* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserve: 28.04.2009
Pronounced on: 06.05.2009

\+ W.P.(C) 3126/2008 & CM No.6045/2008

PRAFULLA SAMANTRA …… Petitioner
Through : Mr. Rahul Chaudhary, Advocate

versus

MINISTRY OF ENVIRONMENT & FORESTS & ORS. ……. Respondents
Through : Mr.S.K. Dubey with Mr. K.B.Thakur, Advocates for Resp. No.1.
Mr. Janaranjan Das, Mr. Swetaketu Mishra and Mr. P.P. Nayak, Advocates, for Resp. No.2.
Dr. A.M. Singhvi, Sr. Advocate with Mr. P.C. Sen, Advocate and Mr. Nitin D. Advocates for Resp. No.3.

CORAM:

Mr. Justice S. Ravindra Bhat

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

Mr. Justice S. Ravindra Bhat:

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1. The writ petitioner challenges an order dated 29.1.2008 of the National Environmental Appellate Authority (hereafter, 'the Authority') dismissing his appeal stating that he is not a "person aggrieved" under section 11 of the National Environmental Appellate Authority Act, 1997 (hereafter, 'the Act').

2. The petitioner, claiming to be a social and environmental activist, preferred the appeal in his personal capacity as the President of a Social Organisation viz. Lok Shakti Abhiyan, Orissa Unit under Section 11(1) of the Act, challenging an order granting environmental clearance, on 7.3.2007, issued by the Ministry of Environment and Forests (hereafter, 'the MoEF'), Central Government, for setting up of Alumina Smelter Plant (2,50,000 TPA) based on pre-baked technology at Village Bhurkamunda / Brundamal, District Jharsuguda, Orissa by the third respondent.

3. The petitioner claims to be a social and environmental activist involved in issues concerning tribals and environment and also is the President of the Orissa Unit of Lok Shakti Abhiyan, an organization dedicated to social and environmental causes. It is claimed that together with his group, he has been closely following environmental issues in Brundamal District, Jahrsuguda, Orissa and is working among the affected communities.

4. The background of the case is that the second respondent i.e. Orissa State Pollution Control Board announced a public hearing on 20.10.2005 for a proposed aluminum smelter plant under the provisions of Environment Impact Assessment (EIA) Notification, 1994. The petitioner objected to the public hearing on the ground that this is not a separate project but a third stage of a Bauxite Mining Project. The public hearing was cancelled and rescheduled for a later date on 9.12.2005. The petitioner made another representation challenging the faulty EIA of the project on 9.12.2005, *inter alia* stating the following:

> *"The Public Hearing for this Aluminum Smelter, an integral part of Vedanta's bauxite miming, alumina refinery and aluminum smelting*

project which is currently sub judice is legally wrong. State Pollution Control Board is going ahead with the Public Hearing without taking into account the recommendations of the Central Empowerment Committee to the Supreme Court of India which show that Vedanta has violated forest and conservation laws.

*It may be recalled that the CEC in its recommendation to the Apex Court had asked for the withdrawal of the environmental clearance to the alumina refinery plant located in Lanjigarh and strictly recommended not to give the Niyamgiri Hills for bauxite mining to the company. The three phases of an aluminum plant involves necessarily the first step of having captive **bauxite mining** which would provide raw material for the second step that is the **alumina refinery** that in turn will be supplied to **aluminum smelter** in the third step. The following situation prevails with regard to the above three steps, which are essentially part of the same project.*

1. ***Bauxite mine:*** *License for mining not granted. The CEC says "It is of considered view that the use of the forest land in an ecologically sensitive area like Niyamgiri Hills should not be permitted (para 32, page 52)" and again the CEC says "The project may only be considered after an alternative bauxite mine site is identified (para 33, page 53)"*

