

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

DATED 15TH SEPTEMBER, 2010

**PRESENT:
THE HON'BLE MEMBER SHRI J.C. KALA**

APPEAL NO. 18 /2009

IN THE MATTER OF :

Shri Prafulla Samantra
President, Lok Shakti Abhiyan,
Orissa Unit, Berhampur – 760005

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APPELLANT

VERSUS

1. Ministry of Environment and Forests,
Through the Secretary
Govt. of India, Paryavaran Bhawan, C.G.O Complex,
Lodhi Road, New Delhi – 110 003.
(Representative Dr. S.K Aggarwal, Director)
2. Orissa Pollution Control Board,
Through it's Member Secretary,
Paribesh Bhavan, A/118, Nilakanthanagar,
Unit –VIII, Bhubaneswar – 751012.
3. M/s. The Orissa Mining Corporation Limited,
OMC House, Bhubaneshwar – 751001.
4. Sterlite Industries (India) Limited
A company incorporated under the Companies Act, 1956
and having its registered office at SIPCOT Industrial Complex,
Madurai Bypass Road,
T.V Puraum, P.O Tuticorin – 628 002,
Tamil Nadu.

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RESPONDENTS

APPEAL NO. 19 /2009

IN THE MATTER OF :

1. Kumti Majhi R/O Kendubordi,
PO Lanjigarh, Kalahandi,
2. Niranjan Acharya
PO Lanjigarh, Kalahandi.

3. Lotak Majhi,
Village Balabhadrapur
PO Lanjigarh, Kalhandi.

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APPELLANTS

VERSUS

1. Ministry of Environment and Forests,
Through the Secretary
Govt. of India, Paryavaran Bhawan, C.G.O Complex,
Lodhi Road, New Delhi – 110 003.
Representative Dr. S.K Aggarwal, Director)
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OMC House, Bhubaneshwar – 751001
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Through it's Member Secretary,
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Tamil Nadu.

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RESPONDENTS

APPEAL NO. 20 /2009

IN THE MATTER OF :

R. Sreedhar,
Academy for Mountain Environics,
33-B, Third Floor, Saidullajab, M-B Road,
New Delhi – 110 030.

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APPELLANT

VERSUS

1. Ministry of Environment and Forests,
Through the Secretary
Govt. of India Paryavaran Bhawan, C.G.O Complex,
Lodhi Road, New Delhi – 110 003.
(Representative Dr. S.K Aggarwal, Director)
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T.V Puraum, P.O Tuticorin – 628 002,
Tamil Nadu.

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RESPONDENTS

APPEAL NO. 21 /2009

IN THE MATTER OF :

1. Srabu Sikaka
Village : Gologola Panchayat Munikhol,
PO Muniguda
Dist. Rayagada, Orissa.
2. Mashimari Sikaka
Vill: Sanigipahu, PO : Munikhol,
PO: Muniguda
Dist Rayagada, Orissa.
3. Dodi Pusika
Village : Gorata, Panchayat Munikhol,
PO: Muniguda
Dist. Rayagada, Orissa.
4. Mandure Pursika
Village : Salapale, Panchayat Munikhol,
PO Muniguda ,Dist Rayagada, Orissa.
5. Patra Majhi
Village Palberi, Panchayat : Trilochanpur,
Dist. Lanjigarh, Orissa.
6. Rama Majhi,
Village Phuldumeri, , Panchayat : Trilochanpur, Dist. Lanjigarh, Orissa.
7. Dunda Majhi
Village Phuldumeri, , Panchayat : Trilochanpur, Dist. Lanjigarh, Orissa.
8. Sonari Majhi
Village Phuldumeri, , Panchayat : Trilochanpur, Dist. Lanjigarh, Orissa.

