

**BEFORE THE NATIONAL ENVIRONMENT APPELLATE AUTHORITY
NEW DELHI**

DATED THE 29TH JANUARY, 2008

APPEAL NO. 4 / 2007

**CORAM: HON'BLE MEMBER SHRI KAUSHLENDRA PRASAD
HON'BLE MEMBER SHRI J.C KALA**

BETWEEN:

Prafulla Samantra,
President, Lok Shakti Abhiyan,
Orissa Unit,
Berhampur -760 005.

APPELLANT

AND :

1. Ministry of Environment and Forests,
Through the Secretary,
Government of India,
Paryavaran Bhavan, CGO Complex,
Lodhi Road, New Delhi - 110.003.
2. The Orissa Pollution Control Board,
Through the Member Secretary,
Paribesh Bhawan, A/ 118, Nilkhant Nagar,
Bhubaneswar - 12, Orissa.
3. M/s. Vedanta Alumina Limited,
No.232, Solitaire Corporate Park,
Andheri -Ghatkopar Link Road,
Chakala, Andheri (East),
Mumbai - 400 093.

RESPONDENTS

Counsel for Appellant (s) : Mr. Ritwick Dutta, Advocate

Counsel for Respondent(s)

Respondent No. 1(MoEF) : Mr. P.R. Saklace, Research Officer, MoEF

Respondent No. 2 : Mr. R Das, Advocate
(Orissa Pollution Control Board) Mr. Awlaretu Mishra, Advocate

Respondent No. 3 : Dr. A.M Singhvi, Sr. Advocate
(M/s. Orissa Sponge Iron Ltd.) Mr. P.C. Sen, Advocate
Mr. Pallar Kumar, Advocate

ORDER

1. This is an appeal filed under section 11(1) of the National Environment Appellate Authority Act, 1997 (NEAA Act, 1997) against the Environmental Clearance Order No. J-11011/144/2006-IA.II (I) dated 07.03.2007 of Ministry of Environment and Forests (MoEF), Government of India, for setting up of an Alumina Smelter Plant (2,50,000 TPA) based on pre-baked technology at Village Bhurkamunda / Brandamal, District Jharsuguda, Orissa by M/s. Vedanta Alumina Ltd., 232, Solitaire Corporate Park, Andheri-Ghatkopar Link Road, Chakala, Andheri (East), Mumbai - 400 093 (Respondent -3).

2. The above Appeal was filed on 05.04.2007, registered on 10.04.2007 and the National Environment Appellate Authority (NEAA) issued notices to the concerned parties by listing the case for hearing on admission on 11.05.2007, 14.06.2007, 18.07.2007, 16.08.2007, 11.09.2007, 11.10.2007, 01.11.2007 and finally on 17.01.2008. Both the parties have filed their objections, reply and rejoinder to the Appeal. The Counsels for the Appellant and Respondents argued their points of view in respect of admission of the Appeal on 17.01.2008.

3. The Counsel for the Appellant argued that the appeal filed under section of 11 of NEAA Act, 1997 may be admitted for the following reasons:

- (i) The Appeal has been filed within the stipulated time of 30 days from the date of issue of Environmental Clearance Order No. J-11011/144/2006-IA.II (I) dated 07.03.2007 by the MoEF.
- (ii) The Appellant has filed this appeal in his personal capacity as President of Lok Shakti Abiyan, Orissa Unit, Orissa.
- (iii) The Appellant is a social and environmental activist involved in the issues concerning the tribals as well as the environment. He and his group have been closely following the development in Brandamal & Bhurkamunda District, Jharsuguda, Orissa on the issues of development.

