

BEFORE THE NATIONAL GREEN TRIBUNAL

SOUTHERN ZONE, CHENNAI

Application No.206 of 2015 (SZ)

In the matter of

Human Rights Forum

Through Kanneboina Venkata Narsaiah

General Secretary

Mulakalapally Village, Kammam Dt

Telangana

.. Applicant

Vs

1. Union of India

Through the Secretary

Ministry of Environment, Forests & Climate Change

New Delhi

2. Telangana Pollution Control Board

Through the Member Secretary

Hyderabad, Telangana

3. Telangana State Power Generation Corpn.Ltd.

Hyderabad, Telangana

Rep. by its Chairman

.. Respondents

Counsel appearing for the applicant

M/s. Ritwick Dutta, Rahul Choudhary

Stanly Hebzon Singh

Counsel appearing for the respondents

Respondent No.1 .. Smt. Me. Saraswathy

Respondent No.2 .. Mr.T. Sai Krishnan

Respondent No.3 .. Mr. R. Thiagarajan, Senior Counsel

Mr. Ramachandra Rao, Addl. Advocate General

State of Telangana

M/s. Y. Rama Rao, Menon, Karthik

Mukundan & Neelakantan

Priya Iyengar

O R D E R

Coram: Hon'ble Shri Justice Dr.P. Jyothimani, Judicial Member

Hon'ble Shri P.S. Rao, Expert Member

 Delivered by Justice Dr. P. Jyothimani, Judicial Member 11th, July, 2016

Whether judgment is allowed to be published on the internet .. Yes/No

Whether judgment is to be published in the All India NGT Report .. Yes/No

The applicant, which is an organisation stated to be non-political and non-profitable, consisting members of various professions like teaching, journalism and law, working for the past 15 years for the protection of peoples' rights and creating awareness, particularly relating to clean and safe environment, has filed the present application, praying for direction against the respondents to restore the area where the work in respect of the proposed 4 x 270 MW Bhadradi Thermal Power Station at Ramanujavaram, Eddulabayyaram and Seetharamapuram Villages, Manuguru and Pinapaka Mandals, Khamman District, Telangana State having been commenced without approval, as per the EIA Notification, 2006 and in accordance with the "Polluter Pays" principle, apart from direction against the officers of the project proponent to initiate prosecution for commencing work without approval under the Air (Prevention and Control of Pollution) Act, 1981 (Air Act), Water (Prevention and Control of Pollution) Act, 1974 (Water act) and Environment (Protection) Act, 1986, and direction that the Expert Appraisal Committee (EAC) and MoEF & CC should not consider the project and that no further steps in the EIA process be initiated till the areas are restored, action initiated and the project examined *de novo*, right from the scoping stage.

2. The third respondent Corporation viz., project proponent which is forming part of the State Government of Telangana, has proposed to develop the above said thermal power station in the said location and applied the proposal in Form – I on 3.2.2015 for grant of Terms of Reference (TOR) to the MoEF & CC for the purpose of undertaking an Environmental Impact Assessment (EIA) study. It is stated that the proposal came up before the EAC in its 32nd meeting on 23rd and 24th February, 2015 and rejected the proposal for TOR, seeking more information and making certain changes to the proposed project. Again the proposal was taken up by the EAC in its 36th meeting

dated 19th and 20th May, 2015 and recommended for the grant of TOR with certain observations. Thereafter, MoEF & CC has granted TOR for the said project on 23.6.2015.

3. It is the case of the applicant that after the TOR was received the third respondent has started construction work illegally. The concern raised by the EAC before recommending issuance of TOR shows that there are substantial questions related to environment and other impacts of the proposed project. According to the applicant, the project proponent is yet to undertake EIA study, conduct public consultation process through the Telangana Pollution Control Board (Board) and the proposal is yet to undergo appraisal by EAC and the final decision is yet to be taken by MoEF & CC. Therefore, without undergoing the above said process, the conduct of the project proponent in proceeding with illegal constructions is not permissible in law.

4. The applicant states that its members have visited the site on 6th and 30th October, 2015 and saw that massive construction of the project was going on without prior EC required under the EIA Notification, 2006. The applicant, on checking the MoEF & CC website and also the website of the Board is unable to find any EC granted to the project and on interaction with the villagers it was found that even public consultation process has not been done so far. The Board has also not given any "Consent to Establish".

5. The applicant has filed photographs stated to have been taken during the visit made by the members of the applicant on the above said dates and it reveals that a certain amount of work relating to the construction of the project has been undertaken by the project proponent and huge amount of materials required for construction activities have been transported and large amount of earth digging and soil excavation and dumping work has been going on at the project site.

6. According to the applicant, such illegal construction activity without obtaining prior EC will affect the EIA study. To substantiate the above said ground, the applicant relies upon the order passed by the Tribunal in *S.P. Muthuraman's* case and it is the case of the applicant as it was also held in the above said case that by such illegal construction there are likely to be changes in the land scape, land usage, pollution of surrounding

areas etc., and therefore it will be against the EAC to perform its appraisal in the form of EIA. It is also the case of the applicant that by undertaking such illegal and massive construction, the agricultural activities in the area have been affected and the land having been acquired, the land owners have been deprived of their right over the land, resulting in damage to their livelihood.

7. That apart, the applicant has also raised an issue that the conduct of the project proponent in proceeding with construction results in dust emission and without any "consent" from the Board such activity being carried on is in violation of the Air Act and the project proponent is liable for prosecution and punishment under the Air Act. The applicant has also referred to Sections 37 and 40 of the Air Act. Further, there is violation of the provisions of the Water Act by the project proponent in putting up illegal construction for which also the Water Act envisages prosecution and imposition of penalty under Sections 44 and 47.

