

# ERC Journal

An update on news, views and developments in India's  
EIA Process

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## The Silence of the Conservationist

India's wildlife Conservation community was once credited as a vocal, politically influential and ever ready to pool in its collective energy to protect India's natural heritage. Its strategic strength ensured that India became the only country in the world to effectively criminalize hunting in all its varied forms, put in a system of heavy punishment for wildlife crime and more importantly, create a network of National Parks and Sanctuaries by creating 'human free' zones out of areas which were inhabited by forest dwelling communities for generations. It is something which purist would have thought is impossible in the largest democracy in the world. The Wildlife conservation groups fought (rather unsuccessfully) to stall the Forest Rights Act and have opposed tooth and nail for any diversion of wildlife areas for

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regularisation of 'encroachments' by tribals and forest dwellers. Despite many criticism about its approach and role, there is no doubt that this 'powerful' and influential conservation community did succeed to a large extent in protecting areas of vital ecological significance.

However, this community has become rather silent of late. The silence of the conservationists is a cause of concern. The community has often being blamed for being pro corporate, pro establishment. The silence only vindicates this point. Why for one is the community so silent about the conduct of the members of the National Board for Wildlife. Is it because, one of the non-official member is an eminent Wildlife Scientists (Elephant Expert) and associated with some of the leading wildlife NGOs in the country? Is it because the community is willing to sacrifice some of the last remaining areas in order to ensure 'ease of business' and 'development' or is it too terrified to raise its voice in the present political climate ?

The recent proceedings of the National Board for Wildlife on 2<sup>nd</sup> June, 2015 [Special Focus on National Board for Wildlife, Page 2] reflects the casual approach of the members of the Standing Committee in deciding issues of crucial conservation importance. India's Protected Areas are already under great stress due to multiple anthropocentric

reasons. The Standing Committee's task is to ensure that activities detrimental to wildlife are not allowed in these last remaining natural areas or allowed only after detailed and thorough scientific scrutiny. Unfortunately, one sees a complete absence of such scrutiny in the proceedings. Not a single proposal was declined, projects which were rejected multiple times earlier were approved, and most shocking is that site visits were ordered to be done after projects were approved! The Standing Committee of the National Board for Wildlife comprises of official and non-official experts. The two non-official members - Prof R. Sukumar of the Indian Institute of Science and Dr H.S Singh former PCCF of Gujarat - have been mute spectator to this destruction. The proceedings reveal that the absence of independent civil society members as well as environmentalist/ecologists who are bold enough to speak strongly have adversely affected the functioning of the Board. It is time that the wider conservation community in the country wakes up to this 'legal and statutorily approved' destruction of India's wildlife and start making the Members accountable for their actions or inaction and of course challenging such diversion of Protected Areas.

Keeping silent is only going to be a giant step forward towards a silent forest.

- Ritwick Dutta

# Special Focus

## Undermining its own mandate: A review of the minutes of the 34<sup>th</sup> meeting of the SC-NBWL

The Standing Committee (SC) cleared projects that were rejected previously, approved projects without conducting site inspections, and surprisingly ordered site inspections after granting clearances

Suman Jumani<sup>1</sup>

The Standing Committee of the National Board for Wildlife (SC-NBWL), constituted under Section 5 A of the Wildlife (Protection) Act, 1972, is mandated '*to promote the conservation and development of wildlife and forests by such measures as it thinks fit*'. This includes, but is not restricted to, the review of project proposals located inside or in close proximity to Protected Areas (National Park, Wildlife Sanctuary, Conservation Reserve, and Community

Reserve). Since Protected Areas are the last remaining refuges of contiguous natural habitat harbouring rich biodiversity, the NBWL is entrusted to review each proposal based on careful scrutiny of project details, opinion of the State Forest Department officials, and independent assessments.

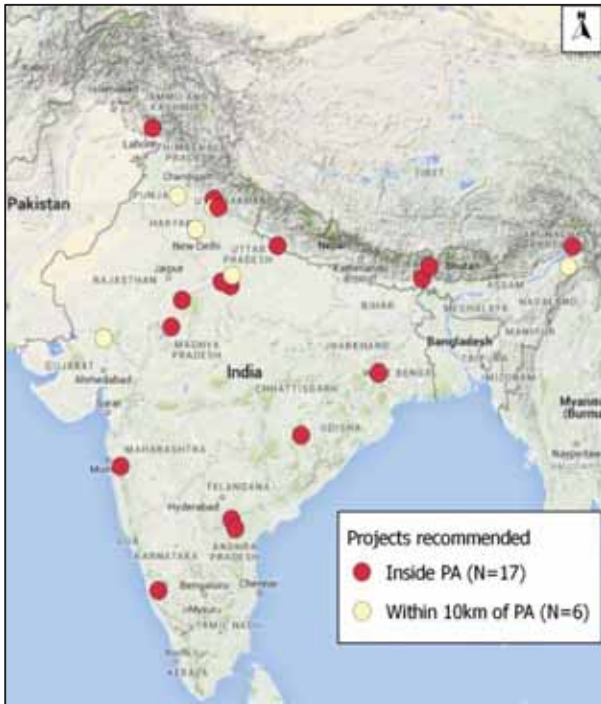
A perusal of the minutes of the 34<sup>th</sup> meeting of the Standing Committee of the National Board for Wildlife (SC-NBWL) held on 2<sup>nd</sup> June, 2015 indicate a serious lack of deliberation and deviation from the mandate. The Standing Committee (SC) cleared projects that were rejected by previous SC-NBWL granted clearances without conducting site inspections, approved projects located within critical elephant corridors, ordered site inspections after granting clearances and displayed an indulgent attitude towards non-compliant project proponents.

In a single short meeting, 40 new projects were discussed for clearance, of which 23 were immediately cleared and not a single project was declined. Of the projects that were considered inside Protected Areas, 94% (or 17 projects) were cleared. Close to 70% of the clearances awarded were for linear projects cutting across

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<sup>1</sup> Suman Jumani, Research Associate, EIA Resource and Response Centre

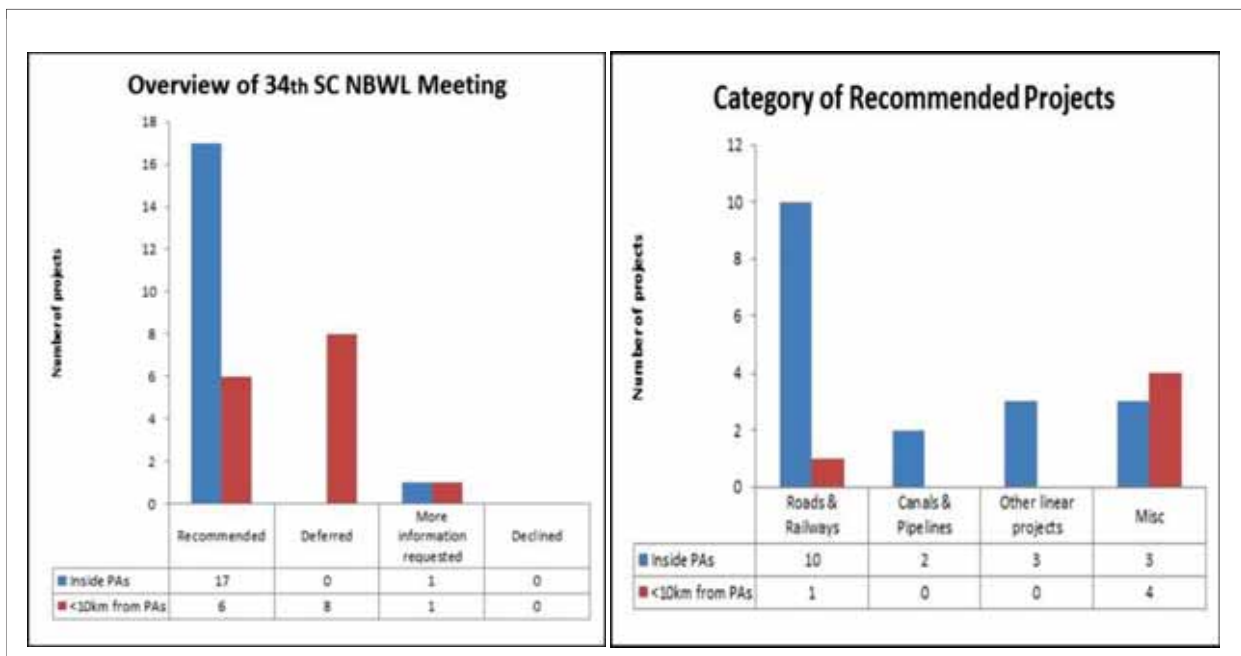
Protected Areas. These included roads and railways (11), canals and pipelines (2) and transmission lines and optic fibre cables (3).