(iv) The Appellant falls within the meaning of 'person' as defined by section 11(2) of the NEAA Act, 1997. The Appellant satisfies criteria laid down by the Hon'ble High Court of Andhra Pradesh in Writ Petition No. 5742/2006 on "any person aggrieved" appearing in Section 11 of the NEAA Act, 1997 in the following manner:

(a) He is social and environmental activist and has shown keen interest in protecting the Environment;

(b) He has been opposing throughout the grant of Environmental Clearance through:

- a letter dated 05.10.2007 to the Chairman, State Pollution Control Board, Orissa with copies to others raising various issues on the Public Hearing of the proposed Project.
- a letter dated 26.11.2005 to the Chairman, CPC for intervention for postponement of Public Hearing. The case is settled in the Hon'ble Supreme Court of India and a copy of the said Order was endorsed to Orissa State Pollution Control Board and others.
- an objection regarding faulty EIA of the project was filed on the proposed Public Hearing of the Aluminium Smelter Project on 09.12.2005 to the Member Secretary on the day of the Public Hearing raising various issues.
- a legal notice was issued to the Member Secretary, SPCB, Orissa for withdrawal of Public Hearing.
- a letter dated 05.06.2006 addressed to the Chairman, SPCB, Orissa drawing attention on the illegal construction work undertaken by M/s. Veclanta Alumina Ltd based on which the State Pollution Control Board, Orissa directed M/s. Veclanta Alumina Ltd. to stop

all construction activities till they obtain Environmental Clearance from MoEF.

- The criteria laid down by the Hon'ble High Court of Andhra Pradesh in Writ Petition No. 5742/2006 on "any person aggrieved" is relevant which reads under:

"...Even otherwise, we are prima facie convinced that the expression "any person aggrieved" appearing in Section 14 is of wide import. It takes within its fold a person like the petitioner who has shown keen interest in protecting environment and has throughout been opposing the Grant of Environment Clearance to the Corporation for Uranium mining and has also participated in the Public Hearing held in compliance of the direction given by the High Court would fall within the ambit of the said expression."

- (v) Keeping in view of the interest of the Public at large and likely adverse impact of the proposed project in the years to come the Authority should consider the Appellant as an affected persons and should not construe the locus standi in the strict sense.
- (vi) The Appellant prayed for that the appeal should be admitted for consideration on merit with reference to the Principles of Natural Justice under Section 17(1) of the NEAA Act, 1997.
4. The Counsel for the Respondent No.2 submitted that the postponement of the public hearing was not done in response to the letter of the Appellant. The perception of the appellant that the public hearing has been postponed in view of his letter is therefore not correct.
5. The Counsel for the Respondent No.3 vehemently opposed the plea for admission of the Appeal on the following grounds:

- (i) The Appellant has no locus to file this Appeal since he is not an aggrieved person and does not fall within any of the criteria specified in Section 11 of the NEMA Act, 1997.
- (ii) Under Section 11(2) (a) of the NEMA Act, the Appellant is not a person likely to be affected by the grant of Environmental Clearance, as he has not produced any documents/proof of evidence to show that he is a affected person in any manner whatsoever by the grant of Environmental Clearance.
- (iii) He is not eligible to file the appeal under section 11(2)(c) of the NEMA Act, 1997 as he has not shown/produced any material proof that any person or his group/association of persons (whether incorporated or not), who are likely to be affected by such order and functioning in the field of environment.
- (iv) The present appeal has not been filed on behalf of the group of aggrieved individuals as neither of them has been arrayed as Appellant nor any of the parties have issued any vakalatnama or power of attorney in favour of the Appellant.
- (v) The judgment of Capt. J. Rama Rao is not applicable to the present case, since the apprehension of the statement made by Sri A.D.N Rao was taken and concluded the locus standi of the petitioner as "aggrieved person" which reads as under:

"The argument of Sri K.S. Murthy that in view of order dated 29.07.2005 passed by the Tribunal in Appeal No.4 of 2005, the appeal filed by the petitioner would be dismissed, is based on a misconceived assumption that the appellant does not fall within the ambit of the term "an person aggrieved". The statement made by Sri A.D.N Rao, learned counsel for respondent No. 1 would be sufficient to allow this apprehension of the petitioner."

- (vi) The judgment of the Apex court in the case *State of Uttar Pradesh Vs. Singhani Singh* reported at AIR 1964 Supreme Court 358 (V) 51 CTR 1046 relying on "exercise of power" which reads as under:

"(8) The rule adopted in Taylor v. Taylor (1876) 1 Ch D 126 is well recognized and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The Principle behind the rule is that if this were not so, the statutory provis on might as well not have been enacted."

