

Item No. 09

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

(By Video Conferencing)

Appeal No. 20/2018

Md. Hayath Udin

Appellant

Versus

Union of India & Ors.

Respondent

Date of hearing: 12.10.2020

Date of uploading: 20.10.2020

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S. P. WANGDI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

ORDER

1. This appeal has been preferred against order dated 22.12.2017 of the Ministry of Environment, Forest and Climate Change (MoEF&CC) granting Environmental Clearance (EC) for Kaleshwaram Lift Irrigation Scheme (KLIS) project in Karimnagar District of Telangana by Irrigation & Command Area Development (I and CAD) Department, Government of Telangana.

Appellant's Case:

2. The case of the appellant is that he is resident of a village in District Siddipet and is a farmer affected directly by the instant project. KLIS is to irrigate 7,38,851 ha in upland areas of Adilabad, Karimnagar, Nizamabad Warangal, Medak, Nalgonda, and Rangareddy Districts of Telangana 'by diverting 180 TMC of water from River Godavari. The original budget of the project is Rs.80499.71 crores. The source point for

KLIS is near Medigadda Village, below the point of confluence of Pranahitha and Godavari Rivers about 20 km from Kaleshwaram.

The Project envisages construction of three barrages between Yellampally & Medigadda viz.

- Medigadda Barrage on Godavari near Medigadda (Kaleshwaram)
- Annaram Barrage on Godavari downstream of confluence of Manair River with Godavari river near Annaram.
- Sundilla Barrage on Godavari downstream of Yellampally barrage near Sundilla.

The project envisages diversion of about 180 TMC water from Godavari for Irrigation purpose (134.5 TMC), stabilization of existing command area (34.5 TMC), drinking water to Hyderabad (30 TMC) drinking water to en route villages (10 TMC) & for industrial uses (16 TMC). Thus, the main aim of the instant project is, irrigation in seven Districts of Telangana to support agriculture. The whole of KLIS is planned in seven “links”, with the water conveyance system consisting of gravity canals, online storages and tunnels involving significant amounts of forest land estimated to be about 3221.2974 ha as per the Final EIA Report submitted by the project proponent to the MoEF. The infrastructure was being constructed prior to applying for Environmental Clearance. The tenders floated for the project show that the infrastructure was being constructed for a major irrigation project to improve agricultural productivity in the upland areas of Telangana. The lift irrigation scheme involves submergence of approximately 32000 ha of land in Telangana, 3211.2974 ha of forest land in Telangana and

approximately 302 ha of land, including some forest land in Maharashtra as per pre-feasibility report. The two States formed an Inter State Board for Joint Irrigation Projects, of which one of the projects was KLIS.

As against the factual position depicted above, the project proponent wrongly claims that the project was not for lift irrigation but only for drinking water supply till grant of EC. The application for EC was made only January, 2017. EC was granted in December, 2017 but before that substantial work had already been undertaken. Thus, according to the appellant the impugned EC was *ex post facto*, in violation of EIA Notification, 2006.

3. Apart from the allegation of EC being after the substantial work of the project was completed, further challenge by the appellant is on the ground that the EC was granted without application of mind, overlooking the procedural irregularities as well as environmental aspects. The project, as proposed, underwent change by increase in capacity and inclusion of Mission Bhagiratha to provide drinking water to Hyderabad and certain villages of Telangana but no fresh scoping was done. The pre-feasibility report submitted in January, 2017 and draft of EIA report submitted in July, 2017 did not mention the Mission Bhagiratha which involved interlinking of the two projects. Feasibility of the change project was never evaluated while granting EC. Construction of pump houses started in February, 2017. There is discrepancy with regard to quantity of the forest land in the project. Different area is mentioned in the first application which was withdrawn from the area mentioned in the application filed in January, 2017. EIA report filed by the project proponent was not in consonance with the Terms of Reference (ToR). Baseline data relied upon in the EIA studies did not cover the winter

season. There is deliberate mis-representation of facts regarding proximity of the protected areas, such as National park, sanctuary, biosphere reserve etc. Final EIA report wrongly states that there is no national park for wildlife sanctuary within 10 km buffer. Drainage maps and soil maps are not properly covered by the EIA report. ToR has not been followed in the study of the forest areas. Samples of the baseline data are inadequate and not representative of the entire area. Part of the studies falling in the State Maharashtra have been ignored. Bio-diversity study has not been carried out by associating a suitable organization. Sampling methodology is deficient. EIA report is deficient on the account of inadequate study of flora and fauna in the region. Surprisingly, re-discovery of Cheetahs, which were declared extinct in India in 1952, is mentioned. The project is Seismic Zone 2 which has not been so mentioned. Such site is not suitable for the project. Public hearing was not conducted as per procedure prescribed in the EIA Notification. EIA was not available to the residents for the public hearing. Various environmental issues have not been dealt with in the EIA.

It is further submitted that even after the grant of EC, the project proponent did not follow the EC conditions. The lifting capacity is proposed to be enhanced without any further EC and enhancement of the capacity from 2 TMC/day to 3 TMC/day for the Medigadda Lift System, Annaram Lift System and the Sundilla Lift System will involve substantial modification in infrastructure.

4. To sum up, the objections are:-

- a) Grant of EC is *ex post facto*.