9. Mandra Sikska
Village : Kaleni Pata, Panchayat Munikhol, PO Muniguda
Dist Rayagada, Orissa.
10. Sambnu Sikska
Village :Kunucheli, Panchayat Munikhol, PO Muniguda Dist Rayagada, Orissa.
11. Dina Pusika
Village :Sgundwayu, Panchayat Munikhol, PO Muniguda
Dist Rayagada, Orissa.
12. Bana Sikska
Village : Dangni Pata, Panchayat Munikhol, PO Muniguda
Dist Rayagada, Orissa.
13. Bama Sikka
Village : Smanda, Panchayat Munikhol, PO Muniguda
Dist Rayagada, Orissa.
14. Dundura Pusika
Village : Sutnguni, Panchayat Munikhol, PO Muniguda
Dist. Rayagada, Orissa.
15. Bari Pidikak
Village :Tahali , Panchayat Munikhol, PO Muniguda
Dist Rayagada, Orissa.
16. Sayam Jakesi
Village : Ada Panga, Panchayat Munikhol, PO Muniguda
Dist. Rayagada, Orissa.
17. Lado Sikak
Village : Lakhpadar, , Panchayat Parsali, , PO : Kalyan Singpur
Dist. Rayagada, Orissa.
18. Bari Pidikak Village : Lakhpadar, , Panchayat Parsali, , PO : Kalyan Singpur
Dist. Rayagada, Orissa.
19. Kanu Sikaka
Village : Lakhpadar, , Panchayat Parsali, , PO : Kalyan Singpur
Dist. Rayagada, Orissa.

20. Budga Sikak
Village : Lakhpadar, , Panchayat Parsali, , PO : Kalyan Singpur
Dist. Rayagada, Orissa.
21. Tima Sikaka
Village : Lakhpadar, , Panchayat Parsali, , PO : Kalyan Singpur
Dist. Rayagada, Orissa.
22. Bangari Majhi
Village : Palberi,, Panchayat Trilochanpur PO : Kalyan Singpur
Dist. Ranjhigarh, Orissa.
23. Bari Majhi
Village : Palberi,, Panchayat Trilochanpur PO : Kalyan Singpur
Dist. Ranjhigarh, Orissa. **APPELLANTS**

VERSUS

1. Union of India
Through the Secretary
Ministry of Environment and Forests,
Paryavaran Bhawan, C.G.O Complex,
Lodhi Road, New Delhi – 110 003
2. Government of Orissa
Through Chief Secretary,
State Secretariat, Orissa,
3. The Member Secretary,
State Pollution Control Board,
Paribesh Bhavan, A/118, Nilakanthanagar,
Unit –VIII, Bhubaneswar – 751012
4. M/s. The Orissa Mining Corporation Limited,
OMC House, Bhubaneshwar – 751001.
5. Sterlite Industries (India) Limited
A company incorporated under the Companies Act, 1956
and having its registered office at SIPCOT Industrial Complex,
Madurai Bypass Road, T.V Puraum, P.O Tuticorin – 628 002,
Tamil Nadu. ... **RESPONDENTS**

1. COUNSEL FOR APPELLANTS

- (i) Appeal No. 18/2009 : Shri Raj Panjwani, Sr. Advocate with
Shri Rahul Choudhary, Advocate
(ii) Appeal No. 19 & 21/09 : Shri Ritwick Dutta, Advocate
(iii) Appeal No. 20/2009 : Shri R Sreedhar, Appellant

2. COUNSEL FOR RESPONDENTS

- (i) Rep. for MoEF : Shri Satish C Garkoti,
Addl. Director, MoEF
(ii) For OPCB : Shri J.R. Das, Advocate,
Shri P.P Nayak, Advocate
(iii) For Orissa Mining Corpn. Ltd.: Dr. A.M Singhvi, Sr. Advocate
Shri Rahul Srivastava, Advocate
Ms. Suparna Srivastva, Advocate
(iv) Government of Orissa : Not Present
(iv) For Sterlite Industries India Ltd.: Dr. Saif Mahmood, Advocate
Shri P.C Sen, Advocate

ORDER

The above appeals were filed under section 11(1) of the National Environment Appellate Authority Act, 1997 against order No. J-11015/221/2005-IA.II (M) dated 28.04.2009 granting Environmental Clearance to Lanjigarh Bauxite Mining Project of M/s The Orissa Mining Corporation Ltd., located in Village(s) Palabir, Konakadu, Niyamagiri RF in Tehsil Lanjigarh, District Kalahandi and village(s) Khambesi, Jungle Block and Nimagiri, Tehsils Bissam Cuttack and K. Singhapur, District Rayagada, Orissa with the prayer to quash and stay the Environmental Clearance dated 28th April, 2009.