### APPROVAL OF A PROJECT THAT HAD BEEN PREVIOUSLY REJECTED BY THE SC-NBWL

The proposal for the widening of NH 17 passing through Karnala Bird Sanctuary in Maharashtra was granted clearance despite it being rejected twice by the Board in its 17th and 29th meeting. In both instances, the proposal was opposed by the Chief Wildlife Warden due to the availability of an alternate alignment. The 17<sup>th</sup> meeting dated 22.12.2009 stated –

*“Considering the small size of the Sanctuary and its biodiversity and availability of three alternative routes, it was decided to unanimously to reject the proposal and to advise the project proponent to take alternative alignment”.*



The 29<sup>th</sup> meeting dated 06.06.2013 also stated –

*“...widening of the road from 2 lane to 4 lane within the sanctuary cannot be considered as an alternate route is also available. After discussion, the committee unanimously decided to reject the proposal and request the NHAI to follow alternate route outside Sanctuary”.*

However, the Standing Committee took an about turn in the 34<sup>th</sup> meeting by concluding that the road in fact will be beneficial for wildlife. The Board cleared project on the grounds that –

*"...widening within the sanctuary will smoothen the traffic and reduce the foul emissions from recurring traffic jams, which are harmful for the birds and other wildlife".*

Adding insult to injury, the chair instructed a site inspection to take place ‘after’ granting clearance.

### **PROJECTS CLEARED WITHIN ELEPHANT CORRIDORS**

Three of the 10 pending proposals from the 33<sup>rd</sup> meeting were granted clearance, and all 3 projects are located within critical elephant corridors. Due to their critical location, these projects have been widely opposed by ecologists, wildlife biologists and other concerned groups. These projects include the construction of

the Sevoke Rangpo railway line (West Bengal), electrification of the railway line passing through Rajaji Tiger Reserve (Uttarakhand) and an oil appraisal well by M/s Hindustan Oil Corporation (Assam).

The most controversial of these projects is the railway from New Jalpaiguri to Sevoke that will cut across the Mahananda Wildlife Sanctuary and will involve the diversion of over 86.6ha of forest land. This region supports good populations of elephants, and the first broad gauge railway line in this region was responsible for over 40 elephant deaths in just 8 years. Wildlife experts have warned that the new railway line will have a disastrous consequence on the wild elephant populations in the region.

<b>Project</b>	<b>Elephant corridor</b>	<b>State</b>
Construction of Sevoke Rangpo Railway line	Champramari - Kalipong - Apalchand- Mahananda corridor	West Bengal
Electrification of Delhi-Dehradun railway line	Chilla-Motichur corridor	Uttarakhand
Oil appraisal well	Golai elephant corridor	Assam

The Government of West Bengal had given an assurance to declare the lower region of the Teesta river basin as a Protected Area in 1995 while seeking

permission for the lower Teesta River barrage project. This assurance has remained unfulfilled. While granting clearance for the survey and investigation of the Sevoke Rangpo railway line, the NBWL in its 28<sup>th</sup> meeting (dated 20.03.2013) had directed the State Government to declare the aforesaid Sanctuary prior to a future submission. However, the State Government has brazenly ignored this condition, and the 34<sup>th</sup> meeting of the SC-NBWL approved the railway line despite the State not declaring a Protected Area that was supposed to have been declared 20 years ago!

Furthermore, the field inspection report by Dr. Sukumar, upon which the project was cleared, has not been made available on the Ministry's website as mandated.

### **SITE INSPECTION TO BE CARRIED OUT AFTER PROJECTS HAVE RECEIVED CLEARANCE**

In an absurd mockery of the order of things, the Committee ordered site inspections after granting clearance for 6 projects located inside Protected Areas. This takes away the opportunity of rejection based on the opinion of independent experts/ forest department officials, and only allows an opportunity to propose mitigation measures.

Even in the case of Borawas Mandana Water Supply Project (Rajasthan) where more information was sought by members of the Standing Committee and a site inspection was explicitly suggested by the Member Secretary, National Tiger Conservation Authority (NTCA),

#### **The list of projects for which a site inspection was ordered after granting clearance**

<b>Project</b>	<b>Protected Area</b>	<b>State</b>
Widening of NH17 – NHAI	Karnala Bird Sanctuary	Maharashtra
Laying of Optic Fibre Cable – M/s Idea Cellular Ltd	Pasuvemula & Nellikal Reserve Forests	Telangana
Laying of Optic Fibre Cable – M/s Idea Cellular Ltd	Pasuvemula & Nellikal Reserve Forests	Andhra Pradesh
Construction of a Police community building	Udanti-Sitanadi Tiger Reserve	Chhattisgarh
Construction of a check-dam	Kudremukha Tiger Reserve	Karnataka
Drinking water pipeline for the Borawas Mandana Water Supply Project	Mukunda Hills Tiger Reserve	Rajasthan



the Standing Committee approved the project and stated:

*“The user agency should be allowed to start work right away and appeal to the NBWL if any modifications in conditions are needed.”*

### **PROJECTS DEFERRED ON FAULTY GROUNDS**

Five of the 8 deferred projects were deferred to await the grant of Environmental Clearance (EC). All five projects were river Bed Mining Projects in the Haridwar district of Uttarakhand.

In the 32<sup>nd</sup> meeting, the SC had ordered a site inspection regarding the 5 RBM projects. Despite the site inspection report suggesting an outright rejection of 1 project and strict regulations for 2 other projects, the SC-NBWL decided to defer these projects to await the grant of EC.

This seems illogical as the grant of Environmental Clearances and Wildlife Clearances are independent processes. While the EAC's role is to consider project proposals within the larger environmental framework, the NBWL has to assess proposals from the perspective of forests and wildlife. In fact, it is the mandate of the NBWL to assess every proposal in strict conformity with Section 29 or sub-section (6) of Section 35 of the Wildlife (Protection) Act, 1972, which states that no person can destroy wildlife

or divert the habitat of any wild animal without a permit and no such permit can be granted unless it is considered necessary for improvement and better management of wildlife therein.

In reality, if the NBWL declines a project proposal, it could be a factor of consideration for the EAC while appraising a proposal for the grant of EC.

### **LENIENT ATTITUDE TOWARDS PROJECT PROPONENTS WITH REGARD TO NON-COMPLIANCE OF IMPOSED CONDITIONS**

The SC-NBWL seemed to be functioning more as a stamping house for clearances rather than discharging its duties. The attitude of the board seems to be skewed towards prioritising the convenience of project proponents over their mandate to assess proposals in strict conformity with Section 29 or sub-section (6) of Section 35 of the Wildlife (Protection) Act, 1972. In its meeting, the SC decided to waive off crucial conditions that it had itself imposed upon project proponents as mitigation measures.

The Standing Committee granted a waiver to declare the Thane Creek as Flamingo Sanctuary due to the construction of the Navi Mumbai International Airport by CIDCO. Though this condition was waived off to minimise the risks of bird hits, the SC-NBWL could have directed the State Government to secure another area. However, this option was not explored,

and instead a resolve was made to make the surrounding mangrove areas inhospitable for birds!

By entertaining the representations of the NHAI, the SC-NBWL has literally allowed the NHAI to overrule it. In its 32<sup>nd</sup> meeting, the SC-NBWL agreed to the mitigation plan proposed by WII and NTCA, and imposed the same on NHAI for the construction of NH-3 and NH-7. However, the Committee has agreed to waive off its own conditions after the NHAI impudently refused to implement them. These conditions include the construction of elevated expressways, underpasses and underground tunnels for parts of NH-3 and NH-7 passing through PAs. Furthermore, NHAI also demanded additional forest land for the widening of NH-7. Instead of directing the User Agency to implement the mitigation measures or opt for alternative alignments, the SC-NBWL instructed WII and the NTCA to conduct site visits along with NHAI representatives to draw up 'agreeable' mitigation measures.

After granting quick clearances without asking for additional information or conducting a site inspection, the minutes of SC-NBWL have meticulously recorded for 6 projects that –

*“The user agency should be allowed to go ahead with construction work immediately, and should appeal to the*

*NBWL if any modifications in conditions are needed”.*

Such actions and language indicates that the SC-NBWL is functioning to serve industries, and is not genuinely concerned about wildlife.

**NUMEROUS PROJECTS GRANTED  
CLEARANCE WITHOUT SITE  
INSPECTION/ DETAILED SCRUTINY**

At least 18 projects were given clearances without seeking further information or conducting a site visit. In other words, the Standing Committee evaluated these projects in a short span of time based on a briefing by the Member Secretary and a

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**“The minutes of the 34<sup>th</sup> meeting make it clear that the prime focus of the SC-NBWL was to assess projects coming up within and around PAs. While this is an important function, it seems like the other mandates are getting side-lined. The meeting very briefly discussed only one conservation issue – a Species Recovery Plan.**

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cursory reading of the furnished project documents. This indicates a lack of seriousness in appraising individual projects and non-adherence to their mandate.