- b) Terms of reference not followed and fresh scoping not done after modification of the project by increasing the capacity and inclusion of Mission Bhagiratha etc.
- c) EIA Notification procedure was not followed in making draft EIA report available to public. The baseline data was not properly conducted as winter season data was left out.
- d) There is concealment of material facts including existence of protected areas within 10 km. of the site without wildlife clearance. It is wrongly mentioned that Cheetahs existed. The extent of forest has not been properly mentioned. The area is Seismic Zone -2 which was also not mentioned.
- e) The EC condition of impact being studied after five years of commissioning is against the Precautionary principle.
- f) There was no proper appraisal of the project.

Proceedings before the Tribunal

5. The appeal was filed on 16.02.2018. Notice was issued to the respondents on 19.02.2018. Parties have filed their pleadings. On 29.07.2019, delay was condoned. On 11.12.2019, application for amendment was allowed permitting objections in the light of the subsequent developments.

6. We may also mention that O.A. No. 113/2020, *Thummanappally Srinivas and Ors. v. UOI & Ors.* was filed before the Southern Zone, Chennai against the proposed increase of pumping capacity. In view of pendency of the appeal before the Principal Bench, the Southern Zone Bench suggested that the application be transferred to the Principal

Bench to be considered along with the appeal. Accordingly, the matter was taken up by the Principal Bench and registered as O.A. No. 204/2020 and directed to be listed for final hearing along with the appeal. The same is being disposed of by a separate order.

Proceedings before the Tribunal prior to EC

7. We may further mention that the appellant earlier filed O.A. No. 370/2017 on 30.05.2017 against the commencement of the project without EC mentioning that there were construction activities in forest area. The land was being sub-merged and huge construction was going on without EC. The project will also affect wildlife without requisite clearance. The project involved budget of more than Rs. 80,000 crores and involved construction of three barrages and diversion of water from the river for irrigation purposes as well as drinking purpose. The States of Maharashtra and Telangana are part of Inter-State Board for joint irrigation project though the responsibility under mutual arrangement for taking requisite clearance is of the State of Telangana. The project was infact 'River Valley' project falling under Entry 1(c) of the Schedule to the EIA Notification, 2006. It could not be commenced without prior EC. EC was applied only on 11.01.2017 and had still not been granted till the filing of the application. The project required 'in principle' clearance from the Central Water Commission (CWC) and Techno Economic Feasibility report. The project will adversely affect the eco system in a big way. The construction will be in forest area without Forest Clearance (FC).

Interim order dated 5.10.2017 by the Tribunal and modification thereof by the High Court at pre-EC stage

7. The Tribunal issued notice on 30.01.2017 and after hearing learned counsel for the parties vide order dated 05.10.2017, granted *ad interim*

injunction restraining States of Maharashtra and Telangana from carrying out any construction activities for the KLIS or activities like felling of trees, blasting and tunnelling in the forest areas in violation of the Forest (Conservation) Act, 1980, till statutory clearances are granted. The stand of the State of Telangana was that the project was irrigation project, conceived by the erstwhile State of Andhra Pradesh which also involved water supply to Hyderabad city and other places enroute Hyderabad. The Mission Bhagiratha was a part of the project to remedy the drought condition in the area. In the said area, ground water was contaminated by chloride. The project was earlier called Dr. BR Ambedkar Pranahita Chevalla Sujala Sravanthi Project, a multipurpose project, involving the States of Maharashtra and Telangana. There was agreement between the two States for the Inter-State Control Board and a Co-ordination Committee had been constituted. EC was applied on 10.11.2014. The project was redesigned and renamed as it involved submergence of land in Maharashtra. There was change of alignment on account of objections of the State of Maharashtra on which the application for EC was withdrawn and fresh application was filed on 13.01.2017. On the basis of these pleadings, the Tribunal observed that the project was primarily an irrigation project, covering seven districts of the State of Telangana and to such a project the drinking water scheme was also added. The State of Telangana had filed pre-feasibility report in the year 2014. Relevant observations are:-

*“45 There are two legal issues which confront the State of Telangana. The first is for Kaleshwaram Lift Irrigation Project activity which is designed, conceived and sought to be implemented by the State of Telangana is a “Lift Irrigation Project”. **It is primarily irrigation project though of course portion of water that may be harnessed is proposed to be utilized to supply drinking water to Districts en-route to Hyderabad and Hyderabad City. That does not take away the Kaleshwaram Lift Irrigation Project out of the Entry 1(c) of the EIA Notification, 2006 requiring prior Environmental Clearance.***

The second aspect is about Forest Clearance. We need not repeat, except to state that the State has admitted involvement of forest land and therefore in view of the decision of the Hon'ble Apex Court, apart from the Statutory Restriction under the provision of Section 2 of Forest (Conservation) Act, 1980, the project proponent cannot proceed with the project activity till requisite permission are obtained. It is further noticed that the contractor involved in the project is a company called L & T and it is alleged that the company had cleared large extent of forest land, cutting trees indiscriminately for construction of staff quarters for the its employees in the prime forest area. The letter of the Forest officer produced by the applicant substantiates this allegation that number of trees are felled by the contractor executing project and it is apprehended by the Applicant and all concerned that if the project actually proceeds to construct, it will destroy much more area.

46. The applicant has further produced the newspaper report to show that the project proponent was blasting the rocks and tunnels, during such activity an incident occurred in the recent past where, several construction workers died due to land slide, collapse of tunnel supporting structure etc. The State of Telangana had not disputed the said incident but has brushed it aside as "Accident" beyond its control. We do not wish to record any finding on it. But it is necessary to take note of such incident to know whether the Respondent No. 2 and Respondent No. 4 are proceeding with construction activity after the project is properly evaluated and obtaining environmental clearance and other clearance under provision of Section 2 of the Forest (Conservation) Act, 1980.