2. The National Environment Appellate Authority (NEAA) registered the Appeals and notices were issued to the concerned parties by listing case on 21.07.2009 for hearing on admission. The Authority heard the parties and admitted the Appeals for hearing on merit. Against the admission order dated 10th August, 2009, the Orissa Mining Corporation has filed Review Application under section 11(2)(f) of the NEAA Act, 1997. The Authority heard the parties on the Review Applications on 30.09.2009, 19.10.2009, 16.11.2009 17.12.2009,

05.01.2010, 21.01.2010 and 15.02.2010 and dismissed the Review Petitions by admitting the appeals for hearing on merits strictly on those issues of the Appeal which did not figure in any of the affidavits placed before the Hon'ble Supreme Court challenging the bauxite mining in the said area.

3. The Appellants in the above four appeals have challenged the Ministry of Environment order dated 28.04.2009 No. J-11015/221/2005-IA II (M), granting Environmental Clearance to Lanjigarh Bauxite Mining Project of M/s Orissa Mining Corporation Ltd. and the cases were heard together on 19.04.2010, 10.5.2010, 14.05.2010, 21.05.2010, 31.05.2010, 05.07.2010, 12.07.2010 and finally on 13.07.2010. Some of them have objected this mining before the Central Empowered Committee. The common grounds of appeal are:-

- (i) That Public Hearing of the Project was held on 7.02.2003 and long time has passed since then till the clearance was granted. Public hearing was held without proper information to the tribals of the area and the other affected persons. Notices were not sent in local Kuvi and Kuyi languages understood by adivasis. EIA report and executive summary were not made available to the affected nor sent to Gram panchayat as per Gujrat High Court order. Proceedings of Public hearing did not give the real picture.
- (ii) That environmental Clearance (EC) was granted ignoring the impact on the Dongri Kond tribe residing in the area which is one of the primitive tribal groups mainly concentrated in the Niyamagiri hills ranging from 1000 to 4970 feet above sea level. Earlier depending on shifting cultivation, the tribals have now taken to horticulture and their cultural life and belief are closely linked with sacred Niyamagiri hills.
- (iii) That biodiversity of the area is threatened by the Project located on the top of the Niyamagiri hills – abode of Gods and ideal habitat for wildlife and also for water recharge feeding numerous rivers on which the tribals depended for their drinking water, personal use and agriculture for centuries. According to tribals “Authorities have not attempted to ensure that we continue to engage in these traditional practices nor we were told the impact of the project on our way of life through meaningful consultations”.

(iv) That EIA report is based on one season monitoring of ecological and social aspects and omits impact on Dongaria kondh community. Appeal-20 cited the case of BALCO mining Project wherein the EAC has declined clearance on the ground of human miseries vis-a-vis reduction in profit to the Industry by alternate means.

4. Respondent-3, the Orissa Mining Corporation (OMC) stated that the issues raised in the appeals have already been decided conclusively by the Hon'ble Supreme Court and re-litigating the same is contrary to law and public policy that multifarious and repeated litigations should be avoided. To this effect the Respondent has enclosed the pleadings made by the parties, observations/comments of Central Empowered Committee and relevant pleadings and submissions made before the Hon'ble Supreme Court. Notwithstanding this, the Respondent-3 gave the following response:-

(i) That the notice regarding Public Hearing was published in news paper with good circulation in accordance with the provision of law and public has been consulted for the project. Hearing was conducted at Lanjigarh and Muniguda about 5-20 Km from the mining site. Local community attended and gave support to the project. Various apprehensions raised in the hearing were addressed in the Environment Management Plan. Interest of tribals were duly taken care of as per directions of the Supreme Court through Special Purpose Vehicle;