2. ***Aluminum refinery:*** *The observation of the CEC is significant on the alumina plant when it says "The casual approach, lackadaisical manner and the haste with which the entire issues of the forests and environmental clearance for the alumina refinery project has been dealt with smacks of undue favour/leniency and does not inspire confidence with regard to the willingness and resolve of both the state government and the MoEF to deal with such matters keeping in view the ultimate goal of national and public interest. In the instant case had a proper study been conducted before embarking on a project of this nature and magnitude involving massive investment, the objections to this project from environmental/ ecological/ forest angle would have become known in the beginning itself and in all probability the project would have been abandoned at this site" (para 32, page 52). The CEC further states that "keeping in view all the facts and circumstances brought out in the preceding paragraphs it is recommended that this honourable court may consider **revoking the environmental clearance dated 22.9.2004 granted by the MoEF for setting up of Alumina refinery plant by M/s Vedanta and directing them to stop work on the project** (para 33, page 53)"*

   *In the EIA of this project it has been mentioned in page 27, point 2.3.1 that the **proposed aluminum smelter plant will receive alumina from***

> ***the alumina refinery at Lanjigarh, Kalahandi*** *district of Orissa which is about 240 kms away from the smelter plant. So public hearing of for an aluminum smelter whose raw material is planned to be drawn from sub judice Lanjigarh refinery is completely contingent on the orders of the Honourable Supreme Court on the Lanjigarh Alumina Refinery. By holding a public hearing on the aluminum smelter, the Orissa State Pollution Control Board is exceeding its brief and disrespecting the Honourable Supreme Court. Therefore, you are requested to kindly consider this public hearing on 9th December, 2005 null and void."*

5. The petitioner contends that when, allegedly, the third respondent illegally started construction work for its proposed Aluminum smelter (2,50,000 TPA) and 5x135 MW Captive Thermal Power Plants located at Brindamal, Jharsuguda without obtaining the mandatory environmental clearance he again objected, before the second respondent by his letter dated 5.6.2006; the receipt of the said communication is not denied by the second respondent. By their letter dated 8.2.2007 the second respondent directed the third respondent to stop all construction activities till they obtained environmental clearance from the MoEF.

6. It is submitted that the environmental clearance for the project was granted on 7.3.2007 and aggrieved by this the petitioner filed an appeal before the Authority on 5.4.2007, which by the impugned order, held that the appeal, at the petitioner's instance was not maintainable. The relevant paragraphs of the impugned order are extracted hereunder:

> *"6. The point for decision at this stage is whether he appellant is eligible to file the appeal in this case. The appellant has submitted that he has filed this appeal in his personal capacity as President of Lok Shakti Abhiyan, Orissa Unit. Let us see how the appellant qualifies to file this Appeal.*

7. Section 11(1) of the NEAA Act, 1997 clearly prescribes two conditions for eliginilty of any person to file an appeal:-

(a) He should be a person aggrieved by the environmental clearance order.

(b) He should file appeal with stipulated time.

7.1 The term person, as defined under Section 11(2) of the NEAA Act, 1997, is shown below-

> *(a) any person who is likely to be affected by the grant of Environmental Clearances;*
>
> *(b) any person who owns or has control over the project with respect to which an application has been submitted for environmental clearances;*
>
> *(c) any association of persons (whether incorporated or not) likely to be affected by such order and functioning in the field of environment ;*
>
> *(d) the Central Government, where the environmental clearance is granted by the State Government and the State Government where the environmental clearance has been granted by the Central Government; or*
>
> *(e) any local authority, any part of whose local limits is within the neighbourhood of the area wherein the project is proposed to be located.*

7.2 In light of the above, the Appellant is not an aggrieved person under the clause (b), (c), (d) and (e) of Section 11(2) of the NEAA Act, 1997 narrowing down the scope to clause (a) of this Section. The Appellant has however sought to take advantage of clause (a) of this section by claiming that he is a social and environmental activist involved in the issues concerning the tribals as well as the environment. He submitted that he has filed this appeal as president of Lok Shakti Abhiyan. He and his group has been closely working among the affected communities of Brundamanl & Bhurkhamunda District, Jharsuguda, Orissa on the issues of development.