47. For the reasons discussed above, we are satisfied that a prima facie case has been made to injunct the project activity which is undoubtedly impermissible in view of the restrictions imposed by Section 2 of EIA Notification, 2006 and provisions of the Forest (Conservation) Act, 1980, without obtaining required permission."

8. Against the said order, the State of Telangana preferred W.P. No. 34458/2017, *State of Telangana & Anr. v. Md. Hayath Uddin & Ors.* before the Telangana High Court, which was decided on 08.11.2017¹. The High Court set aside the order of the Tribunal on a preliminary ground that the Tribunal had not decided the objection about the application being beyond limitation laid down under Section 14(3) of the National Green Tribunal Act, 2010 and that the application could not be filed before the Principal Bench and was to be filed before the Southern

¹ 2017 SCC Online Hyd 356 : (2018) 1 ALD 247 (DB)

Bench. However, while leaving it open to the Tribunal to pass a fresh order, the High Court noted that without EC and FC the State of Telangana could not commence the irrigation component of the project and use the forest land for non-forest purposes. It was observed:-

***“75. On the nature of relief to be granted, we must record our concern regarding certain incidents, referred to in the order of the NGT, which, if true, are indeed disturbing. In its reasoned order, the NGT has noted that the State of Telangana had admitted involvement of forest land in the project, and has held that, in view of Section 2 of the Forest (Conservation) Act, 1980, the project proponent cannot proceed with the project activity till forest clearance is obtained. The NGT has also noted that the contractor, involved in the project, was alleged to have cleared large extents of forest land, cutting trees indiscriminately, for construction of staff quarters for its employees, in prime forest area; and that reliance was placed by the first respondent-applicant on the letter of the Forest Officer to substantiate the allegation that the contractor, executing the project, had felled a number of trees. Yet another incident, which the NGT has referred to in its reasoned order, is that the project proponent had blasted rocks and tunnels; during such activity several construction workers had died due to land slide, and collapse of the tunnel supporting structure, etc. The NGT has also noted that, while the State of Telangana had not disputed the incident, it was brushed aside as an accident beyond its control. It is for this among other reasons that the Principal Bench of the NGT, New Delhi had held that construction activity could only be undertaken after the project was properly evaluated, and environmental and forest clearances were obtained.*”**

76. In Vedire Venkata Reddy v. Union of India², a Division Bench of this Court held that it is not permissible for the State Government to proceed ahead with the implementation of the project till all clearances are obtained; the action of the State Government in implementation of the project, without obtaining environmental clearance, as envisaged under the provisions of the Environment (Protection) Act, 1986, the rules framed thereunder and the notification, is illegal and arbitrary; and the State Government should not proceed ahead in implementation of the project, and should not undertake any construction work, whether preliminary or otherwise, till environmental clearance is obtained.

77. While the petitioner contends that environmental clearance is not required for construction of a drinking water project, they do not dispute that such permission is required for an irrigation project. Despite the assurance of the Learned Advocate-General for the

² AIR 2005 AP 155

State of Telangana that, till final forest clearance is obtained from the Government of India, the petitioner would not fell even a single tree within the limits of the reserve forest, we are of the view that specific directions should be issued to the Government of Telangana in this regard.

78. Till orders are passed afresh by the Principal Bench, NGT, and till Final forest clearance is obtained from the Government of India, the petitioner shall henceforth neither encroach upon any part of the reserve forest in connection with the project, nor shall even a single tree therein be felled for the purposes of the project, or for any ancillary activity connected therewith. The State of Telangana shall also not commence construction of distributaries and channels, or undertake ancillary works relating to the irrigation component of the project without obtaining environmental clearance from the Union of India. Works if any undertaken by, and on behalf of, the State of Telangana shall be confined strictly to the drinking water component of the project. Violation of the aforesaid directions can be brought both to the notice of this Court, and to the NGT, by the first respondent-applicant. It would be open to the Principal Bench, NGT, even before it rules on its jurisdiction to entertain the O.A, to take necessary action against the petitioner for such violations, if any brought to its notice, including directing them to stop all construction activity even in relation to the drinking water component of the project.

VI. CONCLUSION:

79. We are satisfied that failure of the Principal Bench, NGT, New Delhi to examine the jurisdictional issues raised by the petitioner i.e that the O.A. was filed beyond the period prescribed in Section 14(3) of the 2010 Act and its proviso, and it lacked territorial jurisdiction to entertain the present O.A, is fatal, for it is only if the Principal Bench of the NGT, New Delhi has jurisdiction to entertain the O.A, could it have granted the interim relief sought for by the first respondent-applicant.

80. Subject to the aforesaid observations, the Writ Petition is allowed, the impugned order is set aside and the matter is remanded to the Principal Bench, NGT, New Delhi, which shall consider the first respondent-applicant's request for grant of interim relief afresh, and in accordance with law. Miscellaneous Petitions, if any pending, shall also stand disposed of. No costs.”

SLP against the High Court order was dismissed. The application was thereafter taken up by this Tribunal on 21.08.2018. This Tribunal noted that since EC stands granted which was subject matter of

consideration in appeal No. 20/2018, the entire matter could be considered in the appeal. The application was disposed of.

Stand of the Respondents

9. We may now note the stand of the main contesting respondents i.e. MoEF&CC and the project proponent, the State of Telangana.