(ii) That Niyamagiri hills spread over 250 Sq. Kms. comprise of several hills and the proposed mining lease is confined to 7.2 Sq. Kms while the actual activity will take place in only 4.16 sq. Kms, spread over a period of 30 years and as confirmed by the Wildlife Institute, there is no habitation in the mining area. At the same time there is no place of worship in the mining area. None of the tribals come to worship in the leased area. According to book titled 'Kandha of Orissa—their cultural and social life and development' researched and published by Scheduled caste and scheduled tribe research Institute Bhubaneswar, Niyamagiri hills where mining is taking place is not considered as sacred hill and hence the statement of appellants is false;

- (iii) That the scientific mining will not change the topography once it is reclaimed and planted with native trees. The balance area will be converted in to water pools and reservoirs to increase the water table in the area. Mining area with bauxite deposit is currently devoid of vegetation and at the end, it will be clothed with vegetation;
- (iv) That the hydrological impact of project has been considered by M/s CMPDIL pursuant to the direction of MOEF and Supreme Court. A perennial stream called Gadgada Nallah flows through the lease area and is the only source of water to the Dongriyas. There is no perennial stream emanating from the hill top of Niyamagiri. There would be no extraction of ground water in the proposed mined area. As against, during the course of mining and post mining period the infiltration will increase and ground water table enhanced. NALCO bauxite mining in Koraput district is operating in the similar geological settings since 20 years; and
- (v) Mining will be taken up based on approved plan of Indian Bureau of Mines. Bauxites and over burden will be removed by ripping techniques--an alternative to rock blasting. In rare cases controlled blasting will be undertaken only during the day hours. Eco-friendly techniques at mine site will produce least noise which will take care of the concern expressed by the tribals.

5. Respondent-2, the State Pollution Control Board, Orissa in its reply has submitted as follows:

- (i) The lease area of mine falls under Kalahandi and Rayagada districts of the State as such according to EIA Notification, two separate Public Hearings were conducted on 07.02.2003 and 17.03.2003 respectively for the districts of Kalahandi and Rayagada after publishing notice both in English and Oriya (the mother tongue of the entire State) through widely circulated news papers of the region. Board considered Oriya as the local language as the Notification was not clear about this;
- (ii) Venue of the hearing was fixed in consultation with District administration keeping in view the convenience of the public and thus no one raised any complaint to this effect in the meeting. Copies of EIA and Executive summary (in English and Oriya) were placed at designated places including Panchayat's office. Notification does not

provide for free supply to the public and therefore they were asked to take photo copies if they required one; and

- (iii) Conducting one hearing for refinery and the mining has not violated the Notification but it has gone beyond the scope for greater benefit of environment and the local citizens.

6. Respondent-1, Ministry of Environment and Forests in its reply has stated –

- (i) That subsequent to the Public Hearing, M/s Sterlite Industries India Ltd. Submitted an application for site clearance to the project on 12.07.2004 and later the application for Environment Clearance on 13.06.2005 along with the proceedings of Public Hearings held on 07.03.2003 and 17.03.2003. The Project there after was considered by the EAC(Mining) during its various meetings held on 27-29th March, 2006, 23-25th October, 2007, 18-20th August, 2008 and 18-20th March, 2009 before recommending it for Environment Clearance.
- (ii) That EIA Notification as amended on 10.04.1997 did not make any specific mention with regard to combined hearing for refinery, mining and CPP project. However, combined hearing for would provide an opportunity to the public to have a holistic picture un terms of likely adverse impacts of the developments envisaged in that area and to express their view comprehensively.
- (iii) That the Ministry while according clearance has stipulated a specific condition (No. iv) that the project proponent will fulfil all the commitments made during the public hearing and also address all the concerns raised therein including the recommendations of the public hearing panels.
- (iv) That the Ministry issued the clearance based on the final EIA(rapid) prepared by M/s Vimta Labs and taking in to consideration various documents/reports including the study report carried out in compliance of Hon'ble Supreme Court's direction viz. (a) report on impact of proposed Lanjigargh Bauxite mine on biodiversity including wildlife and its habitat, (b)Hydro-geological investigation of Lanjigargh mine and (c) Soil erosion study at Niyamagiri plateau etc.