8. While his representations to the Orissa State Pollution Control Board and other on faulty Environmental Impact Assessment Report, postponement of Public Hearing and not attending the Public Hearing on personal reasons is not disputed, we could not find him affected in any manner so as to satisfy the criteria laid down for "person aggrieved" in the judgment of Supreme Court in the case of Thammanna V. K. Veera Reddy and Ors. as reported at para 16 of (1980) 4 Supreme Court Cases 62.

9. Having perused all the submissions and the documents filed by the Appellant, the Respondent, the Authority finds that the Appellant is not qualified to file this Appeal under clause (a) of the Section 11(2) of the NEAA, Act 1997. The Appeal is accordingly not admitted."

7. The petitioner submits that the interpretation, favoured by the Authority is contrary to the object of the Act, which is to serve as an independent body for quick redressal of public grievances and to decide on petitions, complaints, representations or appeals against the grant of environmental clearances; he relies on *Mukesh K. Tripathi v. Senior Divisional Manager* (2004) 8 SCC 387 and *New India Sugar Mills Ltd. v. Commissioner of Sales Tax, Bihar* AIR 1963 SC 1207 in stating that in case of doubt, the words of statute should be understood in the sense which best harmonizes with the object of the statute and which effectuates the object of the legislature, rather than defeating it. It is contended that the language of Section 11(2) makes it clear that while under sub-clause (a) any person who is likely to be affected by the grant of Environmental Clearances, can maintain an appeal, in his individual right, the concept of standing is necessarily broadened in sub-clause (c), which enables an association of persons – registered or not, engaged in the field of environment, to file an appeal. According to the petitioner, the authority should not have shut its eyes to this distinction. Counsel contended that the consideration of a person or body of persons "likely to be affected" are necessarily different, in the case of an organization, working in the field of environment. Thus, the petitioner, as President of an NGO, working in the field of environment, in Orissa, had the standing to maintain the appeal; the authority erred in rejecting this contention.

8. The petitioner places reliance on the Supreme Court's decision in *M.C. Mehta V. Union of India* 1988 (1) SCC 471 where the right of the writ petitioner to maintain the petition was upheld; it was observed that

> *"The petitioner in case before us is no doubt not a riparian owner. He is a person interested in protecting the lives of people who make use of the water flowing in the river Ganga and his right to maintain the Petition cannot be disputed."*

9. Reliance is placed, by the petitioner, upon the decision of the Supreme Court, in *S.P. Gupta v. President and Ors.* AIR 1982 SC 149 of India, where, while commenting on the issue of *locus standi* Justice P.N. Bhagwati observed as under on the principle of "Citizen Standing" while discussing the maintainability of a Public Interest Litigation petition:

> *"19A. Now, as pointed out by Cappellatti in Vol III of his classic work on "Access to Justice" at page 520, "The traditional doctrine of standing (legitimatio ad causam) attributes the right to sue either to the private individual who 'holds' the right which is in need of judicial protection or in case of public rights, to the State itself, which sues in courts through its organs". The principle underlying the traditional rule of standing is that only the holder of the right can sue and it is therefore, held in many jurisdictions that since the State representing the public is the holder of the public rights, it alone can sue for redress of public injury or vindication of public interest. It is on this principle that in the United Kingdom, the Attorney-General is entrusted with the function of enforcing due observance of the law. The Attorney-General represents the public interest in its entirety and as pointed out by S.A. de Smith in "Judicial Review of Administrative Action" (Third edition) at page 403; "the general public has an interest in seeing that the law is obeyed and for this purpose, the Attorney General represents the public." There is, therefore, a machinery in the United Kingdom for judicial redress for public injury and protection of social, collective, what Cappellatti calls 'diffuse' rights and interests. We have no such machinery here. We have undoubtedly an Attorney General as also Advocates General in the States, but they do not represent the public interest generally. They do so in a very limited field;*