### **LACK OF ATTENTION TO OTHER FUNCTIONS OF THE SC-NBWL**

It is the mandate of the NBWL to promote the conservation and development of wildlife and forests by such measures as it deems fit. This includes promotion and conservation of wildlife, advising state governments on conservation efforts, effective control of wildlife trade and recommendations in setting up Protected Areas. The prevalence of complex

conservation problems across the country also necessitates that the NBWL discuss some of these issues on priority as Agenda Items. The minutes of the 34<sup>th</sup> meeting make it clear that the prime focus of the SC-NBWL was to consider developmental projects coming up within and around Protected Areas. While this is an important function, it seems like the other mandates are getting side-lined. The meeting very briefly discussed only one conservation issue - a Species Recovery Plan. Issues such as non-compliance of user agencies to imposed conditions, issues of human-animal conflict, corridor protection etc. were completely ignored.

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# NGT UPDATE

## **Fisher folks to get Rs. 95crores as compensation for damages caused by port**

Palavi Talware<sup>2</sup>

Fishermen from the villages in Uran and Panvel Talukas of Raigad districts, affected by the Jawaharlal Nehru Port Trust extending the fourth berth in the area of its port, filed a civil action case for compensation and right for rehabilitation for the loss of livelihood caused due to the project. The NGT held that 1630 fishermen families were to be compensated for the yearly loss of income. The NGT directed that CIDCO, JNPT and ONGC would pay the amount of INR 95,19,20,000 in the 10:70:20 ratio as compensation. The Tribunal also directed that there would be a payment of INR 50,00,000 and restoration cost for

environmental damage, in the same share.<sup>3</sup>

In addition to the compensation, the NGT clarified that the Applicants could not be said to be 'Forum Shopping' if they had earlier approached and represented their issues before a Committee under the Collector, Raigad or if they had taken the same facts before the Human Rights Commission, since the jurisdiction, power and procedure of each differs.

The Tribunal also observed that the JNPT had caused destruction of the mangroves and degraded the environment by reclamation of land and also caused obstruction in natural navigation route which was available to the fishermen for fishing. The Tribunal used strong words to express its displeasure of the stand of JNPT, stating that its behaviour was obstinate and that they did not halt the work and continued reclamation of the land in spite of the various references to the destruction of Mangroves. The destruction of mangroves caused loss of ecology, loss of natural spawning of fish and affected the availability of fish catch. This in turn, affected the customary right of livelihood of the fishermen. The Expert Committee of the NGT also remarked that

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<sup>2</sup> Palavi Talware, lawyer, Legal Initiative for Forest and Environment

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<sup>3</sup> [reentribunal.gov.in/Writereaddata/Downloads/Jt.\\_Appln\\_No.19.2013.\\_Ramdas\\_Koli.%20dt%2027.2.15%20\(WZ\).pdf](http://reentribunal.gov.in/Writereaddata/Downloads/Jt._Appln_No.19.2013._Ramdas_Koli.%20dt%2027.2.15%20(WZ).pdf)

destruction and loss of mangroves was in violation of the EC given to JNPT and was also in violation of the CRZ Notification.

The Tribunal further observed several pertinent points with respect to the aspect of limitation. The Tribunal observed that the 'cause of action' once running, then it cannot be stopped and that in case of violation of law such as the CRZ Notification, violation continues if the activity in question continues without hindrance. Thus the 'cause of action' is continuous and remains unabated. The limitation for 'such dispute' commences when the 'cause of action' 'first arose' where 'first arose' means the time when the knowledge of the impacts or of the violations was obtained and the respective Competent Authority failed to act on it.

The Tribunal noted that JNPT ought to have done a cost-benefit analysis of the project prior to obtaining EC, including in it the cost of resettlement of the Applicants who were adversely affected by the project. The Tribunal also commented that there ought to be a standard for in-house environmental due-diligence by P.S.U.s and that the MOEF had recognised such corporate environmental responsibility. The Board of Directors should be made aware of the any violation of environmental norms and that there should be an appropriate system to deal with the same, to truly give

meaning to commitment to 'sustainable development.'

The Tribunal observed that the MoEF and the MCZMA have failed to check compliance of the requisite conditions and did not conduct site inspection as they should have, thereby imposing a cost of INR 1,00,000 on each Authority.

## **Environmental Clearance for dam in Arunachal Pradesh upheld**

**Legal and environmental safeguards disregarded in upholding EC of Demwe- Lower HEP in Arunachal**

Preeta Dhar<sup>4</sup>

The National Green Tribunal upheld the Environment Clearance for the 1750 MW Demwe- Lower Hydroelectric Project in Lohit district, Arunachal Pradesh.

The Tribunal dismissed the appeal in a one-line order, stating that "there are absolutely no merits on all the grounds". A 92 page "reasoned" justification was

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<sup>4</sup> Preeta Dhar, lawyer, Legal Initiative for Forest and Environment

uploaded on the website of the NGT after 45 days – incidentally signed by a retired Expert Member.

The judgment not only displays a lack of appreciation of the issues of hydroelectric projects in ecologically and culturally important regions, but also undermines the legal and judicial safeguards built into the Environment Impact Assessment framework.

### **Conflict of Interest**

At the time the project was considered for scoping, the Chairperson of the EAC, Mr P. Abraham, was a Director of one of the promoting companies of the project proponent.

Incidentally, a basin study was initiated by the MoEF for the Lohit river basin to assess the potential impacts of proposed hydroelectric projects on the basin. However, Lower Demwe project was de-linked from the Lohit basin study. Had the project been considered on an equal footing with the other projects in the basin, it is likely that it may not have been recommended for construction in the first place, considering the fact that it impacts the largest length of the Lohit river in an ecologically and culturally sensitive zone. However, the project was de-linked from the Lohit river basin study at the scoping stage, precluding that conclusion. The presence of Mr Abraham as the Chairperson of the EAC at the time when

this project was discussed and de-linked from the basin study exhibits actual bias, and not just reasonable likelihood of bias.

However, going against a long line of judicial precedent, the NGT dismissed this argument in the “absence of any materials on record to show that Mr. P. Abraham has any interest over the project and he has influenced the other expert members”.

In a further leap of logic, it also goes on to state that “Each of the expert members who are well qualified as prescribed under the notification are entitled to take their views ... Therefore, there cannot be any presumption that the Chairperson will influence the other expert members”. This not only unreasonably puts the Members of EAC beyond any reproach, it also contradicts the EIA Notification which requires the ‘Chairperson shall endeavour to reach a consensus in each case’.<sup>5</sup>

### **“Subsequent rectifications”**

At several instances, the NGT has excused irregularities at various stages of EIA – scoping, public hearing and appraisal – on the justification that “if there was any mistake committed... there was lot of scope for EAC in the subsequent meetings to rectify”. It even goes on to state, “even

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<sup>5</sup> Section 5 Subsection (e) of EIA Notification 2006

after the detailed EAC study, which was only a recommendary (*sic*) body, it is ultimately the MoEF which is to issue the EC which has in fact issued the EC on independent application of mind". The implication of this is that since errors and irregularities could have been rectified at a later stage, the entire procedure leading up to it need not be followed properly.

Particularly in the context of the "Scoping" stage, the NGT makes a problematic observation that "one cannot say that decision taken in the EAC meeting during scoping are final." This in fact runs contrary to the MoEF circular issued in October, 2014, which states clearly that primary issues like siting of the project is to be considered at the stage of scoping, and revisiting the issue of the site of the project goes "against the spirit of the EIA Notification 2006".<sup>6</sup>

### **Non-Consideration of issues by EAC**

The judgment reflects a lack of appreciation of technical issues, as well as facts. For many important issues raised in the appeal – like impact on the downstream areas – including wildlife and biodiversity, daily flow variations, etc., the EAC does not give its independent opinion. Rather, it relies on the

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<sup>6</sup>

[http://moef.gov.in/sites/default/files/OM\\_EAC\\_SEA\\_C\\_07\\_10\\_2014.pdf](http://moef.gov.in/sites/default/files/OM_EAC_SEA_C_07_10_2014.pdf)

"thorough" appraisal purportedly done by the EAC. However, the studies as referred to by the Tribunal were either not completed or in some instances, not even commissioned when the EAC appraised the project in 2009. For instance, the WAPCOS report on flow analysis, including the impact of peaking power, was dated 2011.<sup>7</sup> The report on the flora and fauna of the downstream stretch of the Lohit was commissioned in 2011. The EAC, therefore, could not have considered these studies.

For the downstream impact of diurnal variation of flow due to the peaking operation of the project, the NGT observes, that the "river is well acquainted with flow variability ranging from 200 cumecs to more than 12000 cumecs". Equating diurnal variation with seasonal flow variation reflects a shocking level of ignorance of "Expert" Members.

