

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

**DATED 15<sup>TH</sup> OCTOBER, 2010**

**PRESENT:**

HON'BLE MEMBER J.C. KALA

**APPEAL NO. 18 OF 2010**

**IN THE MATTER OF:**

Ramesh Agrawal,  
Member, Jan Chetna  
Satyam Kunj, Naya Ganj,  
Raigarh, Chhattisgarh – 496 001

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**APPELLANT**

**VERSUS**

1. Ministry of Environment and Forests,  
Through the Secretary,  
Paryavaran Bhawan, C.G.O 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. Athena Chhattisgarh Power Pvt. Ltd.  
7-1-23/2, B Block 5<sup>th</sup> Floor,  
Roxana Towers, Greenlands,  
Begumpet, Hyderabad – 500 016.

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**RESPONDENTS**

Appellant	:	Shri Ritwick Dutta, Advocate
Respondent -1 (MoEF)	:	Not Present
Respondent -2 (CECB)	:	Yogmaya Agnihotri, Advocate
Respondent -3 M/s. Athena Chhattisgarh Power Ltd.	:	Dr. A M. Singhvi, Serior Counsel with Shri Pankaj Kumar Singh, Advocate

## ORDER

The above appeal was filed under section 11(1) of the National Environment Appellate Authority Act, 1997 by the appellant against Order No. J-13011/7/2009-IA II (T) dated 04.06.2010 of Respondent -1(MoEF) conveying 'Environmental Clearance'(EC) for 2 x 600 MW Singhitarai TPP near Village Singhitarai, District Janjgir – Champa, Chhattisgarh by M/s. Athena Chhattisgarh Power Pvt. Ltd., The Appeal was registered as Appeal No. 18 of 2010 and notices issued by listing case for hearing on admission. The Authority heard the parties on 14.09.2010, 06.2010 and finally on 11.10.2010. Based on the points raised in the Appeal, documents filed by the parties to the Appeal, arguments made by the Learned Counsels for the Appellants and the Respondents, the Appeal is considered in succeeding paragraphs.

2. Earlier, the Environment Clearance granted by the Ministry for the same Project was appealed against by the villagers of Singhtarai and dealt in Appeal No. 36 of 2009 of this Authority. During the course of arguments and after viewing the CD of the Public Hearing, this Authority came to the conclusion that the Public Hearing had no validity and accordingly the matter was referred to the EAC of the Ministry. After getting the response of the Ministry, this Authority on 8<sup>th</sup> March, 2010 passed the following order disposing the appeal No. 36 of 2009.

*“ Arguments of both Appellant and Respondent-3 were considered by this Authority. It is felt that a fresh Public Hearing may lead to modifying the EIA document which will form basis for the EAC/ Ministry to reconsider the project. Therefore the present Environment Clearance has no sanctity and accordingly the Environment Clearance issued to M/s Athena Chhattisgarh Power Pvt. Ltd. Vide No. J-13011/7/2009-IA.II(T) dated 17<sup>th</sup> July, 2009 by the Respondent-1 (MoEF) for setting up of 2x600 MW Singhitarai TPP near village Singhitarai, Distric Janjgir,- Champa, chhattisgarh is hereby quashed solely on the ground of invalid Public Hearing.”*

### 3. Grounds of Appeal and Prayer

Appellant in the present appeal has challenged the EC on the following grounds

- (a) that in view of quashing the earlier EC, entire legal process should have started from stage-1 i.e screening leading to fresh TORs. However, in the present case the respondent organized second Public Hearing and the EAC in its 69<sup>th</sup> meeting considered and recommended the project for clearance. The stage-I and stage –II of the EC process were conveniently and deliberately by-passed.
- (b) That Public Hearing held on 05-04-2010 at Nagar Panchayat Dabhara was not in accordance to EIA Notification, 2006 in as much as-
  - (i) The place being far away from the project site despite a request from the villagers to this effect.
  - (ii) Panel included the motivated and biased members who loudly supported the project and politically arm twisted the project affected persons.
  - (iii) Minutes of Public Hearing meeting were not read out nor signed that lead to non verification of content by the audience. Instead some welfare schemes were recommended to the Project Proponent.
  - (iv) Non- application of mind by the EAC as it has not taken note of the order dated 8<sup>th</sup> March, 2010 of this Authority. It has simply enumerated the issues raised in the Public Hearing but failed to give reason as to how the concerns raised were addressed by the proponent.( Utkarsh mandal v/s Union of India WP (civil), decision dated 26-11-2009)