8. Raising various legal grounds that the work undertaken by the project proponent without EIA study, public consultation, appraisal by EAC and final order by the MoEF & CC is illegal for want of prior EC and that the conduct of the project proponent is in violation of the Air Act and Water Act, apart from EIA Notification, 2006 and Environment (Protection) Act, 1986, the applicant has prayed for the relief stated above. The applicant has also sought for an interim relief of stay of all on-going illegal activities at the project site with immediate effect.

9. While admitting the application, by an order dated 12.12.2015 the Tribunal has issued an order of *status quo* against the third respondent, making it clear that the third respondent shall not proceed further, if it does not have necessary EC granted by the competent authority. The interim order granted has continued till date.

10. It appears that in the mean time, the project proponent filed W.P.No.513 of 2016 before the High Court of Telangana and Andhra Pradesh and the learned counsel appearing for the third respondent – project proponent during the hearing of the application on 26th February, 2016 has submitted that steps are being taken for the purpose of withdrawal of the said writ petition and the Tribunal is informed that the writ petition has been subsequently withdrawn.

11. In the mean time, it appears that the public hearing has taken place in respect of the proposed project on 17.3.2016 and steps are being taken for sending the proposals to MoEF & CC for appraisal. It was in those circumstances, in the order dated 7th April 2016 this Tribunal has directed the first respondent – MoEF & CC not to proceed with the appraisal until further orders, if the proposal and papers are received from the project proponent.

12. In the mean time, learned counsel appearing for the applicant has brought to the notice of this Tribunal that Scientist "C" of MoEF & CC, Dr. M.T. Karupiah has inspected the project site on 9.1.2016 and after referring to the said report, which was objected to by the learned Additional Advocate General appearing for the State of Telangana, stating that after the interim order was passed by the Tribunal on 12.12.2015 the third respondent – project proponent has stopped all activities from 14.12.2015 and also considering the fact that the Government has not filed any objection to the status report filed by the Scientist of MoEF & CC, in the order dated 2.5.2016, the Tribunal directed the Government of Telangana to file its objection to the status report which was filed on 17th May, 2016 against which the applicant has also filed a reply.

13. The first respondent – MoEF & CC in its reply dated 25.2.2016 has stated that the Ministry has granted TOR on 23.6.2015 for the preparation of EIA/EMP report for the project by the project proponent and such EIA/EMP report is yet to be received by the Ministry for the consideration of EC. It is also stated that the applicant has brought to the notice of MoEF & CC that the third respondent Corporation has commenced and continuing construction activities without prior EC and "consent" from the Board. This was also confirmed by the Regional Office of MoEF & CC, Chennai by inspecting the site on 9.1.2016. The Ministry has also assured that in accordance with the interim order passed by the Tribunal steps will be taken to prevent any further construction work.

14. In the subsequent reply filed on behalf of the first respondent, after the third respondent has filed objection to the inspection report filed by the Scientist Dr.M.T. Karupiah dated 11th January, 2016, it is reiterated that based on the direction issued

by MoEF & CC in the e-mail communication dated 6.1.2016 the site inspection was carried out by the Regional Office of MoEF & CC at Chennai in the presence of the project proponent and report dated 11.1.2016 was already filed.

15. It is also reiterated that it is a well known fact that the project proponent has commenced its construction activities in respect of the proposed power project without obtaining prior EC and "Consent to Establish". The objections filed by the third respondent against the inspection report dated 11.1.2016 are denied as misleading. The photographs taken at the time of inspection was on 9.1.2016 and not during September, 2015 to 30th December 2015. When TOR itself was granted to the project proponent on 23rd June, 2015, it is not known as to how EIA study has been carried out by the project proponent in May, 2015, which is prior to the grant of TOR. The draft EIA report has not been made available at the time of visit to the spot and also it is not submitted to the Regional Office of the MoEF & CC. While reiterating the site visit report dated 11.1.2016 it is stated by the first respondent that during the visit it was found that part of civil work was under progress and unloading of construction material was going on at the storage yard as revealed by the photographs filed. Even if few number of people are engaged in the activity that would tantamount to the progress of the work. The statement made by the third respondent by way of objection report that the Hon'ble Chief Minister of Telangana met the Hon'ble Minister for MoEF & CC is not forming part of the site visit report and the irrelevant fact cannot be relied upon. It is also stated by the first respondent that the existence of a waterbody within the project site is already established in the photographs and it requires proper examination along with land use map and satellite imagery especially when such waterbody is in existence in the absence of any rain.

16. The second respondent Board in its reply dated 27th May, 2016 has stated that the second respondent received a request letter along with the TOR to conduct public hearing for the proposed project and accordingly a public hearing was conducted on 17.3.2016 and the second respondent has also annexed the proceedings of the public hearing. It is also stated that the proceedings of the public hearing have been forwarded to the MoEF & CC on 29.3.2016. Thereafter, as the application has been filed complaining about various construction activities undertaken by the third

respondent – project proponent, by telephonic instruction on 21.5.2016, the Board ordered inspection of the site and accordingly the Environmental Engineer of the Board conducted an inspection on 24.5.2016 in which the project proponent was also present and the report dated 24.5.2016 was sent to the Board with an observation that the project proponent is not carrying on any construction activity. There is no mobilisation of workers within the premises; concrete transit mixers and cranes are existing in the site but they are not in use; generators, IP & HP turbines of the power plant are observed within the premises and there was no construction/work activity for laying of internal roads, foundation works of turbines, boiler house ESPs and chimneys, excavation work for cooling towers, switch yard, batching plants are not in operation, as observed during inspection and there is no activity in the material stock yard.