For the public hearing as well, despite the fact that there is absolutely no mention of the outcome of the Public Hearing Process in the EAC minutes, the NGT finds itself satisfied by the fact that the technical

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<sup>7</sup> *Effect of peaking power generation by Siang Lower HEP, Demwe Lower HEP and Dibang Multipurpose HEP on Dibru-Saikhowa national park*, WAPCOS, 2011. Available at <http://www.indiaenvironmentportal.org.in/files/file/lohit-basin-21112011.pdf>

aspects of holding the public hearing were met. It overlooks entirely that the EIA Notification mandatorily requires a detailed scrutiny of the “outcome of the public consultations including public hearing proceedings” at the stage of Appraisal.

### **No duty to give reasons**

Perhaps the most damaging aspect of the judgment is the conclusion of the NGT that the EAC has no obligation to give reasons/ justifications addressing issues raised in case an Environment Clearance is granted. According to this interpretation, “*except imposing conditions to safeguard environment ... there is no necessity on the part of regulatory authority to give any other reason for every aspect of recommendations of EAC but it is only in the cases of rejection of the proposal the reasons must be given by MoEF whether it is rejecting the recommendation of the EAC or otherwise*”.

A selective and misleading interpretation of the EIA Notification, 2006 as done in this case, takes away the basic clearance of administrative law to safeguard against arbitrary actions of public authorities. Effectively, as a logical extension of such a conclusion, no “Minutes” are required to be maintained in the first place.

This is ironical because the NGT has extensively referred to the Minutes of the

Meetings of the EAC to come to the conclusion that “there has been total application of mind” by expert members at various stages. It further paves the way for arbitrary and unbridled exercise of power by such bodies.

## **Bridge to be covered under the EIA Notification, 2006**

Maneka Kaur

*“Whether, constructing a ‘bridge’ across Yamuna is a ‘project’ or ‘activity’ that shall require prior Environmental Clearance from the Regulatory Authority, particularly with reference to Entry 8(a) and/ or 8(b) of the Schedule to the Environmental Clearance Regulations, 2006?”*

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**“The legislature has left nothing to the imagination and has worded the Entry 8(b) widely so as to cover within its ambit every facet of environment as contemplated under Section 2(a) of the Act of 1986.”**

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**“Entry 8(b) talks both of Township and Area Development Projects. Besides developing township, development of the areas is also contemplated as an activity for bigger projects.”**

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The National Green Tribunal, after confronting this question-of-law, in *Vikrant Kumar Tongad v. Delhi Tourism and Transportation Corporation & Ors*<sup>8</sup> held that, “*the construction of a ‘bridge’ or similar activity covering a build-up area  $\geq$  1, 50,000 sq. mtrs. and/or covering an area of  $\geq$  hectares, would be covered under Entry 8(b) of the Schedule to the Regulations of 2006.*”

The matter, dealing with non-implementation of the EIA Notification of 2006, concerned itself with the construction of a ‘Signature-Bridge’ across the River Yamuna at Wazirabad in Delhi, which had commenced without obtaining an Environmental Clearance.

### **Bridge under 8(b) of the EIA Notification, 2006**

The Tribunal defined bridge as “a structure that connects any two ends, for various activities... and is intended to provide for natural or artificial link for commutation.” Pointing out how a bridge can never be stand-alone project and would always be a part of a bigger project, activity or development, the bench explained that as the signature bridge over River Yamuna aims at connecting the eastern and western ends of the city of Delhi and to ensure smooth flow of traffic- it will be an Area Development project and hence, fall within Entry 8(b) of the EIA Notification, 2006.

The bench supported its explanation by citing landmark judgments, like *The Authorised Officer, Thanjavur and Anr. Vs. Naganatha Ayar and Ors*<sup>9</sup> and the *Securities and Exchange Board of India v. Ajay Agarwal*,<sup>10</sup> both of which highlighted the need to interpret laws in furtherance of its purpose.

### **Non-application of mind by the regulatory authorities - ignored**

The bench also took a note of the inadvertency and deficiency showcased

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<sup>8</sup> Original Application No. 137 of 2014

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<sup>9</sup> (1979) 3 SCC 466

<sup>10</sup> (2010) 3 SCC 765

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**“As of today, more than 80 percent of the bridge has already been completed. Huge public funds have been spent on this project. It is intended to serve public purpose and is in public interest, namely free and fast flow of traffic between east and west Delhi. Apparently we cannot attribute any fault or breach of legal duty to the Project Proponent. We do not think it is a case where we should either direct stoppage of project work or direct demolition thereof.”**

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by the authorities regulating environmental permits - the acting guardians for our environment.

The bench pointed out that the proponent of the Signature Bridge i.e. Delhi Tourism and Transportation Corporation, did apply for an environmental clearance. However, it was the Ministry of Environment, Forest and Climate Change, which stated that, “bridges are not covered under the EIA Notification, 2006; and hence, no Environmental Clearance

will be required.” The other regulators, i.e. the Delhi Pollution Control Committee (DPCC) and the NCT of Delhi, too, maintained this stand. These regulatory authorities’ indifference and negligence led to 80 percent completion of the project, without any appraisal or study being conducted on the possible adverse effects of the bridge.

Despite noting the gravity of the situation and sensitivity of the zone, the bench remained silent on the incompetence of the MoEF & CC, the DPCC and the NCT of Delhi.

**Environmental clearance - preventive measure or a mere procedural step?**

This judgment no doubt brought clarity to the scope of Entry 8(b) of the EIA Notification, 2006; but, as regard to the present Signature Bridge, it made ‘prior environmental clearance’ just a mere procedural step.

The Applicant’s apprehension regarding the Signature-bridge stemmed from the fact that the construction zone bore special characteristics of being an eco-sensitive area. “The reach from Wazirabad barrage to Okhla barrage is 4700 hectares... The construction of the

bridge is likely to impact River Yamuna and river hydrology adversely.” As a result, it became all the more important that prior Environmental Clearance

should have been obtained, prior to the starting of the project.

*“Any development project or activity upon a flood plain, river bank or across the river is bound to have some impact upon the ecology and bio-diversity of the river. It is an established fact that such projects, whether part of comprehensive developmental activity or independently, would narrow the water course or environmental flow of the river.”*

Despite making the above-observation, and citing the landmark judgment in *Okhla Bird Sanctuary*<sup>11</sup> matter, which held that a mere absence of law cannot be a ground for degrading the environment; the bench gave the following direction:

*“Though the major part of the project has already been completed, we do not direct demolition thereof in public interest. However, we direct SEIAA to put such terms and conditions as may be necessary to ensure that there are no adverse impacts on environment, ecology, bio-diversity and environmental flow of River Yamuna and its flood plains.”*

Whether this direction to SEIAA will ensure protection of River Yamuna and its flood plains, from the Signature Bridge, is

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<sup>11</sup> (2011) 1 SCC 744

something that cannot be determined within such a short span of time. However, the clarity provided by the Tribunal on Entry 8(b) will ensure that henceforth no bridge, falling under this category, is constructed without conducting a proper Environmental Impact Assessment and subsequently attaining an Environmental Clearance.

## **New procedure for Forest Clearance for Linear Projects approved by NGT**

- NGT orders the said OMs are to be read along with the affidavit filed by MoEFCC & its Judgement

Pushp Jain

In *Milind Pariwakam & Anr v. Union of India* [Original Application No. 52 of 2015, Order dated 13.3.2015] issue was raised with regard to office memorandums (OM)/circulars of MoEFCC dated 8.8.2014 and 15.1.2015 through which the process for obtaining forest clearance under Section 2 of the Forest (Conservation) act, 1980 for linear intrusion projects has been diluted. The communications allowed work permit and permission for felling of trees to be issued without Stage II and Final Approval.

The State Government is only required to seek the Final Clearance from the Central Government within a period not exceeding five years, during which time felling of trees and construction may be done irrespective of grant of such Final Clearance from the Central Government.

The primary issues in the case were whether the OMs were in violation of Section 2 of the Forest (Conservation) Act, 1980 and whether the OMs are bound to adversely affect the right of appeal as contemplated to an aggrieved person under Section 16 of the National Green Tribunal Act, 2010.

During the course of the hearing, an affidavit was filed by MoEFCC. Ministry agreed that 'there is legal lacuna in the said communications issued by it but in view of the Affidavit the said lacuna and the gaps stand fully satisfied.' NGT was not entirely satisfied and said, 'It is correct that this Affidavit remedies the legal error in the OM but not to the entire extent.' Thus, NGT gave following directions:

'a. The OM issued by MoEF will be given effect to read with the Affidavit but only and only subject to the directions contained in this Judgment.

'b. No non-forest activity in the Forest Area that is covered under Section 2 of the Forest Conservation Act, 1980 would be permitted and carried on in

any manner whatsoever unless an order has been passed by the competent authority of that State Government and put it in the public domain by putting it on its website and complying with the other requirements in accordance with law.

'c. As the law has already been stated by the Tribunal that it is only an Order passed under Section 2 of the Forest Conservation Act, 1980 that is appealable under Section 16 of the NGT Act, we direct that Appeals would lie against such Orders to avoid difficulty to any litigant/ aggrieved person from approaching the Tribunal in accordance with law.'

