

NATIONAL GREEN TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

Appeal No. 18 of 2011 (T)
Friday, the 24th day of February, 2012

Quorum:

1. Hon'ble Justice Shri C.V. Ramulu
(Judicial Member)
2. Hon'ble Prof. R. Nagendran
(Expert Member)

BETWEEN:

V. SRINIVASAN
R/o C-1, SEABROOKE APARTMENTS
4TH SEAWARD ROAD, VALMIKI NAGAR
TIRUVANMIYUR, CHENNAI-600041
TAMIL NADU

.....Appellant

1. UNION OF INDIA
THROUGH THE SECRETARY
MINISTRY OF ENVIRONMENT & FORESTS
CGO COMPLEX, LODHI ROAD
NEW DELHI – 110 014

2. TAMIL NADU POLLUTION CONTROL BOARD,
THROUGH THE MEMBER SECRETARY
76, MOUNT SALAI, GUINDY
CHENNAI – 600 032
TAMIL NADU

3. CORPORATION OF CHENNAI
THROUGH THE COMMISSIONER
RIPPON BUILDING
CHENNAI – 600 003
TAMIL NADU

.....Respondents

(Advocate appeared: Mr. Ritwick Dutta for the Appellant, none appeared for R-1 and R-3, Mr. A. Ilango, Advocate appeared for the TNPCB(R-2))

ORDER

(Order delivered by the bench)

This appeal is directed against the Environmental Clearance (EC) granted in favour of the Corporation of Chennai (Respondent No. 3), by the Tamil Nadu State Environment Impact Assessment Authority vide Letter No. SEIAA/TN/EC/7(i)/002/F-227/2010 dated 30.06.2010 for setting up of Integrated Municipal Solid Waste Processing Plant of 1400 TPD capacity at Pallikaranai village for the treatment of Municipal Solid Waste.

There is no necessity of going into all the details. After elaborate arguments, it came to light that the Tamil Nadu State Environment Impact Statement Authority has no jurisdiction to grant EC of this nature. Since Guindy National Park is located within a distance of 10 km from the project site, the EC should have been obtained from the Central Government (MoEF), New Delhi. It is pertinent to refer here the Notification dated September 14, 2006, issued by the MoEF in regard to EC. The relevant portion from the said Notification is as under:

“S.O. 1533,

Sl. No. 4. Categorization of projects and activities:-

(i) All projects and activities are broadly categorized in to two categories - Category A and Category B, based on the spatial extent of potential impacts and potential impacts on human health and natural and man made resources.

(ii) All projects or activities included as Category 'A' in the Schedule, including expansion and modernization of existing projects or activities and change in product mix, shall require prior environmental clearance from the Central Government in the Ministry of Environment and Forests (MoEF) on the recommendations of an Expert Appraisal Committee (EAC) to be constituted by the Central Government for the purposes of this notification;

(iii) All projects or activities included as Category 'B' in the Schedule, including expansion and modernization of existing projects or activities as specified in sub paragraph (ii) of paragraph 2, or change in product mix as specified in sub paragraph (iii) of paragraph 2, but excluding those which fulfill the General Conditions (GC) stipulated in the Schedule, will require prior environmental clearance from the State/Union territory Environment Impact Assessment Authority (SEIAA). The SEIAA shall base its decision on the recommendations of a State or Union territory level Expert Appraisal Committee (SEAC) as to be constituted for in this notification. In the absence of a duly constituted SEIAA or SEAC, a Category 'B' project shall be treated as a Category 'A' project;

According to the appellant the distance between the Guindy National Park and the Project Site is less than 10 km. If the distance is within 10 km from the Guindy National Park the project falls under Category - A and the EC should be obtained from the Central Government (MoEF) and if the distance is beyond 10 km, EC may be obtained from the Tamil Nadu State Environment Impact Assessment Authority.

Admittedly, “Common Municipal Solid Waste Management Facility (CMSWMF) is listed under category ‘B’ projects in the schedule as item no. 7(i) of the MoEF Notification cited above.

A note in the schedule under the Notification cited above, mentions the following under “**General Condition (GC)**”:

“Any project or activity specified in Category ‘B’ will be treated as Category A, if located in whole or in part within 10 km from the boundary of: (i) Protected Areas notified under the Wild Life (Protection) Act, 1972, (ii) Critically Polluted areas as notified by the Central Pollution Control Board from time to time, (iii) Notified Eco-sensitive areas, (iv) inter-State boundaries and international boundaries”.