17. In the reply filed by the third respondent dated 26.2.2016 while denying the allegation made by the applicant, the third respondent – project proponent has stated that the Telangana State is a new born State as on 2.6.2014 and it is grappling with many formative and developmental issues, most important being constant monsoon failure for few years and acute drought in several parts of the State and consequently the drinking water and irrigation resources are at the verge of drying, leaving public unable to be served even with minimum water. It is stated that the farmers were worst affected resulting in suicides committed by farmers in large number in respect of which many human right organisations and NGOs have raised the issues at every level and it is in those circumstances the newly formed government had no choice or alternative but to treat the situation with utmost priority and bring some solution to the people to restore calmness in the community. The farmers in the State are solely depending on irrigation for which power is an essential source especially when there is no adequate and timely rainfall and therefore thermal power was considered to be the only solution. It is stated that the entire Telangana is an agrarian region. There are more than 21 lakh electric pump sets owned by poor and marginal farmers which are unable to be made functional for want of power supply resulting in purchase of power from other States at higher rates. It is stated that the requirement of electrical power for Telangana state is 7,200 MW as against which only 4,300 MW is available with deficiency of 2,900 MW and the government had to purchase power from the neighbouring States at an average price of

Rs.5.60 per unit by incurring huge expenditure. Therefore, installation of additional capacity of 6,000 MW is required towards lift irrigation schemes and another 6,200 MW to provide nine hours supply during the day time to the farming sector. Though there is sufficient power supply available outside the State, due to the non availability of transmission corridor, the State is unable to purchase the power to meet the ultimate demand of 15,100 MW and therefore generation of adequate electrical power is of immediate requirement. The entire country knows that the farmers are committing suicide in the State due to acute drought conditions, heavy crop losses, failure to repay loan and inability to have adequate food. It is stated that in such critical situation the matter was raised in the State Assembly and the State Government approached the Central Government which is the sanctioning authority and on a positive signal from the Central Government the State Government commenced the procedural formalities. There was a huge public support to the project. In order to meet the partial demand of 15,100 MW electrical power and avoid the delay, the third respondent – project proponent has proposed to establish 4 x 270 MW Bhadradi Thermal Power Station through BHEL who have assured to complete the project in 24 months and therefore the preliminary civil works have been taken up after completion of EIA study within 10 km radius of the project site and also preparation of draft EIA and EMP reports as per the TOR issued by MoEF & CC dated 23.6.2015 and therefore it has become necessary to complete the work on fast track with enormous support from the public.

18. The State Government acquired land as per the Land Acquisition Act. Out of 936.92 acres required for the project, 90% is the government land and rest 10% was acquired from the public by following due process of law. The land owners, whose lands were acquired, were awarded compensation and the amounts were already deposited in their accounts and there was no objection from the land owners and it is due to the above critical and unavoidable circumstances the State Government took initiative of setting up of a proposed power project which was only after the issuance of TOR and after the completion of draft EIA report.

19. It is further stated by the third respondent that for the proposed coal based thermal power plant at Ramanujavaram, the MoEF & CC has issued TOR on 23.6.2015 and as per the TOR, EIA study has been taken up and completed by September, 2015

through Vimta Labs, Hyderabad, the Environmental Consultant of the third respondent – project proponent. The draft EIA and EMP report for conducting public hearing was prepared and submitted to the Board on 3.2.2016. The Regional Office of the Board has issued public notification in “Namasthe Telangana” – Telugu Daily and in “The Hindu” English Daily dated 14.2.2016 and wide publicity was given for conducting public hearing on 17.3.2016. The contract for completion of the work was awarded to BHEL for Rs.5044 Crores and an advance of Rs.452.04 Crores has already been paid with an undertaking that the project will be completed in 24 months time. It is specifically admitted that the civil foundation works have been commenced in the month of September, 2015 which according to the project proponent is only after completion of EIA study as per the TOR issued by MoEF & CC to save time. While stating that the applicant represented by its General Secretary is neither a Teacher nor a Journalist or a Lawyer but is in the habit of making baseless allegations against the Government, it is the case of the third respondent that the present application filed under Section 14(1) of the NGT Act is with a mala fide intention.

20. While admitting that the proposal in Form – I along with the pre-feasibility report was submitted by the third respondent for the grant of TOR for the said project on 3.2.2015, it is stated by the third respondent that the EIA studies were completed, including preparation of draft EIA and EMP report in September, 2015 by Vimta Labs Ltd and it was only after completion of EIA study the construction works were commenced. It is also admitted that in the EAC meeting held on 19th and 20th May, 2015 the committee required certain clarification and thereafter it has recommended for the issuance of TOR in its 36th meeting and accordingly MoEF & CC has issued TOR on 23.6.2015. It is stated that the third respondent as well as BHEL are all governmental organisations and there is definitely no *mala fide* intention in violating any law and it is a known fact that obtaining EC is a general process and it takes time and therefore the EIA was prepared in advance. It is also stated that it was after TOR was received, civil foundation works were commenced in the interest of public and it is undertaken by the third respondent that all environmental parameters, as prescribed by the MoEF & CC and the Board will be complied with and the unit will be commenced only after obtaining EC. It is also stated that steps have been taken to obtain approval from the Ministry of

Power. It is further stated that about 304 acres of land, out of 936.92 acres has been earmarked for green belt development which is about 33% of the total area of the proposed project. As per the TOR condition, the boundary of the plant is to be kept at a minimum of 500 m distance from HFL of rivers/streams etc. and the plant boundary is proposed at a distance of 800 m from the HFL of Godavari river. It is further stated that the plant is not falling within 10 km radius of any National Park, Sanctuary, Elephant, Tiger reserve, migratory routes/wildlife corridor etc. No trees are being cut or damaged to commence the civil work and it is a barren agricultural land. It is also reiterated that due care will be taken not to disturb or disrupt the environment or cause any damage or hazard.