Based on the above, the Appellant has prayed-

- (a) To quash the EC dated 04-06-2010 for setting up 2x600 MW Coal Based Thermal Power Plant at village Singhitarai.
- (b) Pass an interim order to stay the operation of above EC, and
- (c) Pass any such order which the Authority deem fit and proper

4. Respondent-3, the Project Proponent countering the above has submitted as follows

- (a) That the Appellant is causing obstruction to the project on one pretext or the other. It has never been the case of the appellant that on account of the project there would be serious degradation of environment nor the project would take away the livelihood of the people in the vicinity.
- (b) Power Plant is a public interest project and Hon'ble Supreme court in Ranauq International v/s IVR. Construction Ltd reported in 1999 (1) SCC 492 has held that any delay on account of frivolous litigation would lead to escalation of cost and courts should not allow this to happen. Repeated appeals are being filed by the appellant on one and the same cause of action.
- (c) Not only the Appellant has not produced the authorization of Jan chetana to him but also failed to indicate as to how he is aggrieved by the project.
- (d) The EAC at its 62<sup>nd</sup> meeting has asked the 2<sup>nd</sup> Respondent and the Respondent-3 (Proponent) to re-conduct the public hearing based on the observation of this Authority and no screening and scoping is called for. Accordingly, the Respondent-3 asked the Respondent-2 to conduct Public Hearing as per the Notification
- (e) Public hearing was duly notified, EIA Report made available at the designated places as per Notification.
- (f) On 5<sup>th</sup> April, 2010, about 400 people participated in the hearing and most of the people coming from Singhitarai and project villages as evidenced by the official videography. The chairman of the panel made clear about the purpose and their duty to convey the views of the public to the Ministry.
- (g) In 5 hour long Public Hearing, 78 people spoke of which 69 were from project affected villages. Of the 78, 63 supported the project and 14 opposed and one spoke irrelevant. 113 written representations were received of which 73 being from project affected villages. Demand made in the public Hearing related to development of surrounding area under CSR; provision of employment to the locals; training to local youth; compensation to land losers as per revised Chhattisgarh R & R Policy; conduct of health and educational camps etc. In general the people were happy for the commencement of project work.

- (h) Elected representatives including Panch, Sarpanch, Zila Panchayat Members and Janpad Panchayat President, Ex MLA, and sitting MP also spoke. Respondent-3 neither had any role in selection of persons who sat on the dias. No political influence was made at any time nor any one objected to. People expressed their opinion freely and the entire process went smoothly. (It was stated during the arguments that the MP sitting on the dias mentioned to the Public to say whatever they feel about the Project.)
- (i) Minutes of hearing were indeed summarized and read by the Additional Collector at the end and the fact was reported by the official videographer of CEGB. Repeatedly the ADC announced that all those present should read the contents of the minutes before signing the sheet after ascertaining that their comments have been recorded correctly.
- (j) It is a settled law that once a statutory authority takes a decision it is trite that such authority has considered all issues before it and merely not referring to 8<sup>th</sup> March order or this Authority does not vitiate such order under challenge. Further the EAC has deliberated on the issue and verified all relevant information keeping in view the earlier irregularity, made a recommendation to the Respondent-1 for grant of EC after imposing additional conditions which clearly indicated application of mind by it. Order of Delhi High Court referred by the Appellant is not relevant in this case as that case related to 6 public hearing in one day and EAC being headed by a person who happens to be director of 4 mining companies
- (k) In furtherance of the proposed project, proponent has acquired land, obtained necessary clearances, entered in to agreement with various parties and so far invested Rs 250 Crores and balance of convenience and equity demands that this project which received the support of majority of people should be allowed to go ahead.