see Sections 91 and 92 of the Civil Procedure Code, but, even if we had a provision empowering the Attorney General or the Advocate General to take action for vindicating public interest, I doubt very much whether it would be effective. The Attorney General or the Advocate General would be too dependent upon the political branches of Government to act as an advocate against abuses which are frequently generated at least tolerated by political and administrative bodies. Be that as it may, the fact remains that we have no such institution in our country and we have therefore to liberalise the rule of standing in order to provide judicial redress for public injury arising from breach of public duty or from other violation of the Constitution or the law. If public duties are to be enforced and social, collective 'diffused' rights and interests are to be protected, we have to utilise the initiative and zeal of public-minded persons and organisations by allowing them to move the court and act for a general or group interest, even though they may not be directly injured in their own rights. It is for this reason that in public interest litigation -- litigation undertaken for the purpose of redressing public injury, enforcing public duty, protecting social, collective, 'diffused' rights and interests or vindicating public interest, any citizen who is acting bona fide and who has sufficient interest has to be accorded standing. What is sufficient interest to give standing to a member of the public would have to be determined by the Court in each individual case. It is not possible for the Court to lay down any hard and fast rule or any strait-jacket formula for the purpose of defining or delimiting 'sufficient interest', It has necessarily to be left to the discretion of the Court. The reason is that in a modern complex society which is seeking to bring about transformation of its social and economic structure and trying to reach social justice to the vulnerable sections of the people by creating new social, collective 'diffuse' rights and interests and imposing new public duties on the State and other public authorities, infinite number of situations are bound to arise which cannot be imprisoned in a rigid mould or a procrustean formula. The Judge who has the correct social perspective and who is on the same wavelength as the Constitution will be able to decide, without any difficulty and in consonance with the constitutional objectives, whether a member of the public moving the court in a particular case has sufficient interest to initiate the action."

(emphasis supplied)

In support of the petition, reliance is also placed on the decision in *Thammanna V. K. Veera Reddy and Others* (1980) 4 SCC 62, to the following effect:

> *"16. Although the meaning of the expression "person aggrieved" may vary according to the context of the statute and the facts of the case, nevertheless, normally a 'person aggrieved' must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to something." (As Per James L.J. in Re Sidebothem (1880) 14 Ch.D. 458) referred to by this Court in Bar Council of Maharashtra v. M.V. Dabholkar [1975] 2 S.C.C. 703 and J.N. Desai v. Roshan Kumar A.I.R. 1976 S.C. 576 at p. 584."* *(emphasis supplied)*

10. The third respondent, in whose favour the Central Government granted environmental clearance, opposes the writ petition. It is contended on behalf of the said third respondent by its Senior Counsel, that the concept of standing, as is ordinarily understood in public interest litigation or even in public law jurisdiction of the superior courts, cannot be imported in appeals and matters which the authority is empowered to deal with and dispose of. The authority is a creature of statute and possesses limited jurisdiction. Having regard to the objectives of the enactment, which are to enable and create an effective mechanism for the purpose of development and swift evaluation of environmental impact of industrial projects, if individuals and bodies or non-governmental organisations, which do not have any concern with the local community, or whose members are not affected, are permitted to intervene and file proceedings in appeals, the intention of speedy procedure and determination of such questions would be defeated.

11. Expanding on the argument, learned Senior Counsel for the third respondent submitted that this court should take into consideration the conscious distinction made between the two categories of "persons aggrieved" in Section 11 of the Act. While sub-

clause (a) only deals with an individual, who might be aggrieved directly by the environmental clearance given by any authority, sub-clause (c) on the other hand, talks of an association of persons, who are likely to be affected by the impugned action, and work in the field of environment. It is submitted that the language of the statute is absolutely clear, leaving no room for doubt or ambiguity with regard to who is a person aggrieved, entitled to maintain an appeal before the authority. Counsel emphasized that the requirement under sub-clause (c) are twofold, in that persons who form the associations must be aggrieved individuals and should also be working in the field of environment. Thus, the petitioner can be only considered as a "person aggrieved" if can establish that he is a member of the local community and is non-governmental organisation functioning in the area alleged to be affected. Since the petitioner does not live anywhere near the local community likely to be affected, and is residing somewhere else, he cannot legitimately claim to be a "person affected". The third respondent submitted that the concept of grievance under the Act should not be unduly expanded as otherwise it would lead to a strange situation whereby concerns and non-governmental organizations which do not even have any kind of office or connection with the local community which claim to be affected by the project, will be conferred with the *locus* to file an appeal.