Stand of the MoEF&CC

10. The MoEF&CC in its affidavit dated 15.03.2018 stated that the project is for providing irrigation facility and also for providing drinking water facility. It falls under entry 1(c) of the Schedule to the EIA Notification, 2006. EC was granted subject to certain conditions and directions, as per law. Relevant averments are as follows:-

“5. That the Kaleshwaram Lift Irrigation Scheme (KLIS), which envisages construction of a barrage across River Godavari near Medigadda Village in Karimnagar District of Telangana State for diversion of 180 TMC of water for providing irrigation facility in 7,38,851 hectares of area covering 7 Districts namely Adilabad, Karimnagar, Nizamabad, Warangal, Medak, Nalgonda and Rangareddy. The project is also proposed to provide drinking water facility to Hyderabad and Secunderabad. The total land requirement for the project is about 37,872 hectares, out of which 3168.1315 hectares is forest land. The total length of water canal system is about 1,832 km.

6. That this project belongs to Schedule I (c) of Environmental Impact Assessment (EIA) Notification, 2006. An application was submitted along with Environmental Impact Assessment Report and other relevant documents and reports. These reports were appraised and examined by Expert Appraisal Committee (EAC) constituted for River Valley & Hydropower Projects under the provisions of EIA Notification, 2006 to the satisfaction of the members who are experts in their domain fields.

7. That as per the provisions of Section 2 of the Forest (C) Act read with Rule 6 of the Forest; (Conservation) Rules 2003, Every user agency (i.e. Project Proponent), who wants to use any forest land for non-forest purpose shall make his application to the concerned nodal officer of the state government authorized in this behalf for prior approval of U/s 2 of Forest (C) Act, 1980.

8. That as per the decision of Supreme Court in T.N. GODAVARMAN VS. UNION OF INDIA & ORS and EIA Notification, 2006, public consultation is mandatory. In the light of aforesaid judgment, public hearings were conducted in 15 Districts in Telangana and 1 District in Maharashtra by Telangana State Pollution Control Board & Maharashtra State Pollution Control Board as per the extant norms on the subject.

The details are as follows:

SI. No	DISTRICTS	DATES
i.	Karimnagar, Nizamabad, Medchal-Malkajgiri, Yadagdri-Bhunanagiri in Telangana	22.8.2017
ii.	Peddapally, Nalgonda, Sangareddy, Kamareddy in Telangana	23.8.2017
iii.	Nirmal, Jagityal in Telangana	24.8.2017
iv.	Medak, Jayashankar-Bhupalapally, Manchiryal, Rajanna Sircilla, Siddipet in Telangana	26.8.2017
v.	Gadchiroli in Maharashtra	27.9.2017

It is relevant to mention here that main grievance of the local aggrieved persons were lack of irrigation facilities in the region, drinking water problem, compensation in land acquisition, water supply to arid zones etc. Majority expresses happiness over the implementation of the Project.”

11. Further affidavit filed by the MoEF&CC is dated 26.09.2019 mentioning the steps taken in the grant of EC. Relevant paras therefrom are extracted as follows:-

“3. It is submitted that the Kaleshwaram Lift Irrigation Scheme (KLIS) envisaged to construct a barrage across River Godavari to provide irrigation facility in 7,38,851 ha I 7 Districts of Telangana (Adilabad, Karimnagar, Nizambad Warngal, Medak, Nalgonda and Rangareddy) by diverting 180 TMC of water from River Godaveri. The project is also proposed to provide drinking water facility to Hyderabad and Secunderabad cities.

*The total land requirement for the project is about 37,852 ha, out of which 3168.1315 ha is forestland and 34,684 ha is private land. **The total submergence area is about 18,302 ha.** The project lies in the interstate boundary with submergence area of 174.37 ha of area in Maharashtra State.*

4. *It is submitted that the Project was considered by the Expert Appraisal Committee (EAC) in its meetings held on 30-31' January, 2017 and on 2-3rd March, 2017 for Scoping/ Terms of Reference (TOR) clearance. Based on the recommendations of the EAC the Ministry accorded TOR vide letter dated 31' March, 2017 for preparation of EIA /EMP and conduct of Public Hearing.*
5. *It is submitted that the EAC thoroughly examined the project before recommending the project for grant of environmental clearance as per the EIA Notification 2006 and amendments thereof. Further, it is submitted that after considering all the relevant facts of the project as presented by the project proponent, documents submitted by Project Proponent, clarification furnished in response to its observation, EAC recommended for the grant of Environmental Clearance for the project. The Ministry issued the Environmental Clearance (EC) vide letter dated 22/12/2017.*
6. *It is submitted that the minutes of Public Hearings were taken into consideration by the Expert Appraisal Committee (EAC) for River Valley & Hydro Power Sector while appraising the project for grant of Environmental Clearance (EC). The public hearing were conducted in 15 Districts (i.e. Karimnagar on 22.8.2017, Nizambad on 22.8.2017, Medchal-Malkajgiri on 22.8.2017, Yadadri-Bhunanagiri on 22.8.2017; Peddapally on 23.8.2017, Nalgonda on 23.8.2018, Sangareddy on 23.8.2017, Kamareddy on 23.8.2017; Nirmal on 24.8.2017, Jagityal on 24.8.2017, Medak on 24.8.2017; Jayashankar- Bhupalapally on 26.8.2017, Manchiryal on 26.8.2017, Rajanna Sircilla on 26.8.2017 & Siddipet on 26.8.2017) of Telangana and one District (Gadchiroli on 27.9.2017) of Maharashtra as per the provisions of EIA Notification, 2006.*

Further, it is submitted that EAC has also taken into consideration all the issues raised during Public Hearings and the same is also recorded in the minutes of meeting of the EAC for River Valley & Hydro Power sector. The main issue raised during Public Hearings included - lack of irrigation facilities in the region, improving socio-economic conditions, stabilization of SRSP ayacut (command area), drinking water facility, resolving land acquisition issues at the earliest, rehabilitation benefits for SC/ST communities, R&R as per the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and compensation at 10 times the basic value of land, filling up of tanks and increasing storage facility of Muraharipally village, provisions of water supply to semi-arid zones, giving employment in the villages, compensation as per Mallanasagar project and seeking reasons for redesigning the project & increasing the reservoir capacity, impact on environment, etc. The project proponent clarified all the queries/issues pertaining to them. Majority expressed happiness over the implementation of the project.