Judgement is available at:

[http://www.greentribunal.gov.in/Writer\\_eaddata/Downloads/52-2015\(PB-1\)OA13-3-2015.pdf](http://www.greentribunal.gov.in/Writer_eaddata/Downloads/52-2015(PB-1)OA13-3-2015.pdf)

## The Supreme Court upholds NGT decision to cancel EC for Aranmula Airport

Palavi Talware<sup>12</sup>

The Chennai Bench of the National Green Tribunal had quashed the Environmental Clearance to M/s. KGS Aranmula Air Port Ltd., for setting up an airport at Mallappuzhasserry, Aranmula and Kidangannur villages Kerala, which the Supreme Court, on appeal by the project proponent, recently upheld. <http://courtnic.nic.in/supremecourt/temp/ac%206594-659814p.txt> The airport was to be located at the ecologically sensitive and environmentally diverse and rich area of Aranmula, which is a declared heritage site where the historical Aranmula Parthasarathy temple is located.

The NGT judgment confirmed the requirement that the Environmental Impact Assessment can only be carried out by an agency accredited to do so. [http://greentribunal.gov.in/Writereaddata/Downloads/172\\_2013%28Ap%29%28SZ%29\\_28May2014\\_final\\_order.pdf](http://greentribunal.gov.in/Writereaddata/Downloads/172_2013%28Ap%29%28SZ%29_28May2014_final_order.pdf) M/s. Enviro Care India Pvt. Ltd., the agency in the instant case, was not accredited to carry out the EIA for Airports, which are a

category 'A' project. The NGT noted that the all mandatory principles and guidelines of the EIA process were violated, right from Form I along with the application for EC, to the faulty EIA as well as public hearing and the subsequent grant of EC without application of mind or with due diligence. The NGT even observed that "conditions" cited given in the EC were "Copy and Paste" from some other projects, without any application of mind and 'non-verification' of the document presented before it.

The judgment also made the observation that the ToR for EIA was not as exhaustive and project specific as it should have been. The NGT further strongly criticised the practice of project proponents and of the agencies conducting the EIA to begin collecting data even before the finalization of ToR by the EAC, stating that such practise was untenable in the eyes of law and it also sends wrong procedural signals. The NGT directed MoEF to take note of this and initiate procedural reforms to discourage this practice.

It is pertinent that the project was challenged on numerous grounds, including the fact that the location of the project is paddy fields which are a major bio-diversity hotspot. The location of the project is of specific importance since there are numerous wetlands which serve as flood plain reservoir for the river Pampa. The wetlands are also the means

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<sup>12</sup> Environmental Lawyer at LIFE

of flood control mechanism for the surrounding area. The area, as a result of the wetlands, boasts of a wide variety of species of endemic and economically rare and important plants, fishes and birds. A Greenfield project such as the Aranmula airport in an eco-sensitive area is patently against the principle of sustainable development.

The challenge with respect to the site of the project also raised the issue that since there were two International Airports within 150 km of the proposed site, it was against the draft policy of the Ministry of Civil Aviation which states that a study of the impact of a new airport on existing airport needs to be first carried out, which has not been carried out for the Aranmula Airport.

The fact that the Project Proponent did not discuss or provide for R & R was also brought up before the NGT. The Public Hearing was conducted in a faulty manner - from not informing regarding change of dates, to not making all the requisite information (including the EIA) available to the public - which resulted in only 26 people being present at the public hearing.

## Old project, new lens – NGT on Kanhar irrigation project

Preeta Dhar<sup>13</sup>

The Kanhar irrigation project, with a culturable command area of 47,302 ha, was sanctioned in 1976 in Sonebhadra district, Uttar Pradesh. The project involves displacement of a large population and diversion of large areas of forest lands.<sup>14</sup> At the time the project was approved, there was no legal requirement of a proper Environment Impact Assessment and preparation of Environment Management Plan to assess and mitigate the environmental and social impact assessment of such projects. Since then, other than some minor construction work, the project was abandoned due to non-availability of funds. However, when it was resumed towards the end of 2014, it was challenged before the NGT on the ground that there was a material change in circumstances, and would warrant a re-examination in line with the current environmental law framework.<sup>15</sup>

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<sup>13</sup> Preeta Dhar, lawyer, Legal Initiative for Forest and Environment

<sup>14</sup> The preliminary figures estimates that more than 7500 families will be displaced and 4,131.5 ha will be submerged (as per 1998-99 project fact sheet)

<sup>15</sup> *Om Dutt Singh v. State of Uttar Pradesh & Ors*, 7 May, 2015. Judgment available at



Therefore, it was argued that the project work should not proceed unless the project obtained Environmental Clearance under the current EIA Notification.

The project is likely to have large scale adverse impacts on the environment and ecology of the area. The Kanhar river is a tributary of the Son, which is a major tributary of the Ganga. Due to the construction of several dams and water diversion structures on River Son including Rihand Dam and Bansagar dam, the river already faces threats in terms of loss of its riverine characteristics and fish species. Further, the rapid industrialization and wide-spread mining activities has also lead to the general deterioration of the environment. In fact, the CPCB had identified the area as a “critically polluted area”. The area is also very rich in wildlife and is host to several species of wildlife. However, it has become extremely fragmented owing to rapid industrialisation and the presence of the coal mines in the area. The clearances relied upon by the project proponent relied were obtained prior to the EIA Notification, and did not take into account either the developments of the legal and regulatory framework, or the development in the region since the time the clearances were granted.

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[http://greentribunal.gov.in/Writereaddata/Downloads/521-2014\(PB-I-Judg\)OA7-5-2015.pdf](http://greentribunal.gov.in/Writereaddata/Downloads/521-2014(PB-I-Judg)OA7-5-2015.pdf)

In this case, the National Green Tribunal examined the issue of projects with clearances obtained prior to the enactment of the EIA Notification for which substantial work is yet to be completed.

#### **“Cause of action”**

One of the objections raised by the respondents was that the cause of action, i.e., the “environment clearance” had arisen in 1980, and could not be challenged at this point of time. On this issue, the NGT observed, “*The cause of action must be a composite cause of action which will give rise to environmental specific issues under Section 14 of the NGT Act, 2010. Even if, the land is acquired, environmental clearance is granted and for years together, the work is not carried out, it cannot be said to be a complete and a composite cause of action triggering the point of limitation under Section 16.*” This is a significant observation, which would bring other such projects within the purview and scrutiny of the current framework of environmental laws and remedies.

#### **Changing landscape of environmental laws**

The NGT observed that it is necessary to evaluate the impact of the project on the environment, ecology and biodiversity of the area objectively in its correct perspective.

The clearances that were granted to the projects during 1976 and 1980 were very general in nature. Considering the nature of the project – which involves tunneling, making of canals, roads, bridges and other concrete works – the clearance, or the associated conditions of clearance, are severely insufficient. In light of this, the NGT categorically held that the Environmental Clearance which was granted 33 years back cannot be held as good in the field of environment. The developments that have taken place in the interim period are relevant considerations for examining the environmental impact of the project on the area in question.

This does not impose retrospective application of laws. However, emphasising on the fact that the objective of environmental laws is to protect the environment and public health, it would be appropriate to require compliance with the subsequent development of the EIA framework to projects which are at their very initial stage of construction. In bringing the project under the purview of the EIA framework, the NGT relied heavily on the 2008 Circular of the Ministry of Environment and Forest,<sup>16</sup> which states that projects covered under EIA Notification (1994 and 2006) require

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<sup>16</sup> MoEF Circular dated 15<sup>th</sup> January, 2008, available at [www.moef.nic.in/divisions/iass/Circular\\_CII.doc](http://www.moef.nic.in/divisions/iass/Circular_CII.doc)

environmental clearance is project related activities have not commenced at the site, despite acquiring land and obtaining consents for projects. The NGT held that the language of the notifications and circulars of the MoEF warranted an interpretation that would “further the cause rather than defeat the very purpose and essence of these environmental statutes.”

The judgment also supports this interpretation drawing on the fundamental right to life under Article 21 guaranteed by the Constitution, which includes the right to environment and public health, as well as precautionary principle and sustainable development. The operative part of the NGT judgment clearly articulates, *“If this project was required to take environmental clearance during the period when it has actually started construction, then the laws governing the grant of clearance would have been entirely distinct and different. The laws in force require much more stringent compliance to the standards prescribed under different environmental enactments... The Environmental Clearance granted in the year 1980 was a mere formality and did not safeguard environment and ecology of the area in question. If the project of similar scale was proposed in the times when actual construction work had started after transfer of the required lands, it would have required serious considerations*

*from various environmental perspectives and much harsher conditions would have been imposed on the project proponent.”*

This is a positive finding, in line with the principles of sustainable development and precautionary principle, to apply the continuously evolving environmental law framework to projects for which no significant construction activity have started. This interpretation would go a long way in preventing magnified ecological impacts in the construction and operation of projects which had received clearances in a significantly different context.

