the NEAA Act, 1997.

4. The Ministry of Environment and Forests (Respondent- 1) stated in its objection that they have followed the due procedure prescribed for appraisal in EIA Notification 2006 -- "Where a public consultation is not mandatory and a formal EIA study is not required, the appraisal shall be made on the basis of the prescribed application Form 1 and a pre-feasibility report in the case of all projects and activities other than item 8 of the Schedule". Hence, EIA was not required as the Public Hearing was exempted.

5. The Counsel for the Respondent-3 vehemently opposed the plea for admission of the Appeal on the following grounds:

- (i) The Appellant is not aggrieved by an order granting Environmental Clearance and therefore he is not qualified to file an appeal as the Appellant herein does not fall within any of the criteria specified in Section 11 of the NEAA Act, 1997;
- (ii) The EC order is only for expansion of the existing plant and not setting up of any new plant. The Public Hearing is not mandatory for expansion Projects. The Expert Committee (Industry) has considered the project in its meeting held on 10-12th June, 2008 as per Para 7(ii) of the Environmental Impact Assessment



Notification, 2006 exempting it from Public Hearing;

- (iii) The Appellant and his counsel during the course of hearing have asserted that the Appellant falls under Section 11(2) (c) of the NEAA Act, 1997 but the perusal of the Appeal filed before this Authority shows that the said Appeal has been filed in his personal capacity. The verification clause to the Appeal shows that Shri Mahesh Pandya has filed this Appeal in his personal capacity and not on behalf of the NGO;
- (iv) The Appellant has not filed any Authority Letter from the NGO or Vakalatnama of NGO authorizing him to file the said Appeal;
- (v) According to Section 11(2) of the Act, the 'persons'- who alone can file an Appeal before this Authority has to be strictly construed and confined to the categories of persons given in the clauses (a) to (e);
- (vi) The Judgment of Andhra Pradesh High Court in W.P No. 5742 of 2006 cited by the Counsel for the Appellant is based on a fact and circumstances different from those of this case.
- (vii) The judgment of the Apex court in the case of Punjab Land Development and Reclamation Corporation Ltd. Vs. Presiding Officer (1990) 3 SCC 682 at para 72 reads as under:

“The definition has used the word ‘means’. When a statute says that a word or phrase shall “mean – not merely that it shall “include” – certain things or acts, the definition is a hard-and-fast definition, and no other meaning can be assigned to the expression than is put down in definition. A definition is an explicit statement of the full connotation of a term.”

Further, in TDM Infrastructure Pvt. Ltd., Vs. UE Development India Pvt. Ltd., 2008(8) Scale 576 pr 13, the Hon'ble Supreme Court has held that “whenever in an



interpretation clause, the word “means” is used the same must be given a restrictive meaning” ;

- (viii) The observations made in W.P No. 5742 of 2006 by the Hon’ble High Court that ‘even otherwise, we are prima facie convinced that the expression “any person aggrieved” appearing in Section 11 of wide import, have to be constructed in the light of the facts and circumstances of that case and cannot be applied mechanically to every case. The above observations are not in line with the law laid down by Supreme Court cited above; and
- (ix) The Appellant does not satisfy the conditions for filing the present Appeal. Therefore the Authority should construct the locus standi in strict sense and dismiss the Appeal.

7. The point for decision at this stage is whether the Appellant is eligible to file the Appeal before the NEAA. The Appellant has submitted that he has filed this Appeal as Coordinator of Paryavaran Mitra-Janvikas, Ahmedabad under Section 11(2) (c) of the NEAA Act, 1997. Let us now examine how the Appellant qualifies to file this Appeal before NEAA.

8. Section 11 (1) and (2) of the National Environment Appellate Authority Act, 1997, reads as under:

“11. (1) Any person aggrieved by an order granting environmental clearance in the areas in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards may, within thirty days from the date of such order, prefer an appeal to the Authority in such form as may be prescribed;

Provided that the Authority may entertain any appeal after the expiry of the said period of thirty days but not after ninety days from the date aforesaid if it



is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) For the purposes of sub-section (1), "persons" means -

- (a) any person who is likely to be affected by the grant of environmental clearances;
- (b) any person who owns or has control over the project with respect to which an application has been submitted for environmental clearance;
- (c) any association of persons (whether incorporated or not) likely to be affected by such order and functioning in the field of environment;"
- (d) the Central Government, where the environmental clearance is granted by the State Government and the State Government, where the environmental clearance is granted by the Central Government;
or
- (e) any local authority, any part of whose local limits is within the neighbourhood of the area wherein the project is proposed to be located."

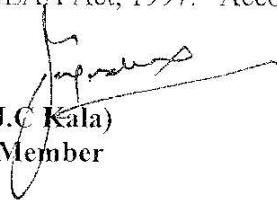
9. The Appeal filed by the Appellant shows that he has filed this Appeal in his personal capacity. In this context, the Appellant is not an aggrieved person under clause (a), (b) (d) and (e) narrowing down the scope to clause (c) of Section 11(2) of NEAA Act. The Appellant has sought to take advantage of clause (2)(c) of Section 11 of the NEAA Act, 1997 claiming that he has filed this Appeal as Co-coordinator of Paryavaran Mitra- Janvikash, Ahmadabad. He has submitted the various institutions have invited the Member of the Appellant Organization to participate in various environmental activities and his group has been closely working among the affected communities.



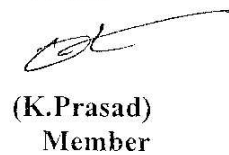
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The Authority perused the documents submitted by the Appellant but has not found any evidence even the authorization letter from the affected people or an Authority letter from an NGO to represent the case, though he has claimed that he has filed this Appeal on behalf of the complaint of the affected persons. No proof of any association of persons (whether incorporated or not) likely to be affected by an order of EC was produced before this Authority. The Appellant has failed to establish his locus standi and failed to satisfy the Authority to admit the case for hearing on merit.

10. Having perused all the submissions and the documents filed by the Appellant and the Respondents the Authority conclude that the present Appellant is not an "aggrieved person" qualified to file an Appeal before this Authority under Section 11(2) (c) of the NEAA Act, 1997. Accordingly, the Appeal filed by the Appellant is not admitted.


(J.C. Kala)
Member


(Dr. I.V. Manivannan)
Member


(K. Prasad)
Member



Court Master
National Environment Appellate Authority
Trikon-1, 2nd Floor, Bhikaij Cama Place
New Delhi-110066