7. It is submitted that the Ministry accorded Stage-I Forest Clearance (FC) on 24.10.2017 and Stage-II FC on 24.11.2017. The Stage-II FC for diversion of 3168.131 ha was accorded on the basis of the compliance report furnished by the State Government of Telangana for construction of canals, tunnels, lift systems, surge pool, delivery system and reservoir, etc. involved in the KLIS subject to the compliance of the conditions stipulated in State-II FC clearance on 24.11.2017. Therefore, the averments made by the Appellant are baseless and not maintainable.

8. It is submitted that the Ministry's OM dated 29' August, 2017, which inter-alia provides as under:-

"The baseline data used for preparation of EIA/EMP reports may be collected at any stage, irrespective of the request for ToR or the issue thereof. However, such a baseline data and the public consultation should not be older than 3 years, at the time of submission of the proposal, for grant of Environmental Clearance, as per ToRs prescribed."

It is submitted that the baseline data used by the Project Proponent for preparation of EIA/EMP report for the proposed project was not more than three-years and hence in conformity with the above said provision. Therefore, the averments made by the Appellant are baseless and not maintainable.

9. It is submitted that detailed flora and fauna study was conducted by the project proponent, and the same was incorporated in the EIA report. As per the EIA report and informed by project proponent, there was no endangered, threatened and endemic category of flora & fauna. Even the project area of both core and buffer zones do not have any breeding habitats, spawning grounds or migratory corridors for wildlife. During the period of survey, no endangered and threatened aquatic fauna have been found."

Stand of the Project Proponent

12. The stand of the project proponent is that the project is for providing water to the drought prone areas of the Telangana. It has two parts: drinking water and irrigation. **The project is primarily for water supply and water management project, which is not covered by the EIA Notification, 2006, in view of the amendment dated 25.06.2014.**

With regard to the expansion, it is stated that the decision has been taken to increase drawl of water from 2 TMC/day to 3 TMC/day by the

Telangana govt. on 06.10.2019. **It is stated that the expansion does not alter the infrastructure plans. The State did not proceed with the irrigation component of the Kaleshwaram Project till the necessary and requisite clearances are obtained by them.** The High Court had permitted the answering Respondents to construct only components which would relate to supply drinking water.

It is denied that the EC is *ex post facto*. **The project was being constructed prior to grant EC only for drinking water for which EC was not required. The project started in the year 2008 with construction of series of barrages, reservoirs, pipelines and canals and pump houses to pump water from one reservoir to the other and is still continuing. Major part of the project had already been constructed. Environment Management Plan (EMP) envisages spending Rs. 16,000 crores.** There is no change in the project after filing of Form – 1. EIA report is in consonance with the ToR. EC has been accorded after verification of the study and recommendations and plans for conservation suggested in the EIA/EMP report. Public hearing was duly conducted. The project involves lifting of water from the river during monsoon season and its collection for supply to affected drought areas. It is for overall social welfare. Mission Bhagiratha is not a part of the project. The project will merely provide water to the Mission Bhagiratha which does not imply any change in the project. The Mission Bhagiratha is a different project and has a different project proponent i.e. Rural Water Supply and Sanitation Department. The line diagram is only illustrative and is not to the scale. Location of the pump house has been correctly described in the EIA Report.

Shamirpet tank was not shown in the 'bespoke' and not-to-scale 'line diagram' and the affidavit dated 03.10.2017 because the answering respondents were required to show only the main trunk of the project at that stage. The forest area has been correctly described and application for diversion of such area has been duly made. **Withdrawal of the earlier application for EC and filing of the subsequent application was on account of change in alignment of the project.** The baseline data has been properly compiled in 10 km radius of the main project. The data has been collected for 3 seasons pre-monsoon, monsoon and post monsoon by the Environment Protection Training and Research Institute (EPTRI) which has expertise on the subject. The wildlife clearance is to be taken subsequently. The EIA report contains all relevant studies, using 'Champion and Seth' method. Forest Working Plan has been included in the EIA Report. Reserved forest has been shown in the maps. FC Stage-II has been granted. Adequate number of samples were taken. 10 samples have been taken only for air quality index. There are samples for noise monitoring, water quality, soil quality, traffic data. There is also study about hydrology referring to rain fall data. There is information about the social environment like population density, literacy level, employment level. Anticipated impact and mitigation measures are also mentioned. Public consultation was conducted in 15 Districts of Telangana and one District of Maharashtra. Disclosure requirements have been fulfilled. Comprehensive ecology and biodiversity study have been undertaken. EIA is in conformity with ToR and contains all the relevant studies, data and maps. 3500 citizens attended the public hearing. Lifting of 3 TMC/day water as against 2 TMC/day is to fully utilize the capacity.