5. Respondent-1 (MoEF) has submitted that after receipt of re-conducted Public Hearing on 5<sup>th</sup> April, 2010, and the revised EIA/EMP, the proposal was appraised by the EAC in its 69<sup>th</sup> meeting during April 30- May 01, 2010. During this meeting the EAC discussed in detail

the issues raised and written objection received in the Public Hearing viz. location of Public Hearing site, impact on environment due to number of proposed plants in the region, availability of water from Mahanadi river, compensation due to acquisition of the land, inaccessibility of EIA report in CECB site, employment of locals, storage of fly ash , medical facilities, community development activities proposed, insurance cover for affected crops/ agri-produce due to power plant, protection of tribal cultural heritage, rehabilitation by providing pucca houses, not to use ground water for the project. The EAC found the Public Hearing in order and based on the discussion held and the clarification provided by the Proponent, recommended the project of clearance. And while doing so the EAC has imposed additional conditions including earmarking of one time investment of Rs 22.8 Crores and recurring expenditure of Rs 4.6 Crores under CSR activities. It directed need based assessment of villages and draw action plans for income generation, development of fodder farms, fruit bearing orchards, vocational training and special attention on tribals besides in-built monitoring mechanism and social audit.

The order of Authority was solely on the ground of invalid Public hearing and hence the decision to re-conduct the Public Hearing and continuing the process of EC was adhered to.

6. Respondent-3 Chhattisgarh Environment Conservation Board in its affidavit submitted that the Public Hearing was duly conducted as per the provisions of the EIA notification 2006. The venue was selected by the District administration keeping in view the expected number of people, law and order situation and also public accessibility. Nearly 400 people participated, 78 spoke, 60 spoke in favor, 14 opposed, one spoke unrelated and 3 supported project conditionally. Presiding officer summarized all the issues raised and loudly announced that the hearing is concluded. The entire proceedings was videographed.

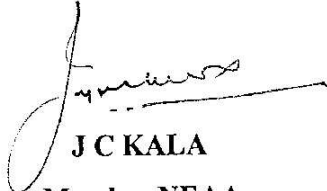
7. Submissions made by the Appellant, Project proponent and the Ministry were carefully examined by the Authority and it is observed that earlier EC was quashed by this Authority **solely on the ground of invalid Public Hearing**. It is therefore, enough if the process starts from the point where the flaw has crept in. Ministry has re-conducted Public Hearing which was attended by nearly 400 persons as against 350 in the last hearing at the project site Singhatarai when law and order marred the hearing. The site of the hearing was fixed by the District Collector vide his letter dated 24-02-2010 directing necessary arrangements for peaceful conduct of the hearing to the authorities concerned. Necessary publicity, mandatory availability

of EIA/EMP were found to be observed. Presence of elected representatives of the people on the dias did not cause any prejudice nor influenced the proceeding as seen from video and the minutes of Public Hearing meeting. The Chairman of the Panel summarized the proceedings to the public and asked them to verify the proceedings before signing the sheet. After careful assessment of the affidavits, arguments, documents and the ground reality, the Authority holds the Public Hearing in order.

8. The Authority has perused the minutes of 69<sup>th</sup> meeting of EAC which considered the Project. It is seen that the EAC has deliberated on various issues raised viz. location of Public Hearing site, impact on environment due to number of proposed plants in the region, availability of water from Mahanadi river, compensation due to acquisition of the land, inaccessibility of EIA report in CECB site, employment of locals, storage of fly ash, medical facilities, community development activities proposed, insurance cover for affected crops/ agri-produce due to power plant, protection of tribal cultural heritage, rehabilitation by providing pucca houses, not to use ground water for the project and advised the Ministry to issue fresh clearance after adding some more conditions to the earlier EC. These additional conditions are narrated in the affidavit of the Ministry referred in para 5 above. It is seen that the deliberations of the EAC are reflected in the various conditions imposed by it. Authority is therefore convinced of application of mind by the EAC.

It is further seen that the Appellant has not raised any point relating to environment nor stated as to how he is affected by the Project.

9. In view of above and adopting the doctrine of substance, the Authority has come to the conclusion that the Appeal is frivolous and devoid of merit and therefore dismissed. No Cost.

  
**J C KALA**  
**Member NEAA**

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7/11/2014  
Court Master  
National Environment Appellate Authority  
Third and Floor, Brijraj Cama Pk  
New Delhi-110066