21. The paper publication was given for public hearing on 17.3.2016 and the EIA studies within 10 km radius of the proposed project have been completed in September, 2015 and when once the public consultation process is completed, the on-line application along with the final EIA/EMP study will be submitted to MoEF & CC. There is no impact on conducting an objective study. It is also not true that the villagers have objected the acquisition of land and on the other hand the villagers have been wholeheartedly accepting the project, since it is in favour of the community at large. Therefore, there is no loss of land to the land owners. By virtue of the Government Order not only adequate compensation have been paid but also 300 eligible persons among the land owners, whose lands were acquired, were assured to provide permanent employment in the proposed project. There is no complaint from any of the villagers. The third respondent has also undertaken that the unit will be put into operation only after obtaining EC and "consent" obtained under Water Act and Air Act from the Board. The legal grounds raised by the applicant have been denied and on the other hand it is stated that there is no harm caused to the environment and no environmental issue of public importance has been raised by the applicant.

22. In the affidavit filed on 7.4.2016, the third respondent - project proponent has stated that W.P.No.513 of 2016 filed on the file of the High Court of Telangana and Andhra Pradesh has been withdrawn. It is also stated that the public hearing took place on 17.3.2016. Eventhough in this regard the third respondent has chosen to state that public hearing has taken place pursuant to the orders of this Tribunal dated 26.2.2016, it

is relevant to note that in the order dated 26.2.2016 the Tribunal has not directed public hearing to be carried on. But in the said order, the statement made that public hearing is posted on 17.3.2016 and will be carried on in accordance with law, has only been only recorded. It is also stated that nearly 2,700 people participated from the surrounding villages during the public hearing conducted on 17.3.2016 and 27 members have given their opinion welcoming the project.

23. The third respondent – project proponent while filing objection to the Inspection Report of the Scientist of MoEF & CC dated 11.1.2016 has stated that while visiting the site on 9.1.2016 he has taken the photographs of the work carried out from September, 2015 to 30th December, 2015 based on which he prepared a report. While it is not objected that certain construction activities have been carried out, it is stated that when the Scientist visited the site, there was no work being carried on. While denying the report of the Scientist that EIA studies were not completed, it is reiterated by the project proponent that the agency appointed by them viz., Vimta Labs Ltd, has conducted EIA study from March 2015 to May 2015 and prepared the draft EIA and EMP reports. It is also denied that the construction work is being continued by the project proponent. It is also denied that during the visit of the Scientist the construction work was continued, many of the workers were not present but few of them were deployed at the site as well as in the material store yard. Few labourers who have been observed by the Scientist are only Watch and Ward engaged by their sub-contractor viz., BHEL while it is true that heavy machineries, vehicles and equipments were kept in the project site it is stated that they are kept in idle position. While it is true that some civil foundation works have taken place in the main power house – Block – I but the instances of work stated by the Scientist is repudiated by the project proponent. While it is true that certain activities were commenced from September, 2015, it is only after the EIA and EMP report was prepared. It is stated that the project is taken up in public interest by the third respondent as per the directions of the State Government and the works carried out are still below ground level and no structure or equipment are erected or in position. While repudiating the claim of the Scientist that there is a waterbody in existence, the project proponent has stated that the project site which is situated on the right side of the road from Manuguru to Eturunagaram is at lower level than the area located on the left side

of the road. There are agricultural lands on the left side of the road and for draining out the excess water in the agricultural fields, there is a culvert across Manguru – Eturunagaram Road. The excess water generated from the agricultural fields passes through the said culvert and it stagnates in the above area and it is not a water spread area and when once the construction work gets resumed, proper drainage arrangements will be made. It is also denied that the project proponent has not obtained fuel linkage and water linkage. In this regard it is stated by the project proponent that the State Government has accorded approval vide G.O.Ms.No.3 dated 7.1.2015 for drawal of 1.4 TMC of water per annum from Godavari river situated 5 km from the plant site. In respect of fuel linkage MoU has been entered with Singareni Collieries Co. Ltd, for supply of 4.20 MTPA of coal. It is reiterated that there is no water body which is in existence and all the documents including Satellite Imagery/land pattern have been given in Form – I which were submitted to MoEF & CC on 3.2.2015 through on-line.

24. Mr.T. Mohan, learned counsel appearing for the applicant submitted that while it is true that the project proponent has made the application in Form – I on 3.2.2015, it remains a fact that the EAC in the meeting held on 23rd and 24th February, 2015 deferred the proposal and asked for further information and ultimately it was only in the meeting held on 19th and 20th May, 2015 the recommendation was given for the issuance of TOR and even in the said recommendation there was a direction to the project proponent to find out the feasibility of installing Super Critical Technology and in the event of proposal of sub critical technology, prior approval should be submitted and EIA/EMP should be prepared accordingly. In such circumstances, it is certainly not open to the project proponent to presume as if EC will be issued and proceed with the construction activity. In any event, he has submitted that as per the EIA Notification, 2006 which categorically stipulates requirement of prior EC as mandatory and unless and until such prior EC is granted, any activity done by the project proponent, except to fence the area for protection from encroachment, will have to be held as totally illegal and therefore any construction put either underground or above ground level must be directed to be demolished so as to enable the EAC to make a comprehensive study while making an appraisal of the proposed project. The learned counsel has also