- (v) That Wildlife Institute of India, based on biodiversity study has suggested a mitigation plan according to which at any point of time not more than 20 hectare will be exposed for mining and the same has been stipulated in the condition of Environment Clearance.
- (vi) That the project proponent as per the direction of the Supreme Court has committed to set up a Special Purpose Vehicle to undertake the scheduled area development project which will include health, education, child care, women development, skill up-gradation, infrastructure development and a comprehensive conservation cum development plan for Dongaria Kondhs.

7. An application was moved by M/s Sterlite Industries India Ltd(SIL) requesting to impleade them in the case as they were also the affected party and they have been referred in Hon'ble Supreme Court's order dated 23rd November, 2007 and dated 8th August, 2008. The request was agreed to.

8. The Senior Counsel for the Respondent-SIL again raised the issue of res-judicata quoting various case laws, when he was reminded of the following order dated 15th February, 2010 of the Authority

“ --- There are points in the appeal which need consideration of this Authority. Accordingly, this Authority dismisses the Review Petition and once again admits the appeal for hearing on merit strictly on those issues of the appeal which did not figure in any of the affidavits placed before the Hon'ble Supreme Court challenging the bauxite mining in the said area”

And it was finally decided to deal the following eight sub-issues under three main issues viz. (a) whether the Public Hearing is faulty, (b) whether the EIA is improper/inadequate and (c) in the circumstances whether the environment clearance suffer lacuna(e)

- (i) Whether Public Hearing was conducted as mandated in 1994 EIA Notification.
- (ii) Whether there was participation of Dongria Kondh (worship Niyamagiri hill) in the hearing and whether they were informed of implications of mining.

- (iii) Whether it was proper to combine the hearing for refinery/ captive power plant with the mining when they are different project.
- (iv) Whether EIA document on the basis of which the project has been approved was available with the public.
- (v) Whether rapid EIA could be a basis for approving such a mega project having implications for the tribal, water regime and bio-diversity.
- (vi) Whether in view of site clearance letter the rapid EIA is not illegal?
- (vii) Whether EIA has taken in to account the religious and cultural values of Niyamagiri Hills for Dongria kondh who regard it sacred, and
- (viii) Whether the project could be approved during 2009 on a hearing held in 2003.

It was made clear that all the argument made on the above are strictly subject to this Authority's order dated 15th February, 2010.

9. Commencing his arguments, the Senior Counsel for the Appellant referred to following documents--

- (a) Rapid EIA report of Tata AIG to show that the *full report has not been produced*
- (b) Letter of PCB to the Collector Kalahandi, the Public Hearing notices in the news paper and the proceedings of Public hearing dated 17-03-2003, to show *that only executive summary was made available and not a full EIA report as mandated.*
- (c) Site clearance letter dated 12th July, 2004 of the Ministry of Environment and Forests *indicating the requirement of comprehensive EIA and EMP.*
- (d) Rapid EIA report of M/s Vimta Labs, March, 2005 to show *that the report incorporates the data generated from 20th May 2004 to 30th November, 2004 covering part of pre-monsoon, monsoon and post monsoon season besides a foot note that the report is confidential and use by a third party is at his risk.*

- (e) Relevant pages of MoEF's reply to show *that the EC was granted based on Vimta Labs report (not placed before the public for hearing)*.
- (f) Reply of PCB *falsely terming the Rapid Vimta report as comprehensive* and leaving the decision to MoEF as to which report is to be placed before public for hearing.
- (g) Kerala High Court Judgment dated 23rd March, 2006 in Athirapalli Gram Panchayat v/s Union of India and Others where in EC has been quashed on the ground *that the comprehensive EIA (suggested by the Public Hearing panel) was never placed before the public and thus the procedural requirement as contemplated in MoEF's Notification No. S.O. 632 (E), dated 13-06-2002 have not been complied with.*

10. Another Counsel for Appellant reiterating the points raised in the appeal, desired to have a review of the EIA to know if a comprehensive EIA is required while the Appellant in Appeal No. 20 of 2009, referred to geological implications of mining in the area which have been ignored in the EIA.