Reply of State of Maharashtra

13. We may also refer to the reply filed by the State of Maharashtra on 15.06.2018. It is stated that agreement dated 19.07.2013 was signed between the State of Maharashtra erstwhile Andhra Pradesh **to undertake joint irrigation projects, including the present irrigation project.** The State of Telangana agreed to abide by the existing agreement. Further agreement was signed on 08.03.2016 to form Inter-State Board for joint irrigation projects. The said Board is to resolve pre construction, construction and post construction issues. There is mechanism of joint action and responsibility. In terms of the agreement dated 23.08.2016, **the State of Telangana is to obtain statutory clearances for the project.**

Consideration of Rival Contentions

14. We have heard learned counsel for the appellant, MoEF&CC, CWC as well as the project proponent. At the conclusion of hearing on 12.10.2020, following order was passed:

“Hearing concluded.

Order reserved. The order will be uploaded on the website on 20.10.2020. A note of written submission, if any, be filed on or before 16.10.2020.

We have particularly asked learned counsel for the project proponent and the State of Telangana to respond to the averments in para 4 and 8 of the counter affidavit filed by the Secretary, Department of Water Resources, Ministry of Jal Shakti on 09.10.2020 which refers to a letter dated 07.08.2020 by the Ministry of Jal Shakti to the Chief Minister of Telangana not to proceed with the project without submitting DPR to Godavari River Management Board and without sanction of the Apex Council. The project for expansion has also to be submitted to the CWC, in absence of which we will have to issue directions to that effect.”

15. We have also considered the written submissions filed by the appellant in appeal and the applicant in the connected matter on 16.10.2020. The project proponent has also filed written submission on 17.10.2020 which is also reiteration of the submissions already made. However, the State of Telangana in its written submissions has mentioned in paragraph 32 that the Chief Minister has given reply dated 02.10.2020 to the Minister of Jal Shakti that the project is an old project before bifurcation of the State.

16. In view of the above rival contentions, the basic question is the validity of the impugned EC and in case there is infirmity in the EC, further remedial action. There is also an issue with regard to expansion of the project by way of increase of drawl of water from 2 TMC/day to 3 TMC/day in terms of the decision of the Telangana Government on 06.10.2019, without requisite EC, inspite of opposition by the Ministry of Jalshakti, Govt of India, taking the view that clearances are quired for the same.

17. As noted earlier, the stand of the appellant is that the impugned EC is invalid as the project proponent commenced the project prior to the application. The project was predominantly a river valley project. In support of challenge to the EC, procedural infirmities in failing to undertake fresh scoping when the project was modified after filing application for EC and in concealing material facts regarding existence of wildlife sanctuary. On the other hand, the stand of the MoEF&CC and Project Proponent is that EC has been duly granted. According to the Project Proponent the project is primarily for water supply and water management and is not covered by the EIA Notification, 2006, as initially conceived. The State did not proceed with the irrigation component in

the project till all the necessary clearances were obtained. Only components relating to supply of drinking water were constructed which did not require any EIA. According to State of Maharashtra, the project is irrigation project but taking clearance is responsibility of Telangana. The MoEF stand is that the project is Irrigation project but also involves water supply. No comment has been made about requirement of EC prior to undertaking substantial execution of the project from 2008 to 2017.

18. We are unable to accept the stand of the project proponent that primarily the project is for water supply and water management and that irrigation is subsidiary or incidental part of the project so as to hold that no EC was required prior to execution of the project from 2008 to 2017. We are also unable to agree that the State did not proceed with the irrigation component in the project till the clearances were granted and only constructed components relating to supply of drinking water. There is no basis for the submission that no part of execution of the project prior to EC related to Irrigation purpose as project is admittedly integral and inseparable. The argument, if accepted, will defeat the law.

19. It remains undisputed that the project involves budget of Rs. 80,000 Crores. EMP itself has a provision for Rs. 16,000 Crores. There is a provision for construction of three barrages. Irrigation for 7 lakhs hectares of land is envisaged. 18000 hectares of land is to be submerged as per the EC. Out of 180 TMC of water to be lifted and diverted from Godavari, 134.5 TMC is for Irrigation and 40 TMC is for drinking. The remaining is for other purposes, including Industrial as noted earlier. The project started in the year 2008 with construction of barrages, reservoirs, pipelines, canals and pump houses. Major part of the project

was constructed prior to EC. The stand of the project proponent that the project executed prior to EC is unrelated to irrigation is patently untenable and if accepted, will defeat the law. It is for this reason that prior to EC, this Tribunal and the High Court had to grant injunction against development of infrastructure after finding massive activities of construction of barrages involving blasting and other such activities. All such activities are clearly part of the Irrigation project which cannot be separated from other objectives. It is difficult to accept that all such activities are only for drinking purpose. The State has led no evidence in support of the plea that all earlier activities are exclusively for water supply. The State could produce documents like contracts to show that the infrastructure had no nexus for the irrigation. This plea is not shown to have been gone into by the MoEF while granting EC.

20. Even according to the project proponent, EC was applied earlier in the year 2014 but the application was withdrawn on account of change of alignment. This negates the plea that the project proponent was not contemplating seeking EC at that time. The project had serious implication in terms of environment. It was never exclusively a water supply project. Even in 2008, report filed by the project proponent with its affidavit, it is clearly mentioned that the project is a multipurpose project as apart from irrigation, it also involves drinking water supply. Thus, to say that from 2008 till December, 2017 when EC was granted, by which time project was almost completed, activities related only in relation to the drinking water supply and not with the irrigation and that the irrigation project activities commenced thereafter is difficult to accept. As already mentioned, the Tribunal as well as the High Court clearly found that the project proponent was illegally proceeding with

construction activities for the irrigation project and also diverting forest land for non- forest purposes without prior clearances. While injunction was granted by the High Court against such activities, the substantial activities had already been undertaken without prior EC. The MoEF&CC has not even adverted to this aspect either while granting EC or even in the reply filed before this Tribunal. It is not the case of the MoEF&CC that the project undertaken from 2008 to 2017 was only in relation to water supply and not in relation to irrigation infrastructure.