12. The above discussion would show that the limited controversy to be decided in these proceedings is about correctness of the Authority's ruling about the petitioner not possessing standing, since he is not a "person aggrieved" under Section 112(a), which provides that the term "person aggrieved" includes any "person" who is likely to be

affected by the grant of environmental clearance. Section 11 of the Act is reproduced as under:

> *"11. (1) Any person aggrieved by an order granting environmental clearance in the areas in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards may, within thirty days from the date of such order, prefer an appeal to the Authority in such form as may be prescribed:*
>
> *Provided that the Authority may entertain any appeal after the expiry of the said period of thirty days but not after ninety days from the date aforesaid if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.*
>
> *(2) For the purposes of sub-section (1), "person" means-*
>
> > *(a) any person who is likely to be affected by the grant of environmental clearance;*
> >
> > *(b) any person who owns or has control over the project with respect to which an application has been submitted for environmental clearance;*
> >
> > *(c) any association of persons (whether incorporated or not) likely to be affected by such order and functioning in the field of environment;*
> >
> > *(d) the Central Government, where the environmental clearance is granted by the State Government and the State Government, where the environmental clearance is granted by the Central Government; or*
> >
> > *(e) any local authority, any part of whose local limits is within the neighbourhood of the area wherein the project is proposed to be located."*

13. A plain, textual reading of Section 11 (2) (a) establishes that an individual who is or is likely to be affected, has an undoubted *locus standi* to file an appeal. Section 11 (2) (c), on the other hand, is phrased differently. It talks of more than one thing; i.e. –

"association of persons, (whether incorporated or not); who are likely to be affected by the impugned action, and who work in the field of environment. If one juxtaposes the two sub-clauses, it is apparent, that sub-clause (a) talks of those who are affected or are likely to be affected – this underlines the immediacy of the impact, on the individual. The construct of this (clause (a)) does not rule out more than one person, likely to be affected, but who are actually aggrieved. On the other hand, the reference to an association of persons, particularly an incorporated one, necessarily widens the scope, in clause (c). This part is further emphasized by the qualifying idea, that such association of persons should be working in the field of environment. Now, one can understand a body of persons, who form an association being affected, *individually, as well as collectively,* as members of the community, or the likelihood of their being affected. However, there is little possibility of an incorporated association, such as a society, or a co-operative society, being "affected" in the manner understood. Thus, if the third respondent's contentions were to be accepted, there would be little to choose between those covered under both the sub-clauses. There is yet another consideration, why the respondents' interpretation would lead to anomalous results; perhaps even defeat the objectives of the enactment, in terms of access to justice. India, even today, lives largely in its villages. A project or scheme, which is likely to affect or impact a remote community, that may comprise even a cluster of villages, may or may not have an "association of persons" who work in the field of environment. The villagers, like most others, are unlikely to know about the project clearance, or possess the wherewithal to question it, through an appeal. If the third respondent's contention, and the authority's

impugned order were to be accepted, and upheld, such community's right to appeal, meaningfully, would be rendered a chimera, an illusion. In their case, the Act would be a cruel joke, paying lip service, while promising access to justice, but in reality depriving such a right. Such communities' right to be represented in courts, under Article 226 and 32, was undeniable; yet, in a specialized tribunal whose mandate it is to consider the impact upon them, their immediate environment, the flora, fauna and wildlife that sustained them for generations, they would have no say, representatively, except in the extremely restricted manner projected by the third respondent, and affirmed by the authority.