### **The double edges of sustainable development**

Despite categorical findings regarding the irregularities and illegalities within which the construction of the project has continued, the conclusion arrived at by the NGT fails to reach the logical conclusion of stopping such projects. Rather, it justifies the very same illegalities using the principles of sustainable development and precautionary principle.

Given that the principles of sustainable development and precautionary principle have been developed in the context of environmental protection and necessarily implies strict accountability of human activities in terms of its environmental impact, it is shocking that the NGT

observes, *“The facts of the present case, examined in the light of the principles of sustainable development and the precautionary principle would tilt in favour of the project proponent”*. It further supports proceeding with the project in light of “the huge amounts of public funds have already been spent on the project”. This also goes against the well-established jurisprudence of the Supreme Court that huge expenditure in making constructions must not be treated as a justification for condoning this illegal act.

In what appears to be a balancing act, the NGT constituted a Committee with representation of official and technical members with a mandate to prepare a report outlining, inter alia, any modifications are required in the execution of the project to protect the environment, and if any additional measures and conditions are required to be imposed to avoid adverse impacts on environment, rivers forests, villages and biodiversity. It also specifically recommended that the Committee should examine maintenance of certain minimum environmental flow downstream of the dam.

However, effectively, the judgment serves merely a theoretical purpose. The construction is on-going even as the Committee is yet to be constituted. The NGT also overlooks the fact that in the

absence of a stay order, a large portion of the construction was being carried out while the case was pending before it. Environmental concerns are paid merely a lip service, while illegal activities are carried on with impunity.

## Striking a Balance

Maneka Kaur

Terming *Forward Foundation & Ors. v. State of Kerala & Ors.*<sup>17</sup> as a fit case, wherein the Tribunal could invoke both the principles of Polluters' Pays and Precautionary principle in exercise of its jurisdiction in terms of Section 20 of the National Green Tribunal Act, the NGT (Principal Bench) on 7<sup>th</sup> May 2015 directed two Bengaluru based firms to pay a sum of INR 117.35 crores and INR 22.5 crores respectively for commencing construction of their SEZ project without obtaining Environmental Clearance.

Applicants raised concerns over the two projects, Mantri Techzone Private Limited and Core Mind Software and Services Private Limited, which were encroaching upon an Ecologically Sensitive Area, namely, the valley along with the

catchment area and storm water drains, which drained rain water into the Bellandur Lake. This is the largest lake in south-east of Bengaluru city.

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**There is a definite possibility of environment, ecology, lakes and the wetlands being adversely affected by these projects. There are multiple public authorities including SEIAA involved in regulating such projects and they are also responsible for protecting interest of environment and ecology while keeping in mind the settled canon of sustainable development.**

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Though the proponents asserted that they had all the necessary approvals, the Applicants submitted before the court that to suit the needs of a few, even the status of the land was changed from being a 'Protected Zone' to a 'Residential Sensitive' area.<sup>18</sup> The Applicant, relying

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<sup>17</sup> Original Application No. 222 of 2014.  
[http://www.greentribunal.gov.in/Writereaddata/Downloads/222-2014\(PB-I-Judg\)OA7-5-2015.pdf](http://www.greentribunal.gov.in/Writereaddata/Downloads/222-2014(PB-I-Judg)OA7-5-2015.pdf)

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<sup>18</sup> The Master Plan formulated by the Bangalore Development Authority identified the allotted land as 'Residential Sensitive', though the same land was identified in the draft Master Plan as 'Protected Zone.'

on various reports and findings, further claimed that the construction was being undertaken right in the midst of a fragile wetland area, hence exposing it to grave and irreparable damage. Moreover, the conditions with regard to no-disturbance to the Storm Water Drains, natural valleys and buffer area in and around the storm water-drains were also being violated.

Relying upon the material submitted by both the sides, including expert reports and Google images, the Tribunal observed that, “the Bellandur Lake and even other lakes for that matter have wetlands and catchment areas. There are encroachments on the Rajakaluves as well as on the catchment areas of the water bodies... [v]arious authorities including the BBMP and the KIADB have found out and observed that the construction should be stopped forthwith.” The Tribunal also highlighted upon the duty of various regulatory authorities, including SEIAA, to ensure that Cumulative Environmental Impact Assessment is conducted in similar matters for the protection of the water bodies, the wetlands and the catchment areas.”

### **Balancing the principles**

To maintain an equitable balance between default and its consequential liability, the Tribunal referred to its judgment in case of *Sarang Yadwadkar*

*and Ors. v. The Commissioner, Pune Municipal Corporation and Ors.*<sup>19</sup>, wherein, the Tribunal had declined demolition of a raised construction and issued substantive directions in the interest of environment and ecology. The Tribunal also went back to the principles of law enunciated by the Supreme Court in *Sterlite Industries*<sup>20</sup> and *Krishankant Singh*<sup>21</sup>, wherein the polluter pays principle was applied.

NGT thus ordered as follows:

*“[t]o maintain equitable balance between the default and the consequential liability of the Applicant, we direct the project proponents to pay at the first instance compensation for their default at the rate of 5 per cent of the cost of the project. In light of this, Respondent No. 10 would be liable to pay a sum of Rs. 22.5 crores and Respondent No. 9 would be liable to pay sum of Rs. 117.35 crores.”*

Further, to ensure that a proper understanding of the issue is attained and that no harm comes to the ecology, the National Green Tribunal has constituted a Committee. The Committee’s duty would

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<sup>19</sup> 2013 ALL (I) NGT REPORTER (DELHI) 299

<sup>20</sup> M/s Sterlite Industries (India) Ltd. v. Tamil Nadu PCB & Ors. [JT 2013 (4) SC 388]

<sup>21</sup> Krishankant Singh v. National Ganga River Basin Authority [2014 ALL (I) NGT REPORTER 3 DELHI 1]

be to inspect the projects in question and submit a report, thereafter.

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**We restrain MoEF, SEIAA and/  
or any public authority from  
sanctioning any construction  
project on the wetlands and  
catchment areas of the water  
bodies in the city of Bangalore**

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One of the issues to cover would be, “If these projects have any adverse impacts upon the surrounding ecology and environment, with particular reference to lakes and wetlands.” Various technical experts and authorities have already submitted their report stating that these projects might prove to be a disaster to the wetland of Agara and Bellandur Lakes. Having experts study the region would result in one more report. But, considering the present circumstances, wherein, the construction has not been stopped, it seems the ecosystem is being put at a grave risk and once the report arrives, it will be used for ‘damage control’ rather than as tool to apply the principle of precaution.

**Ban on sanctions for projects coming up  
on lake catchment areas**

A positive outcome of this judgment, is the direction given to the MoEF, SEIAA and other public authorities restraining them from sanctioning any construction project on the wetlands and the catchment areas of the water bodies in the city of Bangalore. This ban will be strictly enforced till the committee submits its report, which shall not be later than three months from the date of judgment. This direction, an example of precautionary principle, however, is silent on its possible retrospective effect. It needs to be clarified whether the already initiated projects will be covered under the judgment and hence, will stop their construction until the report is received.

**Current status of the case**

The Supreme Court, on May 20, 2015 stayed the order of the NGT imposing heavy penalty on the two firms by directing the NGT to hear the pleas of the firms on merit. <sup>22</sup>

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<http://www.deccanherald.com/content/478794/sc-stay-ngtamp8200order-not-setback.html>



# Analysis

## Highlights and Review of Study of Cumulative Impact Assessment of HEP in Tawang Basin

Parineeta Dandekar<sup>23</sup>

Tawang is a tiny district of Arunachal Pradesh nestled between Tibet and Bhutan. The region is home to Monpa Buddhists who practice an ancient form of Buddhism. In places like the Zemithang valley, where 780 MW Nyamjang Chhu HEP of the Bhilwara group is slated to come up, locals have formed community conservation reserves to protect the Black Necked Crane which is not only a threatened bird, but revered as the reincarnation of sixth Dalai Lama for the Monpas.

In this tiny district of barely 2000 sq km, 13 hydro-electric projects have been planned by public and private proponents, damming and tunnelling main stem and tributaries of the Tawang Chhu which will need 249 hectares of

forest land. Total capacity of these 13 projects will be 2890.10 MW. Of these, 3 projects are over 500 MW capacity, 7 projects of 50-100 MW capacity and 3 projects of less than 50 MW capacity.

The Forest Advisory Committee (FAC) of the Ministry of Environment and Forests (MoEF) While considering 750 MW Tawang-I and 750 MW Tawang-II projects for Forest Clearance recommended that the Government of Arunachal Pradesh to conduct a study on Tawang river basin. The Government of Arunachal Pradesh in turn commissioned the *North-Eastern Hill University (NEHU), Shillong* for this.<sup>24</sup>

The study report "*Perspective Plan for Development of Tawang River Basin: Cumulative Impact Assessment of Proposed Hydel Power Projects, Determination of Basin Carrying Capacity, and Landscape Level Biodiversity Management Plan*" came out in September 2014. The study is divided into 6 sections:

### 1. Impact Assessment of Individual Projects

This section looks at individual impacts of the 13 projects and suggests project specific mitigation measures.