21. In *Hanuman Laxman Aroskar v. UOI*³, the Hon'ble Supreme Court held that objective of the EIA was balancing of environmental and developmental concerns to give effect to the principle of Sustainable Development.⁴ The development agenda of the Nation must be carried out in compliance with the norms for protection of environment. There is no trade-off between the two. Environment protection is an essential facet of development. The laid down procedure must be meticulously followed. The material information must be disclosed in Form-I. Mere substantial or proportionate compliance is not adequate. Strict standards must be complied with and burden of compliance rests on the project proponent.⁵ Ecologically sensitive areas must be duly factored because of presence of flora and fauna. Environmental Rule of Law is based on pillars of Sustainable Development – economic, social, environment and peace. It has to take precedence in the light of Stockholm Conference. This requires effective, accountable and transparent regime. The EIA Notification is a significant link in quest to pursue SDGs⁶. If there is a failure of due process in grant of EIA,

³ (2019) 15 SCC 401

⁴ Para 58

⁵ Para 88

⁶ Para 144, 169

remedial action has to be taken by requiring the EAC to revisit the recommendations for grant of EC.⁷

22. In *Alembic Pharmaceutical Ltd. V. Rohit Prajapati & Ors.*⁸ the Hon'ble Supreme Court held, following the earlier view, that concept of *ex post facto* clearance is contrary to the requirement of prior EC.⁹ Such concept is detrimental to the environment and can lead to irreparable degradation. EC can be issued only after various stages of decision-making process which are meant to ensure that all necessary safeguards are duly appraised by the experts before the project starts. *Ex post facto* EC will condone the violations and, in the process, irreparable harm may be caused to the environment. The Hon'ble Supreme Court upheld the quashing of circular of the MoEF dated 14.05.2002 permitting *ex post facto* EC. However, it was held that on failing to take prior EC, revocation of EC may not be the only option. The project proponent must be held accountable for non-compliance by way of requiring restitution and restoration.¹⁰ Same view was taken in *Keystone Realtors Pvt Ltd. V. Anil V. Tharthare & Ors.*¹¹ it was observed that undertaking of expansion without prior EC denies opportunity to evaluate mitigation measures.¹²

23. In *Re: construction of Park at Noida near Okhla Bird Sanctuary v. UOI & Ors.*¹³, the issue for consideration was whether EC was required for the project of setting up of a Memorial Complex at Noida near Okhla Bird Sanctuary. The stand of the project proponent was that the project was only development of a park while the contention in support of the

⁷ Para 172, 175

⁸ 2020 SCC OnLine SC 347

⁹ Para 27

¹⁰ Para 49

¹¹ (2020) 2 SCC 66

¹² Para 21

¹³ (2011) 1 SCC 744

challenge to the project was that it involved building and construction. The Hon'ble Supreme Court held that 'dominant nature' test was required to be applied for determining whether EC was required and whether the project was covered by the Schedule to the EIA Notification, 2006¹⁴. It was further held that even if there was no laid down requirement of EC, environment protection being guaranteed under Article 21 of the Constitution, if there is any perceived harm to the environment, likelihood of such adverse impact must be duly examined¹⁵. Even after holding that EC was not required, the Hon'ble Supreme Court constituted Committees of experts which suggested protective and mitigation measures. The Hon'ble Supreme Court directed all such measures to be adopted.¹⁶

24. The issue relating to 'river valley projects' have been directly considered *inter-alia* in *Narmada Bachao Andolan v. UOI & Ors. (Sardar Sarovar Dam)* ¹⁷ and *N.D. Jayal & Anr. v. UOI & Ors. (Tehri Dam)*¹⁸

25. In *Narmada Bachao Andolan v. UOI & Ors.* one of the objections against the project was absence of proper EIA. The project proponent however defended the same as being in national and public interest particularly to provide drinking water in water scarce area. The project also provided for irrigation, industrial water supply, hydro-electric power and control of floods. The Hon'ble Supreme Court noted the studies undertaken on the subject at various levels and did not accept the plea that construction of the dam will have adverse ecological impact¹⁹.

¹⁴ Para 67

¹⁵ Para 74

¹⁶ Para 77-84

¹⁷ (2000) 10 SCC 664

¹⁸ (2004) 9 SCC 362

¹⁹ Para 119

Distinguishing the judgement in *Vellore Citizens' Welfare Forum v. UOI*²⁰ dealing with the 'Precautionary' and 'Polluter Pays' principles and special rule of burden of proof, it was observed that ecological disaster could not always be presumed from violation of procedure, if mitigative steps are taken²¹. Construction of dam was not at par with polluting industries or nuclear establishments which results in ecological degradation.²² Thus, it was found that all due precautions had been taken and studies carried out. There were measures for relief and rehabilitation. The mitigation measures were being duly monitored. There was a Grievance Redressal Authority. The benefits for river valley projects in terms of food safety, water supply, energy supply, etc. were taken into account to offset the loss caused by displacement of persons, loss of forest and adverse impact on ecology.²³

26. In *N.D. Jayal & Anr. v. UOI & Ors.*, while considering the Tehri Dam Project, it was observed that sustainable development is component of Right to Life. Thus, powers of the Environment Authorities were coupled with duty to enforce the guaranteed Right to Environment²⁴. In the light of the said principle, directions were issued to monitor compliance of conditions for EC, apart from the existing mechanism under the MoEF&CC.