submitted that when admittedly the project proponent has prepared EIA/EMP report even before the TOR was given and contract entered accordingly with Vimta Labs Ltd., Hyderabad, such activity shows not only the arrogant attitude of the project proponent not even thinking about following of the EIA Notification, 2006 but also such EIA study without obtaining TOR has no legs to stand on its own in the eye of law. It is his submission that by the illegal conduct of the project proponent a *fait accompli* situation has been created and it virtually prevents the EAC to make a proper appraisal study. The very conduct of the project proponent in making EIA study even before TOR makes the entire attitude of the project proponent illegal for the reason that the on-line data has been collected by the project proponent for preparation of EIA before issuance of TOR. Even if it is the case of the project proponent that it is the need of the people of the area, the project proponent being a governmental organisation, which is expected to be a role model, cannot be permitted to defy law. He has also submitted that the interim order passed by this Tribunal has not been obeyed in the strict sense and has also extensively quoted the report of the Scientist of MoEF & CC to show as to how there is not only a defiance but the project itself is not viable. He has also specifically stated that in the project site that there is a waterbody in existence and in such circumstances the project can never be approved. There is abundant evidence as it is seen from the affidavit filed by MoEF & CC itself that the third respondent – project proponent has been giving misleading information. The conduct of the project proponent in approaching the High Court when the matter has been pending before this Tribunal also shows the scant respect the project proponent, which is a governmental organisation, is having towards the Tribunal. The governmental organisation must at the first instance give fullest respect to the law of the land. He has also submitted that the plea of *locus standi* cannot be raised by the project proponent at all when once it is admitted that the project proponent has proceeded to the construction activity before the EC was granted. He also submits that the project proponent must be made criminally responsible for acting against the provisions of the EIA Notification, 2006 and consequently committed breach of Environment (Protection) Act, 1986. In spite of the *prima facie* fact that the project proponent has committed serious criminal offence and illegality, neither the Board nor the MoEF & CC has taken any step against the officers

of the project proponent. He submits that for having committed such illegal activity, the Tribunal should invoke "Polluter Pays" principle and impose heavy penalty, apart from directing the project proponent to restore the project area to its original position. He has also relied upon the judgment of the Hon'ble Supreme Court in VELLORE CITIZENS WELFARE FORUM VS. UNION OF INDIA (1996) 5 SCC 647). He also relies upon the judgment of the Principal Bench in *S.P. MUTHURAMAN'S* case to contend that by the illegal conduct of the project proponent, the appraisal by EAC is made impossible and therefore by following the judgment in *S.P. MUTHURAMAN'S* case order should be passed.

25. Per contra, it is the contention of Mr R. Thiagarajan, learned Senior Counsel as well as Mr. Ramachandra Rao, learned Additional Advocate General of the State of Telangana and Mr. Y. Rama Rao and Mrs. Priya Iyengar all appearing for the third respondent – project proponent by referring to the documents of the case that Telangana is a newly formed State with effect from 2nd June, 2014 and the infrastructure development is of immediate necessity at least to avoid death of farmers for want of water for irrigation for which the source is electricity. They have also submitted that out of the project area of 936.92 acres, 814 acres is the government land and the remaining have been acquired. The contractor viz., BHEL which is also a governmental agency has taken up the preliminary civil work only in 1.845% of the total land after obtaining TOR from MoEF & CC and therefore it is not correct to state that the project proponent has made a *fait accompli* situation. Otherwise it is the case of the learned counsel that the construction work are only at the preliminary stage and above the ground level there is no construction. It is not as if the EAC has rejected the proposal in February, 2015 only. It required some more particulars and after furnishing the same in May 2015 the MoEF & CC has granted TOR which has addressed all relevant environmental concerns for preparation of EIA report by the project proponent. In fact, the TOR specifically states that the waterbody/nalla passing across the site should not be disturbed as far as possible and even if any diversion is made, it should not disturb the natural drainage pattern of the area. They have also submitted that the EIA study had stated that there is a proposal to divert Nalla without disturbing the natural drainage pattern of the area and this can always be assessed by EAC at the time of appraisal. It is also totally

denied by the learned counsel that there is a waterbody located near the site. The revenue records and other governmental records do not show the existence of any water body. On the other hand, there is a culvert across the road leading from Ramanujavaram, Eddulabayyaram and on the left side there are agricultural fields and the site is situated on the right side of the road which is at the lower level of the agricultural field. Therefore, the excess water generated from the agricultural fields passed through the culvert and stagnated on the low lying area of the project site and therefore it is not a water body as such. The HFL of river Godavari is 800 m away from the project site. It is not a wetland and false and vague information is given by the applicant as if wet lands are being used for the project. It is also stated that immediately after the Tribunal has passed order of status quo on 12.12.2015, from 14.12.2015 all works have been stopped even though the vehicles and other materials are still lying at the work spot. The learned counsel has also submitted that the report of Dr. Karupiah dated 11.1.2016 is contradictory as in one place it is stated that the work is being continued and in other place it is stated that the workers are not present and he misunderstood the Watch and Ward, looking after the security of the area, as workers and therefore the report is incorrect and should not be taken note of. They have also submitted that even in the public hearing conducted on 17.3.2016 there was absolutely no objection for the project to come up in the area, as the people are eager to have electricity supply for irrigation purposes. When once the public hearing is completed, the EAC must be permitted to proceed with the appraisal, which is a statutory requirement and therefore the interim order is against the very purpose of the EIA Notification, 2006 and therefore they submitted that not only the application must be dismissed the interim order of status quo also must be vacated so as to enable the appraisal process to go on.