14. The Act is a beneficial statute, which is clear from the scheme of the Statement of Objects and Reasons to the Act appended to the Bill, it states as under:

> *"Clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 empowers the Central Government to impose restrictions in the areas in which any industries, operations or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards. In view of recent pronouncements by the Supreme Court in certain public interest litigation cases involving environmental issues, it was considered necessary to set up an independent body for quick redressal of public grievances. Consequently, an Ordinance was promulgated providing for the establishment of a National Environment Appellate Authority to deal with writ petitions, complaints, representations or appeals against the grant of environmental clearance to projects."*

15. A well established rule of interpretation is that a beneficial statute should be given a purposive construction, to further legislative intention, if literal interpretation thwarts it. The Act is at once a special one, providing for evaluation by experts, and also, at the same time, a beneficial one, to further the cause of environment protection.

Recently, in a decision of the Supreme Court, viz. *Union of India (UOI) v. Prabhakaran Vijaya Kumar and Ors.* (2008) 9 SCC 527 it was held that:

> *"12. It is well settled that if the words used in a beneficial or welfare statute are capable of two constructions, the one which is more in consonance with the object of the Act and for the benefit of the person for whom the Act was made should be preferred. In other words, beneficial or welfare statutes should be given a liberal and not literal or strict interpretation vide Alembic Chemical Works Co. Ltd. v. The Workmen AIR 1961 SC 647, Jeewanlal Ltd. v. Appellate Authority AIR 1984 SC 1842, Lalappa Lingappa and Ors. v. Laxmi Vishnu Textile Mills Ltd. AIR 1981 SC 852, S.M. Nilajkar v. Telecom Distt. Manager AIR 2003 SC 3553 etc.*
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> *13. In Hindustan Lever Ltd. v. Ashok Vishnu Kate and Ors. AIR 1996 SC 285 this Court observed:*
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> > *"In this connection, we may usefully turn to the decision of this Court in Workmen v. American Express International Banking Corporation wherein Chinnappa Reddy, J. in para 4 of the Report has made the following observations:*
> >
> > *The principles of statutory construction are well settled. Words occurring in statutes of liberal import such as social welfare legislation and human rights' legislation are not to be put in Procrustean beds or shrunk to Lilliputian dimensions. In construing these legislations the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognized and reduced. Judges ought to be more concerned with the 'colour', the 'content' and the 'context' of such statutes (we have borrowed the words from Lord Wilberforce's opinion in Prenn v. Simmonds). In the same opinion Lord Wilberforce pointed out that law is not to be left behind in some island of literal interpretation but is to enquire beyond the language, unisolated from the matrix of facts in which they are set; the law is not to be interpreted purely on internal linguistic considerations. In one of the cases cited before us, that is, Surender Kumar Verma v. Central Govt. Industrial Tribunal-cum- Labour Court we had occasion to say:*

Semantic luxuries are misplaced in the interpretation of 'bread and butter' statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the Court is not to make inroads by making etymological excursions.

Francis Bennion in his Statutory Interpretation Second Edn., has dealt with the Functional Construction Rule in Part XV of his book. The nature of purposive construction is dealt with in Part XX at p. 659 thus:

A purposive construction of an enactment is one which gives effect to the legislative purpose by-

(a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this Code called a purposive-and-literal construction),

or

(b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive and strained construction).

At p. 661 of the same book, the author has considered the topic of "Purposive Construction" in contrast with literal construction. The learned author has observed as under:

Contrast with literal construction - Although the term 'purposive construction' is not new, its entry into fashion betokens a swing by the appellate courts away from literal construction. Lord Diplock said in 1975: 'If one looks back to the actual decisions of the [House of Lords] on questions of statutory construction over the last 30 years one cannot fail to be struck by the evidence of a trend away from the purely literal towards the purposive construction of statutory provisions'. The matter was summed up by Lord Diplock in this way -

...I am not reluctant to adopt a purposive construction where to apply the literal meaning of the legislative language used would lead to results which would clearly defeat the purposes of the Act. But in doing so the task on

which a court of justice is engaged remains one of construction, even where this involves reading into the Act words which are not expressly included in it.