27. In the present matter, the project is predominantly for Irrigation though water supply is also involved. Plea to the contrary is untenable. Thus, the EC has been granted ex post facto in violation of legal

²⁰ (1996) 5 SCC 647

²¹ Para 122 & 123

²² Para 124

²³ Para 238-244

²⁴ Para 24-26

requirement for prior EC. Question is what consequences follow in the facts of the present case.

28. Right at the outset, we asked learned counsel for the appellant as to what was to be done if the project had already been substantially undertaken prior to grant of EC in violation of law. He fairly suggested that in such a situation what was required is to take suitable mitigation measures.

29. We find that inspite illegality found, it is neither possible nor desirable to undo what has happened but accountability needs to be fixed and remedial measures taken. As already noted, the MoEF&CC has not, in granting EC, gone into the issue whether the project had been substantially constructed without prior EIA and in the light of such factual position, what further safeguards were required and how the project proponent is be held accountable for violation of law and presenting *fait accompli*. Mere plea that the project was multi-purpose project and also had a component for which EC may not be required, was not sufficient for the project proponent to have gone ahead without the impact assessment and it is on that account that an injunction was issued by this Tribunal and by the High Court. Since we have found that there is major infirmity in EC being sought *ex post facto*, it is not necessary to go into other points. The fact remains that the project has been completed and only issue is of remedial action and future precautions.

30. We find that undoubtedly the project seeks to provide drinking water to the needy people and irrigation facilities to improve agricultural productivity which serves public interest. Also huge amount of public

money has been spent. At the same time, it is not necessary that for such development, damage to environment must be ignored and adequate safeguards are not to be adopted. Environmental rule of law need not be considered to be in conflict with the need for development but a facet of development. The development has to be sustainable and the light of principles which the country has accepted in the form of the frame work of legislation and best environmental practices.

31. Beyond submitting that there is damage to the environment on account of the project having been executed without prior EC, there is no tangible material before the Tribunal on the basis on which a specific direction for mitigations, restoration and rehabilitation measures can be directed. This exercise was expected from the experts recommending and the authorities granting EC. The project proponent should have been held accountable for the violations. This exercise may have to be undertaken now to enforce the rule of law.

32. Accordingly, we direct the MoEF&CC to constitute a seven-member Expert Committee preferably out of EAC members with relevant sectorial expertise to go into the matter in light of observations hereinabove. It may assess the extent of damage caused in going ahead with the project without EC (from 2008 to 2017) and identify the restoration measures necessary. Relief and Rehabilitation measures adopted and required to be further adopted may also be looked into. In this regard, we also note that the EC was granted with reference to ToR based on Form-I submitted by the project proponent, without considering the changes which have taken place in the project subsequently. The Expert Committee may also examine effective implementation of EMP earlier

submitted by the project proponent based on which EC was granted and compliance of EC conditions. The Expert Committee may be constituted within one month and it may complete its exercise within six months thereafter. The progress may be finally monitored by the Secretary, MoEF&CC. Any affected party will be at liberty to make representation to the MoEF&CC within three weeks putting forward suggestions and grievances, which may be taken into the account by Committee. The MoEF&CC may consider measures to prevent recurrence of such violations where EC is sought *ex post facto*. This is particularly required when the projects are multipurpose projects and part of it requires EC, so that such requirement is not defeated on specious plea that the project was partly not covered by the Schedule, as has happened in the present case. For this purpose, instead of confining consideration merely to Form-I, a mechanism is required to be evolved and followed whereby physical verification of material particulars can be undertaken, wherever necessary.

33. We are further of the view that the decision for expansion taken by the Telangana Govt. on 06.10.2019 is without EC and not tenable in view of stand taken by the CWC in O.A No.204/2020.²⁵ The stand of the State, that expansion of the project by extraction of 3 TMC/day instead of 2 TMC/day does not involve any infrastructural changes and therefore EC is not required, cannot be accepted. Extraction of more water certainly requires more storage capacity and also affects hydrology and riverine ecology of Godavari River. Such issues may have to be examined by the concerned statutory authorities. *Prima facie*, it is difficult to accept the plea that enhancement of capacity by one third will not require any infrastructural changes. In any case, this aspect needs to be

²⁵ Para 8

evaluated by the statutory expert Committees before the expansion is undertaken. The Minister of Jal Shakti vide letter dated 07.08.2020 addressed to the Chief Minister, Telangana has requested that the State may not proceed with the project without submitting DPRs to Godavari River Management Board (GRMB) and also without obtaining sanction of the Apex Council. CWC has also stated that no project proposal with respect to expansion of the project has been submitted to it as required. In these circumstances, the stand in the letter of the Chief Minister dated 02.10.2020 needs to be looked into by the Ministry of Jal Shakti and the State may proceed on the basis of such decision. The directions of the Central Government are binding and unless challenged and set aside, the same have to be followed.

The appeal stands disposed of in above terms.

Copies of this order be forwarded to MoEF&CC, Secretaries, Ministry of Jal Shakti and, Ministry of Power Govt. of India, CWC, State of Telangana, State PCB and GRMB by e-mail.

Adarsh Kumar Goel, CP

S. P. Wangdi, JM

Dr. Nagin Nanda, EM

October 20, 2020
Appeal No. 20/2018
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