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<sup>23</sup> Parineeta Dandekar, South Asia Network for Dams, Rivers and People. This is an edited version of her article previously published on the SANDRP website (<https://sandrp.wordpress.com/2015/04/10/cumulative-impact-assessment-of-tawang-basin-highlights-from-the-nehu-study/#more-4877>)

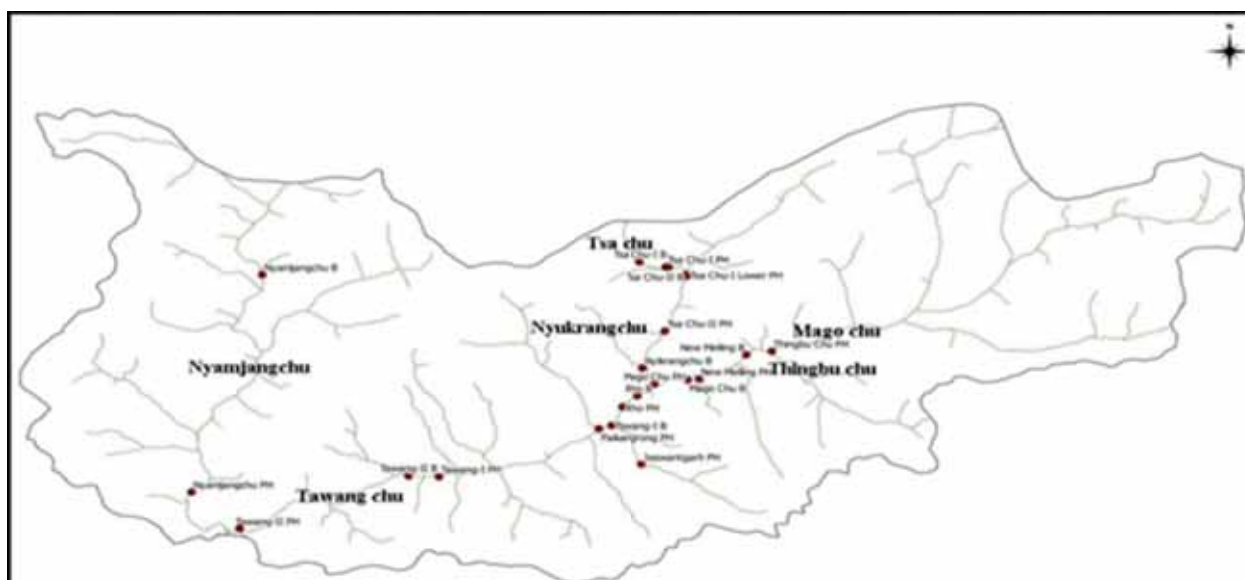
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<sup>24</sup> The Executive Summary of the Study can be accessed at <https://sandrp.files.wordpress.com/2015/04/tawang-basin-study-nehu-exec-sum-sept-2014.pdf>

Planned hydro projects in Tawang (from CIA Report)

Name of project	Name of implementing agency	Revised/proposed capacity (MW)	Elevation (m asl)
Tsa Chu- I	Energy Development Co. Ltd., Faridabad	24.00	3350
Tsa Chu- I Lower	Energy Development Co. Ltd., Faridabad	77.20	3245
Tsa Chu- II	Energy Development Co. Ltd., Faridabad	67.00	3170
Thingbu Chu	Arunachal Pradesh Mega Power Projects Pvt. Ltd., New Delhi	60.00	2800
New Melling	Sew Energy Ltd., Hyderabad	90.00	2786
Mago Chu	Sew Energy Ltd.	96.00	2456
Nykcharong Chu	Sew Energy Ltd.	96.00	2460
Rho	Sew Energy Ltd.	93.00	2240
Tawang-I	NHPC Ltd., Faridabad	750.00	2092
Tawang-II	NHPC Ltd., Faridabad	750.00	1536
Nyamjang Chu	Bhilwara Energy Ltd., Noida	780.00	2115
Paikangrong Chu	SMJ Consultants Pvt. Ltd., New Delhi	2.40	2150
Jaswantgarh Stage- I	SMJ Consultants Pvt. Ltd., New Delhi	4.50	3357
<b>Total</b>	<b>6</b>	<b>2890.10</b>	

Map of Tawang Basin indicating location of planned projects (from CIA Report)



- “Adequate water flow must be ensured for this downstream region. Given the amount of water to be released from the barrage, the lateral flow from 18 stream / streamlets must be allowed naturally. This would also help in maintaining the biodiversity in the downstream areas.”
- A wide range of measures ranging from maintaining prescribed e-flow, restricting the construction activities during winter months and minimising the noise pollution to protect the wintering ground of the black-necked cranes

## 2. Cumulative Impact Assessment

The Tawang CIA study looks at cumulative impacts from the perspective of ecosystems and impacts on **Valued Ecosystem Components (VECS)** and tries to understand the threshold values for cumulative impacts. While the approach is novel and good, the way it is implemented leaves a lot to be desired.

Some of the issues not considered by the Cumulative Impact Assessment include:

- Individual and Cumulative impact of **peaking releases** through HEPs in Tawang and downstream Bhutan not studied under hydrology.
- **Downstream Impacts** find no mention in the study.

- Cumulative impact of blasting, tunnelling, road construction and muck disposal

There is ambiguity on the basis on which VECs and their components are selected and exactly how scores for cumulative impact were arrived at. There should have been a lot more clarity on this important aspect.

That said, the CIA section looks at and assesses hereto neglected impacts like cultural and livelihood impacts, assessing the dependency of the villages around the planned HEPs on the rivers or tributaries. This assessment is a welcome feature of the CIA Study and has not been attempted before in India.

**61 Village consultations** - Amazingly, the study claims to have held meetings in 61 affected villages. However, although the table makes it clear that most villagers area against the HEPs or want more information about these, it is not clear if the concept of cumulative impacts have been explained to them. Although limited in its scope, this is a welcome aspect of the study. However, it is strange that the CIA does not allude to the strong protests which have happened in Tawang valley so far and the agitation of monks against the projects.

## 3. Assessment of Environmental Flows

The Tawang CIA has based its eflows recommendations on **Building Block Methodology** which considers following 'blocks':

- (i) River biodiversity based on fish species like *Schizothorax richardsonii*, *Schizothorax sp.*, endemic species (endemic periphyton, endemic zooplankton), and threatened bird (Black necked crane)
- (ii) River hydraulics (bed composition),
- (iii) Cultural requirement (dead body disposal and the habitat requirement of black necked crane)
- (iv) Livelihood requirement (water use, river resources, and edible Algae) and
- (v) Ecosystem structure and function (periphyton density, water quality, NPP, invasibility by invasive alien species (IAS).

This is the first Indian study I have come across which assigns values to **Livelihood requirement and cultural requirement**. The study should have specifically mentioned that these flows should be mimicking real time natural hydrograph and should be released as such and not on a daily/ weekly/monthly or seasonal basis which will defeat the purpose of e-flows.

The percentage flows recommended by the study are given below:

**780 MW Nyamjang Chhu Project** – The study has recommended higher eflows for Nyamjang Chhu HEP as against the extremely low eflows recommended by CIFRI. In fact, the study states “Considering the conservation importance of Black Necked Cranes, the experts were *unanimous to protect the habitat of the species in the downstream area of Nyamjang chu barrage axis*” The minimum environmental flow

Sl. No.	Name of HEP	Recommended environmental flow in percentage of 90% dependable flow			Recommended environmental flow in discharge (cumec)		
		Lean	Monsoon	Non-Monsoon	Lean	Monsoon	Non-Monsoon
1	Tawang-II	30	30	20	12	43	14
2	Tawang -I	30	30	20	9	35	11
3	Rho	30	30	30	9	35	16
4	Nykcharong chu	50	30	30	10	13	11
5	Mago chu	70	30	50	5	16	8
6	New Melling	50	30	50	3	15	7
7	Tsa chu-I	30	30	20	6	13	7
8	Tsa chu -I Lower	30	30	20	6	13	7
9	Thingbu chu	100	30	100	1	2	1
10	Tsa chu-II	30	30	20	6	13	8
11	Nyamjang chu	70	30	30	10	23	10

requirement for three seasons at Nyamjang chhu project site as per the CIA are: Lean season: 10 cumecs, Non-monsoon season: 10 cumecs, Monsoon season: 23 cumecs. In contrast, CIFRI had allowed for the complete diversion of Taksang Chhu River recommended a blanket flow of barely 3.5 Cumecs from the Barrage in lean and non-monsoon months.