DISCUSSION & CONCLUSION:

26. We have heard the learned counsel appearing for the applicant as well as the learned counsel appearing for the respondents, particularly the third respondent – project proponent in detail and referred to voluminous records and pleadings placed before us and given our anxious thought to the issue involved in this case.

27. On a perusal of the entire documents and arguments advanced, the following issues arise for our consideration:

- 1) Whether the third respondent - project proponent must be directed for restoration of the area, by demolishing of the construction put up by them in furtherance of the proposed project and consequently not to permit the EAC to proceed with the appraisal of the project till restoration?
- (2) Whether the third respondent – project proponent should be made liable under “Polluter Pays” principle?
- (3) Whether suitable action must be directed to be taken against the officers of the project proponent for violating Air Act and Water Act, apart from EIA Notification, 2006 and Environment (Protection) Act, 1986?

28. **Issues 1 & 2:** It is an admitted fact that the third respondent – project proponent for the purpose of developing 4 x 270 MW Bhadradi Thermal Power Plant at Ramanujavaram, Eddulabayyaram and Seetharamapuram Villages, Manuguru and Pinapaka Mandals, Khamman District, Telangana State has made a proposal in the prescribed Form – I under the EIA Notification, 2006 to the MoEF & CC on 3.2.2015. The proposal was considered by the EAC in its 32nd meeting on 23rd and 24th February, 2015 and after discussion the committee required additional information from the third respondent which are relating to

- (i) minimum two alternate potential sites on a topo sheet
- (ii) optimize the land requirement as per CEA norms
- (iii) revise the plant layout by shifting the locations of ash pond and township
- (iv) examine the feasibility of switching to super-critical technology and accordingly, revise the configuration of proposed units

As per the original proposal three sites were examined out of which Site Nos.2 and 3 were not considered, as they fall within the Reserved Forest area and the first site which is the subject matter of the project is 1183.24 acres, out of which for thermal power plant an extent of 1110.38 acres have been earmarked and for future expansion of solar

power plant 72.86 acres have been left out. The Kinnerasani Wildlife Sanctuary is at a distance of 10.8 km in south west direction and the total estimated project cost is approximately 7,360.21 Crores. The coal requirement for the project will be 4.07 MTPA, out of which 50% will be domestic coal and the remaining 50% will be imported coal at 85% PF with GCV of 4550 Kcal/kg and 3.24 MTPA of 100% imported coal at 85% PLF with GCV of 5700Kcal/kg. The coal proposed to be imported is from Indonesia or imported from other countries. The ash content of indigenous coal and imported coal will be 40% and 15% respectively and the total water requirement of 4155 m³/h (1.4 TMC/annum) to be sourced from river Godavari. Till such requirements were fulfilled, the proposal was deferred in the 32nd meeting.

29. Subsequently, in the 36th meeting of the reconstituted EAC (Thermal Power Plants) held on 19th and 20th May, 2015 the proposal of the third respondent was again considered, after receiving the information sought for in the minutes of the 32nd meeting and considering the following information submitted by the project proponent viz.,

“ A number of sites were surveyed in various Districts of Telengana State for establishing proposed TPP. But no suitable site having rail connectivity, availability of water source and good road connectivity is identified other than three sites including the proposed one. Though site -2 & site -3 (two sites) are also suitable for establishing the proposed TPP in view of area advantage to rail connectivity, nearby water source and road connectivity, they were not considered as they are falling within the eco-sensitive zone of Kinnerasani wild life sanctuary. Finally, the site -1 at Manugru is selected for establishing the proposed TPP due to availability of about 87% of Government lands, 13% of Patta lands and basic inputs such as rail connectivity, availability of water source from Godavari River and good road connectivity to nearest State Highway connecting Eteru Nagaram and Manuguru town.

(ii) The land required for establishing the 4 x 270 MW TPP including green belt has been optimised and worked out to be 936.92 acres (492.88 + 165.42 + 278.62) as against actual requirement of 1177.20 Acres as per CEA norms.

(iii) An extent of 149.55 acres (67.84+15.62+66.09) has been excluded and ash dyke boundary is shifted away from the forest area and Perantala Cheruvu on south side of the Block-II. An extent of 62.44 acres has been excluded and shifted township boundary 500 m away from the Godavari River.

(iv) A note was furnished by the Government of Telengana vide letter dated 15.04.2015 justifying the setting up of 4 x 270 MW sub-critical power plant. As there is acute shortage of power in Telengana State, the State Government has directed TSGENCO to establish 4 x 270 MW Thermal Power Station at Manuguru to meet power demand in the Telengana State in view of the assurance given by M/s.BHEL to complete the project in two years period on fast track mode. TSGENCO will ensure the stipulation of MoEF & CC, GOI and TSPCB suitably for Sub- Critical technology,”

the Committee took note of the latest orders of CEA/Ministry of Power for allowing only super critical technology and if the project proponent is not able to propose the said

technology, exemption must be obtained from CEA and if the project proponent is not able to propose 33% of the area as green belt, which is required, the EAC in the said 36th meeting has recommended issuance of TOR in addition to the standard TOR for undertaking a detailed EIA study and preparation of EMP, subject to the following conditions:

- I. Shall explore the feasibility of installing Super Critical Technology. If subcritical is proposed, prior approval of MoP shall be submitted. Accordingly, the EIA/EMP shall be prepared.
- II. Action plan for development of green belt in 33% of the area and thick green belt between the Road and the River.
- III. Green belt plantation should be started as soon as possible, before starting any construction activity.