When the very the distance of the project from the Guindy National Park was disputed, on 18th October, 2011 we directed the Principal Chief Conservator of Forest-cum-Chief Wildlife Warden, Tamil Nadu to measure aerial distance between the two nearest points of the project site and the boundary of the Guindy National Park and send a report to this Tribunal.

In pursuant to that direction, the Principal Chief Conservator of Forest cum Chief Wildlife Warden, Tamil Nadu, submitted a report dated 25.11.2011 and also filed a reply stating that the aerial distance between the two nearest points of the project site and the boundary of the Guindy National Park as 5.6 km and 6.2 km.

Whereas the TNPCB is trying to justify that the distance is more than 10 km from the project site to the Guindy National Park. It is stated that the distance was measured road wise and not as the crow flies. Further, the counsel did not dispute as to the correctness of the report submitted by the

Principal Chief Conservator of Forest and the Chief Wildlife Warden, Government of Tamil Nadu which says that the distance between the two nearest points of the project site and the boundary of the Guindy National Park as 5.6 km and 6.2 km. Thus there is no difficulty to say that this project falls under category A. For grant of EC for category A projects the jurisdiction lies with the Central Government (MoEF) and not with the Tamil Nadu State Environment Impact Assessment Authority. Thus the Tamil Nadu State Environment Impact Assessment Authority has no jurisdiction to deal with the project for which the clearance was granted which is under challenge. The EC granted by Tamil Nadu State Environment Impact Assessment Authority has no validity under law and therefore, requires to be set aside.

However, the learned counsel for the appellant, Mr. Ritwick Dutta, vehemently argued that when the EC granted by the Tamil Nadu State Environment Impact Assessment Authority is set aside on the ground of jurisdiction *vis-à-vis* distance, even the EIA report submitted by the local authorities or by the project proponent cannot be blindly accepted by the Central Government (MoEF). We are in full agreement with the submission made by the learned counsel for the appellant that the report prepared and submitted by the authorities cannot be taken into consideration by the Central Government (MoEF) for considering grant of EC for project afresh. We need not go into merits and demerits, validity or otherwise of the Environment Impact Assessment report prepared by the project proponent through its consultant. When the process of issuance of EC has to be initiated by the Central Government, it is for that Government (MoEF) to call for afresh EIA study etc. Therefore, we make it clear that the appellant is at

liberty to file all the objections as raised in this appeal before the Central Government (MoEF), whenever application is made by the project proponent for grant of EC. We also make it clear that the Central Government (MoEF) shall issue notices to all the parties before granting EC in favour of the project proponent whenever it is considered.

The learned counsel for the appellant also vehemently submitted that the EIA consultant of Project Proponent who furnished the details for the purpose of obtaining EC as to the distance between the project site and the Guindy National Park, which is proved to be false must be dealt with seriously and if necessary, strictly warned in writing. In this regard the learned counsel drew the attention of the tribunal to the relevant portion in the EIA manual of the MoEF which reads as under:

“Environmental consultant should be conversant with the existing legal and procedural requirements of obtaining environmental clearance for proposed project. The consultant should guide the proponent through initial screening of the project and establish whether EIA studies are required to be conducted and if so finalise the scope of such study. The consultant should also be fully equipped with required instruments and infrastructure for conducting EIA studies. The environmental consultant is responsible for supplying all the environment-related information required by the SPCB and IAA through the proponent. The consultant is also required to justify the findings in the EIA and EMP during the meeting with the expert groups at IAA”.

It may not be out of place to mention that this Tribunal had deprecated such practice adopted by the EIA consultant in furnishing false information and the Central Government (MoEF) had issue suitable

guidelines to deal with such project proponents who are guilty of furnishing false information resulting in grant of projects, unmindful of the legal and environmental consequences. We have no doubt in our mind that the information furnished by the EIA consultant in the present case as to distance is not only a gross negligence but also professional misconduct. The concerned authority shall take appropriate steps to prevent such occurrences by taking suitable action against the EIA Consultant and warning him in writing in this regard.

For all the above reasons the appeal stands allowed and the EC no. SEIAA/TN/EC/7(i)/002/F-227/2010 dated 30.06.2010 issued by Tamil Nadu State Environment Impact Assessment Authority is set aside. No cost.

(Prof. Dr. R. Nagendran)
Expert Member

(Justice C V Ramulu)
Judicial Member

