

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

DATED 4th DAY OF APRIL 2008

PRESENT

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

APPEAL NO. 1/2008

BETWEEN:

Shetkari Sangarsh Samiti,
Through its Secretary,
Village : Pezari,
Post Poyanand, Tal. Alibag,
Dist. Raigad, Maharashtra.

APPELLANT

AND :

1. Ministry of Environment and Forests
Through the Secretary,
Government of India,
C.G.O Complex, Lodhi Road,
New Delhi - 110003
2. Maharashtra Pollution Control Board,
Through its Member Secretary,
Kalpatru Point (3rd and 4th Floor),
Sion Matunga Scheme, Sion East,
Mumbai-400 022.
3. Maharashtra Energy Generation Limited,
Reliance Energy Centre,
Santacruz East,
Mumbai -400 055
4. National Environmental Engineering Research Institute,
Nehru Marg,
Nagpur -440 020

RESPONDENTS



Counsel for Appellant : Shri Ritwick Dutta, Advocate
Shri Anil Raj, Advocate

Counsel for Respondents

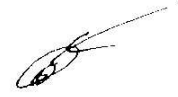
1. Respondent No. 1(MoEF) : Shri Om Prakash, Deputy Director,
MoEF
2. Respondent No. 2(MPCB) : Not Present
3. Respondent No. 3 : Mr. J.J Bhat, Senior Advocate
(Maharashtra Energy General Ltd.) with Ms. Anjali Chandurkar, Advocate
Ms. Smiectaa Inna, Advocate
4. Respondent No. 4 : Not Present
(National Environmental Eng. Research)

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-13011/71/2006-IA.II (T) dated 21.11.2007 granting Environmental Clearance for the proposal of setting up of a 4000 MW Natural Gas & Coal based Power Project at Shahpur, Raigad District, Maharashtra by M/s. Maharashtra Energy Generation Ltd. Reliance Energy Centre, Santacruz East, Mumbai – 400 055.

2. The Appeal was filed on 15.02.2008 i.e. 86th day from the date of Environment Clearance order (21st November, 2007, the date of the Environmental Clearance order excluded). The delay in filing the appeal before the NEAA is 56 days. The appeal was registered and listed for hearing on condonation of delay on 25.03.2008 and the parties were heard.

3. The Counsel for the Appellant stated that the Appellant is a registered society working on issues concerning the welfare of farmers as well as on environmental concerns of the area. The Appellant organization, through its members, made representation to various concerned authorities on the anticipated environmental impact



of the proposed thermal power plant. It has also participated in the Public Hearing held as part of the EIA process.

4. The Counsel for the Appellant pleaded for condonation of delay of 56 days involved in filing of the Appeal and put forward the following reasons that caused the delay in filing of the Appeal.
- (i) The Appellant came to know about the issue of Environmental Clearance order granted on 21st November, 2007 only on 13th December, 2007 i.e. almost three weeks after the clearance;
 - (ii) At this point of time a Public Interest Litigation (PIL No. 126/2006) was pending before the Hon'ble High Court of Bombay regarding faulty Public Hearing. The Hon'ble High Court of Bombay enlightened the Appellant on 16.01.2008 that he is at liberty to challenge the Environmental Clearance order issued by the MoEF to establish the Project before the appropriate forum if so advised. The decision to file an Appeal before NEAA was taken pursuant to the above High Court order;
 - (iii) As the Appellant has no previous experience in approaching this Hon'ble Authority, the Appellant had to familiarize themselves with the procedure for filing the Appeal, which took over a weeks time. The entire procedure and details of the Authority had to be explained to the Members of the Committee and affected farmers living in about 9 villages and the community consultation took considerable time since most of the affected persons were farmers. A final decision was taken on 03.02.2008 to file the Appeal;
 - (iv) The Appellants thereafter contacted the Advocates at Delhi and as per their advice, collected all the necessary information and material which took about a weeks time; and
 - (v) The Appellant has made all efforts to ensure that there was no undue delay in filing the Appeal and the delay had just and sufficient cause, which were beyond his control.



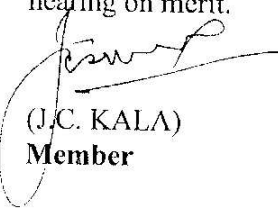
The counsel for the Appellant cited many cases wherein the Hon'ble Supreme Court has laid down certain principles for adopting liberal and judicious approach towards deciding such types of cases. He pleaded for condonation of delay in filing the Appeal beyond the stipulated period of 30 days, and he pressed for hearing the case on merit.

5. The Counsel for Respondent -3 submitted the following arguments opposing the plea of the Appellant for condoning the delay in filing the Appeal.

- (i) The Appellant was associated with the case right from the beginning;
- (ii) The subject matter of PIL case before the Hon'ble High Court of Bombay was entirely different from the Appeal petition under consideration. As the copy of the impugned order was available on 13th December, 2007 itself i.e. well before expiry of 30 days time allowed under Section 11(1) of the NEAA Act, 1997, the Appellant could have filed the Appeal before this Authority even during the pendency of the case in the court of Hon'ble High Court of Bombay; and
- (iii) He has not furnished justifiable reasons for condoning the abnormal delay involved in this case.

6. The Authority considered the documents produced by both the sides and heard the arguments put forward by the counsels of Appellant and Respondent-3 (Project Proponent). In view of the delay in publication of the Environment Clearance order in newspapers, and in the interest of natural justice, the Authority decides to condone the delay in filing the Appeal and accordingly admit the case for disposal on merit.

7. Notice may be issued to the parties concerned in this Appeal listing the case for hearing on merit.


(J.C. KALA)
Member


(DR. V. MANIVANNAN)
Member


(KAUSHILENDRA PRASAD)
Member

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copy"
21/11/07