It is based on the said recommendation, the MoEF & CC in the communication dated 23.6.2015 has issued TOR for preparation of final EIA/EMP report by the project proponent with various conditions and details. The said communication also states that EC shall be applied only after fuel and water linkages are firmed up. It further states that after preparing the draft EIA/EMP covering the issues mentioned in the TOR, the same shall be submitted to the Board for conducting public hearing as per EIA Notification, 2006 and the final EIA/EMP report after incorporating the issues emerged during public hearing along with the public hearing report and other requisite documents including objections, if any, raised during public consultation process to be submitted to the Ministry for appraisal by EAC for consideration of awarding EC under EIA Notification, 2006. The communication further states that the TOR is valid for three years from the date of issue. The documents filed by the third respondent include the draft EIA which shows that the draft EIA was prepared by the third respondent through its agent Vimta Labs Ltd. The draft report states

“The report has been prepared in line with the prescribed TOR issued vide letter No.J-13012/02/2015-IA-II(T) dated 23.6.2015 by Ministry of Environment, Forst and Climate Change, New Delhi.”

Therefore, the case of the applicant, as submitted by the learned counsel, as if the project proponent has prepared draft EIA report even before TOR was issued, has no basis. The mere fact that the third respondent has placed a purchase order with Vimta Labs Ltd., on 29.11.2014 which is before the date of TOR issued in which it is stated

that the form was prepared and EIA to be furnished within five months time and the terms of payment have also been referred to, does not mean that the draft report prepared by Vimta Labs Ltd on 5.2.2016 was not in accordance with the issues referred in TOR issued by MoEF & CC on 23.6.2015. In the draft report of February 2016 which was much after the TOR was issued by MoEF & CC on 23.6.2015, while referring to the mitigation measures in respect of land use (impact of land use) it is also stated that the total project area is 936.92 acres, consisting of 87% of government land and 13% of private land. The land use of the project area consists of 80% single crop agricultural land and balance 20% covered with roads and drainage system etc. It also states that the proposed site does not involve any forest area and grazing land. It further states that two nallas are flowing through the proposed project site area i.e., one nalla in the power house block and second in the ash pond area. It is proposed to divert the nallas along with the project boundary without affecting its natural drainage pattern. The draft report also enclosed diversion map.

30. The order of status quo granted by this Tribunal dated 12.12.2015 is in respect of further proceeding with the project which continued till date. It is true that in the mean time the project proponent has approached the High Court by filing W.P.513 of 2016 against the interim order passed by this Tribunal dated 12.12.2015 and ultimately the writ petition on the file of the High Court of Andhra Pradesh and Telangana came to be withdrawn. It also remains a fact that in the mean time, based on the above said draft EIA submitted by the project proponent and sent to the Board, the Board has conducted a public hearing on 17.3.2016 in the premises of Bhadradi Thermal Power Plant near Pylon area, Seetharampurm (V), Uppaka (G), Pinapaka (M), Khamman District and the proceeding was conducted by the District Collector and after the public hearing the entire papers as well as representations received have been sent by the second respondent Board to the first respondent along with the covering letter dated 29.3.2016 and as we have directed in our order dated 7.4.2016 the first respondent not proceeded with the appraisal and the appraisal has not been done and the proposals are lying at that stage only.

31. In the reply filed by the second respondent Board, based on an inspection conducted by the Environmental Engineer on 24.5.2016 the Official of the Board has made the following observations during the time of inspection:

- “1. The industry is not carrying any construction activity
2. There is no workers mobilization within the premises
3. Concrete transit mixers & cranes are existing in the site but not in use
4. Generators, IP & HP turbines of the power plant are observed within the premises
5. There is no construction/work activity for following:
 - Laying of internal road (metal poured)
 - Foundation works of turbines, boiler house, ESPs and chimneys
 - Excavation work for cooling towers, switch yard
 - Batching plants are not in operation as observed during inspection
 - No activity in the material stock yard (Project materials)”

Eventhough as per the report it appears that there has not been any work carried out on the spot where the unit is to come up, it is not disputed or rather admitted by the third respondent that anticipating EC, certain construction activities have been carried on. The photographs produced by both the parties show that there has been site levelling activities, road formation, construction work below the ground level for the proposed boiler etc. Therefore, it is in the light of the admitted position that before the EC was granted the third respondent project proponent has proceeded with the construction activities, if not commencing the activities of the proposed unit, we have to consider the case.

32. In the EIA Notification, 2006 which is a statutory notification issued in accordance with the Environment (Protection) Act, 1986, Clause 2 makes it abundantly clear that prior EC is required before starting any activity. Further Clause 6 of the EIA Notification reads as follows:

- “6. Application for prior Environmental Clearance (EC).—(An application seeking prior environmental clearance in all cases shall be made by the project proponent) in the prescribed Form 1 annexed herewith and Supplementary Form 1 –A, if applicable, as given in Appendix II, after the identification of prospective site(s) for the project and/or activities to which the application relates, before

commencing any construction activity, or preparation of land, at the site by the applicant. The applicant shall furnish, along with the application, a copy of the pre-feasibility project report except that, in case of construction projects or activities (Item 8 of the Schedule) in addition to Form 1 and the Supplementary Form 1-A, a copy of the conceptual plan shall be provided, instead of the pre-feasibility report.”