(emphasis supplied)""

16. In view of the above, the expression "person aggrieved" has to be given a panoptic import and be understood to include persons like the petitioner who display interest in social and environmental causes. This is established by the fact that his organization was closely following the issue of setting up of aluminum smelter plant during various stages of the project to the extent that it had, on two occasions objected to the holding of the 'public hearing' and sent a detailed letter elucidating the objections and further when it learnt about alleged unauthorized construction at the project site, he wrote to the second respondent, which later directed the third respondent to stop such activities.

17. The appeal before the Authority was filed by the petitioner in his personal capacity as the President of Lok Shakti Abhiyan, Orissa Unit thereby representing the organisation, which is nothing but an "association of persons"; the Authority thus faltered in construing that the applicable provision was sub-section 2 (a) of Section 11, which provides that the term "person aggrieved" includes any person who is likely to be affected by the grant of clearance. In the opinion of this Court the relevant provision is Section 11 (2) (c). Even if the Authority's ruling is accepted to the extent that the applicable provision is Section 11 (2) (a), its further stand that the petitioner was not affected in any manner so as to satisfy the criteria of "person aggrieved" is erroneous. In the impugned order the Authority acknowledged that the petitioner had on several

occasions in the past made representations before the Orissa State Pollution Control Board challenging the holding of public hearing and that the petitioner could not attend the hearing due to personal reasons. Public hearings, in such cases, are organized to elicit comments from the members of public before granting clearance to a project in order to assess the nature of environmental damage, if any, due to the likely execution of project and its impact on the rights of inhabitants and the persons who depend on that area for livelihood or otherwise. A person who participates in the public hearing, and thus in the process of decision-making, potentially becomes an aggrieved person if his grievances are not properly addressed. The petitioner, though not participating in the public hearing, had presented his detailed objections before the second respondent against the holding of public hearing on the ground of faulty environmental impact assessment report. At one stage, his representations were found substantial by the authorities. Denial of the right to appeal would also lead to a highly incongruous situation whereby someone like him, allowed to participate in the principal decision making process, is denied the right to question the findings of the primary decision maker, in the appellate proceedings.

18. The world as we know is gravely imperiled by mankind's collective folly. Unconcern to the environment has reached such damaging levels which threatens the very existence of life on this planet. If standing before a special tribunal, created to assess impact of projects and activities that impact, or pose potential threats to the environment, or local communities, is construed narrowly, organizations working for the betterment of the environment whether in form of NGOs or otherwise, would be

effectively kept out of the discourse, that is so crucial an input in such proceedings. Such association of persons, as long as they work in the field of environment, possess a right to oppose and challenge all actions, whether of the State or private parties, that impair or potentially impair the environment. In cases where complaints, appeals etc. are filed *bona fide* by public spirited interested persons, environmental activists or other such voluntary organisations working for the betterment of the community as a whole, they are to be construed as "aggrieved persons" within the meaning of that expression under Section 11 (2) (c) of the Act. As a native American proverb goes, *"We do not inherit the earth from our ancestors, we borrow it from our children";* denial of access to meaningful channels to communities who can be affected by proposed projects would only leave them remediless, on the one hand, and allow unchallenged indiscriminate drawings from the future generations' rights with impunity, thus gravely undermining the purpose of the Act.

19. For the above reasons, the impugned order of the Authority cannot be sustained. It is hereby quashed. The authority is directed to entertain and dispose of the petitioner's appeal, in accordance with law. The writ petition is allowed with costs, quantified at Rs.50,000/- to be paid by the third respondent, to the petitioner, within four weeks.

(S. RAVINDRA BHAT)
JUDGE

May 06 , 2009
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