#### 4. Assessment of Carrying Capacity of Tawang River Basin

The Report claims that the carrying capacity has been assessed by considering combined social and environmental impact threshold, human population influx threshold, E-flow, free-flow river length and forest loss threshold. The following parameters were identified as indicators for determining carrying capacity of Tawang river basin: (1) basin zonation, (2) human population influx, (3) prescribed E -flow based on availability of water at different points, (4) forest/vegetation loss, and (5) combined socio -environmental index.

Threshold limits considered for Carrying Capacity Study include:

- 50 percent of the main river length should be free-flowing i.e free of any projects,
- 66 percent of the total geographical area will be under forest cover,

- The total population of Tawang at any given point of time should not exceed 33% more than the present population i.e. 65,000 persons
- No projects above 2500 m asl should be constructed.
- Minimum level of water flow must be maintained round the year to ensure the sustainability of the river ecosystem structure, function and services.

The projects which did not meet these criteria have been recommended for rejection, including the *24 MW Tsa Chhu, 77.2 MW Tsa Chhu I Lower, 67 MW Tsa Chhu II, 60 MW Thingbu Chhu and 90 MW New Melling HEP*

The study also recommended **phasing of projects** for diffusing the impact both spatial and temporal segregation of the construction, as well as the influx of population within the carrying capacity limit, i.e. presumed to be 33% increase from the base population. The report recommends two phases:

*Phase I* (0-5 years): Nyukrangchu, Tawang II, Nyamjangchu, Jaswantgarh and Paikangrong

*Phase II* (5-10 years): Tawang I, Rho, and Mago Chu

## 5. Biodiversity Perspective plan for Tawang Basin

The perspective plan consists of several mitigation measures, some which are highly questionable like nest box erecting (without any scientific study and limited bird species), however, project specific plans like suggestions for protection of Black Necked Crane in case of Nyamjang Chhu project are important.

### Conclusion and Recommendations of the Tawang Basin Study

- Tsa Chu I, Tsa Chu I Lower, Tsa Chu II, Thingbu Chu and New Melling should not be implemented since they are proposed above 2500 m asl and have a cumulative impact assessment index value  $>0.84$
- The e-flow as recommended should be maintained by all the projects recommended viz. Nykcharong chu, Tawang I, Tawang II, Nyamjang chu, Rho, and Mago Chu. The design discharge, power generation and peaking hours need to be modified accordingly.
- The recommended 6 large hydro projects and the 2 small-hydels should be implemented in two phases as follows: Phase I (0-5 years):

Nykcharong chu, Tawang II, Nyamjang chu, Jaswantgarh and Paikangrong; and Phase II (5-10 years): Tawang I, Rho, and Mago Chu.

- The mitigation measures recommended by the report should be implemented to minimize the adverse impacts of the projects.

**To sum up**, the Tawang CIA/ Perspective Plan/Basin Study is indeed a unique attempt in Cumulative Impact Assessment which is a departure from consultant-centric, isolated Basin studies so far. This study has robust primary work on some topics like E-flows.

That said, the study shies away from recommending dropping any bigger projects, despite their issues. Factors in scoring system based on per MW score have contributed to this. For example, In case of 780 MW Nyamjang Chhu Project, the CIA agrees that the project has severe impacts on social, cultural and ecological aspects: specifically nesting of Black Necked Crane and it is impossible to shift the barrage site in any other place. Such a direct stalemate means that the project should be dropped, but NEHU has shied away from making such a recommendation.



We hope that the Cumulative Impact Assessment/ Carrying Capacity Study and Perspective Planning of Tawang is disseminated throughout the region in local language and is improvised with inputs from inhabitants of the region. It will not be prudent to take up any projects without this process. Further, the Tawang CIA should undergo a public hearing before it is accepted.

In the meantime, Environmental Clearances given and future process of Nyamjang chhu and Tawang Basin projects will have to be kept in abeyance unless the proponents accept the e-flows and other mitigation measures recommended by the CIA.

## Public Hearing for Tadadi Sea Port in Karnataka

Terence Jorge<sup>25</sup>

When projects apply for an Environmental Clearance (EC), a Public Hearing is part of the Public Consultation <sup>26</sup> process to obtain public views and comments on a Draft Environmental Impact Assessment

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<sup>25</sup> Field Researcher, ERC

<sup>26</sup> Of the EIA Notifications 2006

(EIA) Report. Yet, does it always happen in a genuine way?

A Public Hearing (PH) for the Tadadi Sea Port proposed in the **Aghanashini estuary** was conducted by the Karnataka State Pollution Control Board (KSPCB) on 23<sup>rd</sup> March 2015<sup>27</sup> in Hiregutti town, Kumta Taluka in North Karnataka.

This proposal has been in the air for some time. Local environmental groups and active individuals were concerned about the possible impacts and were in touch with ERC. I had visited the area in October 2014. Based on our primary information and available documents we submitted a written representation to KSPCB. We guided some of the participants to raise relevant questions and issues.

Issues raised in written by ERC include:

- a) Measures for preserving ecologically sensitive areas
- b) Impact of dredging and sewage waste on oyster beds and mangroves
- c) Impact on the Gangavalli River due to withdrawal of water for this project

Whether the movements at the present fishing harbour would be restricted.

Following are the highlights of developments at the Public Hearing.

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<sup>27</sup> The Public Hearing was conducted at Secondary High School, Hiregutti in Kumta Taluka of Uttara Kannada District.

## 1. Why a port in a biodiversity rich estuary?

### a) Proposal for a Biological Heritage Site (BHS)<sup>28</sup>:

- It is the only one among the five major estuarine systems in Uttara Kannada, without any dams or diversions.
- It has a U-turn, providing a vast backwater shelter for biodiversity.

### b) Proposal for a Multipurpose Sea Port: It would require about 560 ha. for

- Seven berths handling 62.36 MTPA<sup>29</sup>
- Liquid Natural Gas (LNG) terminal.

c) **In the Public Hearing:** Maruti Gouda said that the oyster beds and the existing fishing harbour could be harmed.

## 2. The existing Tadadi fishing harbour, an important source of livelihood

- i. Exports include Ribbonfish, Cuttle fish, kingfish and prawns.
- ii. 25 people with 1 Persian boat could earn around 8 lakh per year.

## 3. Govt. dilutions of the EC process

a) **Extending the life of project proposals:** Unlike earlier, MoEF & CC<sup>30</sup> Office Memorandum (O.M.) of 07.11.2014 has

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<sup>28</sup> A final report on the "Survey of Kali and Aghanashini Estuaries to Declare as Heritage Sites" was prepared and submitted by V.N. Nayak, Professor and Chairman, Department of Studies in Marine Biology, Karwar to the Karnataka Biodiversity Board on **12.09.2011**.

<sup>29</sup> Million Tonnes Per Annum

<sup>30</sup> Ministry of Environment, Forest & Climate Change

now allowed projects even with baseline data collected more than 3 years ago to be considered for EC. The baseline data for this project was collected in 2010.

b) **Limiting public participation:** A LIFE<sup>31</sup> critique of the High Level Committee (HLC)<sup>32</sup> report points out that 'amongst the most damaging aspects of the report is its absolute contempt for people's voices in the environmental decision making process.'

## 4. A stage-managed Public Hearing

The Panel consisted of the Deputy Commissioner of Uttara Kannada District, Ujwal Kumar Ghosh and a KSPCB Member.

Whenever someone tried to raise issues, people clearly brought in to support the project, would shout in its favour.

## 5. Unsatisfactory clarifications from the EIA Consultant

The Draft EIA report was done by National Environmental Engineering Research Institute (NEERI) and submitted in August 2014.

Local concerns included:

- Mahabaleshwar Hegde felt that the information provided is not sufficient.

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<sup>31</sup> Legal Initiative for Forest and Environment

<sup>32</sup> To amend Forest and Environmental Laws

- Mangal Shetty from Kagal said that water sources could be polluted.
- M. R. Hegde from Snehakunja Trust and Pandurang Hegde form the Appiko movement, both senior activists voiced their concerns.
- To protect the BHS, the EIA Consultant would 'do their best possible.'
- To guarantee that the project will implement the measures promised, these would be conditions to the parties yet to be contracted

The Public Hearing highlights importance of guiding people regarding procedure, laws and issues for better following of the environmental clearance process.

#### **6. People succeed in enforcing the EIA Notifications 2006**

**a) Concluding improperly:** The Public Hearing was almost concluded without reading out the minutes of the meeting. People objected and we pointed out that as per the EIA Notifications 2006, the proceedings accurately reflecting all the views and concerns expressed are to be read over to the audience in vernacular language. The 'agreed' minutes should be signed by the District Magistrate on the same day and forwarded to the SPCB concerned. After initial reluctance the PCB announced that this would be done after 3 days so that they could compile the minutes.

**b) Reading out the minutes after 3 days:** The Environmental Officer of Karwar PCB read out the minutes to about 20 people at the same venue on 27<sup>th</sup> March 2015. The parts relevant to the people present were clarified.