- (vii) The judgment of the Apex court in the case Thammanna Vs. K. Veera Reddy and Others reported at (1980) 4 Supreme Court Cases 62, the para 1 and 1a are relevant on the interpretation of "person aggrieved" which reads as under:

"4. A preliminary objection has been raised by the learned counsel for respondent 1. It is submitted that Shri Thammanna is not competent to maintain this appeal, because he does not fulfil the character of a "person aggrieved" in the judgment of the High Court. It is emphasized that it was not necessary for the election petitioner to join Shri Thammanna as a respondent because no relief was claimed against him; that he was implicated as respondent 5 only as a matter of form; that he did not participate in the proceedings before the High Court; nor joined ~~him~~ with respondent 1. It was only between the election-petitioner and respondent 1, while the original respondents 2 to 7, including Thammanna, were proceeded against ex parte. In short the objection is that since the appellant could not be said to be partly adversely affected by the judgment of the High Court, he has no locus standi to prefer this appeal.

16. Although the meaning of the expression "person aggrieved" may vary according to the context of the statute and the facts of the case, nevertheless, normally, "a 'person aggrieved' must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something."

- (viii) The Appellant did not participate in the Public Hearing.
- (ix) The Appellant does not satisfy the conditions for filing the present Appeal. Therefore, the Authority should construe the locus standi in strict sense and dismiss the appeal with costs.

6. The point for decision at this stage is whether the appellant is eligible to file the appeal in this case. The Appellant has submitted that he has filed this appeal in his

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personal capacity as President of Lok Shakti Abhiyan, Orissa India. It is shown that the Appellant qualifies to file this Appeal.

7. Section 11(1) of the NIAA Act, 1997 clearly prescribes two conditions for eligibility of any person to file an Appeal:-

- (a) he should be a person aggrieved by the environmental clearance order;
- (b) he should file the appeal within the stipulated time.

7.1 The term person, as defined under Section 11(2) of the NIAA Act, 1997 is shown below:-

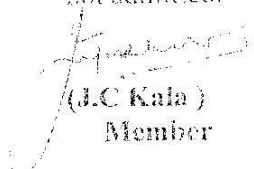
- (a) any person who is likely to be affected by the grant of environmental Clearances;
- (b) any person who owns or has control over the project with respect to which an application has been submitted for environmental clearance;
- (c) any association of persons (whether incorporated or not) likely 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, or part of whose local limits is within the neighbourhood of the area wherein the project is proposed to be located.


7.2 In the light of the above, the Appellant is not an aggrieved person under clause (b), (c) (d) and (e) of Section 11(2) of the NIAA Act, 1997 narrowing down the scope to clause (a) of this Section. The Appellant has however sought to take advantage of clause (a) of this section by claiming that he is a social and environmental activist involved in the issues concerning the tribals as well as the environment. He admitted that he has filed this Appeal as president of Lok Shakti Abhiyan, Or. and his group have been closely working among the affected communities of Brundharaj & Bhurkumunda District, Jharsuguda, Orissa on the issues of development.

[Signature]

8. While his representations to Orissa Pollution Control Board and others on faulty Environmental Impact Assessment Report, postponement of Public Hearing and not attending the Public Hearing on personal reasons is not disputed, we could not find him ~~affected in any manner~~ so as to satisfy the criteria laid down for "person aggrieved" in the judgment of Supreme Court in the case of *Thammanna Vs. K. Veera Reddy and others* as reported at para 16 of (1980) 4 Supreme Court Cases 62.

9. Having perused all the submissions and the documents filed by the Appellant, the Respondents, the Authority find that the Appellant is not qualified to file this Appeal under clause (a) of the Section 11(2) of the NEAA Act, 1997. The Appeal is accordingly not admitted.


(J.C. Kala)
Member


(Chairman/President)
Member

"Certificate of to be true copy"


30/1/2008