11. Respondent-1 (MoEF) in its additional affidavit submitted that the proposal was considered by the EAC after calling post monsoon data. It further stated that there is no mention of either rapid or comprehensive EIA in the 1994 Notification. The hand book of procedural guidelines in this regard states that as the comprehensive EIA will normally take at least one year , project proponents may furnish rapid EIA based on one season data (other than monsoon) and a comprehensive EIA may be submitted later if called for by the Impact Assessment Agency ie. MoEF.

12. Respondent(Sterlite), quoting extensively from the WP No. 549 of 2007 in the matter of Sidhartha Nayak v/s State of Orissa, the OMC and the MoEF—para 3.3, 4.4 to 5.6 relating to disastrous implication of mining on tribal communities specially Dongria Kondhs and their habitat, habitat of Gods, the Niyamagiri Hills:, para 6.1, 8.C relating to REIA of one season monitoring of ecological and social impacts; Report of Central Empowered Committee(CEC) paras 32 & 33 observing abandonment of present mining site if objections from

environmental, ecological and forest angles had become known and look for alternate site; Inspection report of Fact Finding Committee dated 18-23th December, 2004 referring to allegation that the public hearing had not been free and fair; Application 571 of 2004 of Academy of Mountain Environics before Supreme Court referring to rapid EIA for such a mega Project, studies to prevent damage to eco-system beyond resilience, the vague disaster management plan and the detrimental effects of refinery and mining on forest and hydrology of the area; Counter before the CEC by the State of Orissa besides the two judgements dated 23rd November, 2007 and 8th August, 2008 of the Hon'ble Supreme Court of India directing a package and imposing several safeguards some in relation to environment with ultimate objective of striking a balance between development and environmental protection etc;, argued at length as to how the issues relating to Public Hearing and the comprehensive EIA have been dealt in various affidavits forming part of report of CEC placed before the Hon'ble Supreme Court.

13. Submissions of the Appellants and the Respondents were carefully analysed by the Authority in the light of its order dated 15th February, 2010 referred in paragraph-8 above. This is discussed as under:

- i) NEAA Act of 1997, under which the matter is dealt, provides for hearing appeals with respect to restriction of areas in which any industry, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment Protection Act, 1986:-
- ii) In view of Hon'ble Supreme Court's Order dated 8th August, 2008, granting clearance for diverting 660.749 ha (the project site) of forest land **to undertake mining of bauxite** on the Niyamagiri hills in lanjigarh, **the only option** left with this Authority is to examine whether EC suffers from inadequacy of safeguards.
- iii) Each of the points of Appellants and more specifically the ones raised by the Senior Counsel for Appellants finally (referred in para-9 above), were examined in the light of documentary submissions and arguments of the Respondents and it is observed that all of them are covered, in one way or the

other, in the documents that formed part of CEC's report to Hon'ble Supreme Court *except* the issue of Vimta Lab EIA report which formed the basis for the Ministry for granting EC but was never placed before the public for hearing.

- iv) It is noted that Tata AIG report was the document before the public to react to and raise their concerns. Vimta Lab report was not in the picture. Both the Appellants and the Respondents made their pleas in respect of the material difference the two reports would have caused in the outcome of Public Hearing and in turn in the EC. The authority also went through the minutes of two public hearings and also perused the minutes of 25th EAC meeting held on March 18-20th 2009, which considered, interalia, the issues raised during public hearings.

14. From the submission of the Appellants and the Respondents, it is clear that the Vimta Lab EIA of 2005 on the basis of which the EC was granted, was never in public domain for people to express their views/concerns during the two Public Hearings held in Raiguda and Kalahandi during 2003, leading to non-compliance of Ministry's Notification. Further a perusal of rapid EIA by Vimta Labs reveals that it lacks analysis in respect of human miseries which the project is likely to inflict. However, except for some minor variations, there is a marked similarity in the two reports and whether the Tata AIG report could have provided some basis to the Ministry to incorporate additional safeguards or mitigative measures can best be assessed by the Ministry itself through its expert arm viz the Expert Appraisal Committee.

The Authority therefore remits the matter to the Ministry with direction to revisit its Environment Clearance including the aspect of public hearing and take appropriate action. Till this process is over, the Environment Clearance stands suspended. The appeals are disposed accordingly. No Costs.

(J C KALA)
Member NEAA