It makes explicit that even application is to be made in Form – I before commencing any construction activity or preparation of land at the site. Therefore, except for the purpose of protecting land earmarked for the purpose of proposed project from being encroached by the outsiders, the project proponent shall not proceed with any activity and as per the EIA Notification, 2006 prior EC is a mandatory requirement. Under the EIA Notification, 2006 there are four stages viz., screening, scoping, public consultation and appraisal. Admittedly the project in question being “A” category” it is to start with the “scoping” and therefore MoEF & CC, based on the proposal given by the project proponent, through its EAC, has granted TOR which is in the “scoping” stage. In fact, even at the “scoping” stage itself, the regulatory authority viz, MoEF & CC can reject the proposal based on the recommendations of the EAC.

33. On the factual and admitted matrix of this case, the MoEF & CC has not rejected the proposal at the ‘scoping’ stage and therefore it should follow the “public consultation” process which contains components of “public hearing” and “receiving representation” and that stage has also now passed through, leaving only the last stage of “appraisal” to be done by EAC either to recommend or not to recommend to the regulatory authority viz., MoEF & CC to grant EC for the proposed project. Therefore, the conduct of the third respondent in proceeding with the construction activities, including laying of roads etc., is certainly not in accordance with the terms and spirit of the EIA Notification, 2006 and mandatorily only after obtaining prior EC the third respondent should have proceeded with any such activity. The fact remains that the final EIA has also been prepared by the project proponent.

34. The question is as to whether by making such preliminary construction activities, the project proponent has made it as *fait accompli* situation and virtually prevented the EAC from making appraisal which is in the form of Impact Assessment.

35. Much reliance is placed on the decision given by the Principal Bench of this Tribunal in *S.P. Muthuraman's* case. That was also almost a similar case as that of the present issue before this Tribunal, however, with a slight difference that there it was construction of multi storeyed building which required prior EC from SEIAA as it is a 'B' category project as per Clause 8 of the Schedule annexed to the EIA Notification, 2006 and the project proponents have completed construction without obtaining EC merely based on certain communication by the developmental authorities and also based on some official memorandum issued by MoEF & CC granting ex-post facto approval which was the subject matter of challenge before the Principal Bench. While considering a specific issue as to whether under such facts and circumstances wherein construction has been completed without prior EC whether the Court/Tribunal should proceed to demolish the construction. The Tribunal adopted a more practical approach holding that it is not advisable to direct complete demolition of such property and applied the "sustainable development" and "precautionary" principles. In fact, the Principal Bench has referred to various other decisions, including that of the Apex Court to arrive at such a practical approach. It is relevant to extract the following paragraphs from the said judgment:

"153. Wherever anyone violates the law and flouts the directions issued by the regulatory authority and other concerned authorities, commences construction without even applying for Environmental Clearance and completes the project or activity extensively, two fold consequences would follow. First, that it would render itself liable for imposition of penalties for contravention of the Act, Rules, Orders and directions in terms of Section 15 of the Act of 1986. The other, for issuance of directions in regard to the demolition of grant of consent subject to such conditions as may be considered appropriate by the authorities or the Tribunal. Tribunal exercising its appellate power and original jurisdiction in terms of Section 14 and 16 of the Act of 2010, has the powers of merit and judicial review and is competent to issue such directions as it may deem necessary in terms of the said provisions including Section 18 of the NGT Act, 2010. The Court and Tribunals, particularly, in such cases of *fait accompli* have adopted a more practical approach which would permit the remaining work of the project to be completed while providing stringent safeguards in the interest of the environment as well as issuing orders which would vest the project proponent with civil consequences. In the case of *Sterlite Industries (India) Ltd. vs. Union of India (UOI) and ors.* (2013) 4 SCC 575, Supreme Court held that the appellant company was liable to pay compensation of Rs.100 crores for polluting the environment and operating its industry without renewal of consent by the Board. In this case, industry had obtained consent to operate from the Board prior and subsequent to the period when it operated without consent of the Board. After passing of the judgement of the Supreme Court in this very case, the Tribunal directed the industry to take precautionary measures as well as directed the Pollution Control Board to impose more stringent conditions while permitting the industry to operate (*M/s.Sterlite Industries (India) Ltd. vs Tamil Nadu Pollution Control Board*, 2013 (ALL (I) NGT REPORTER (DELHI) 368).

154. Further, in the case of *Sarang Yadvadkar and Ors v. The Commissioner, Pune Municipal Corporation and Ors.* 2013 ALL (I) NGT REPORTER (DELHI) 299, the Tribunal had passed remedial and prohibitory directions in the project underway. The Corporation was constructing elevated road in the floodplain. Major part of the project

had already been constructed. The Tribunal directed partial demolition of the raised structure and further directed the Corporation to construct the bridge on pillar so that there was no obstruction to the free flow of water and the course of the river was not adversely affected. This order of the Tribunal was challenged before the Supreme Court in Civil Appeal No.3445 of 2015 and was dismissed by the Supreme Court vide its orders dated 12th February, 2015.

155. In somewhat similar situations like the one in hand, the Tribunal in the case of Forward Foundation vs. State of Karnataka and ors. Original Application NO.222 of 2014 decided on 7th May, 2015, where the project proponents had raised the construction on the wet lands and the Rajakaluves (storm water drains) affecting the same, without obtaining prior Environmental Clearance. The Tribunal while appointing a special Committee referred to it various questions relating to environment and ecology and prohibited the project proponents from creating any third-party interests. The Tribunal further imposed 5 percent of the project cost as environmental compensation on project proponent for degrading and damaging the environment and ecology of the area in question and had required the Committee to submit a report to the Tribunal. The project proponent in this case, had preferred a statutory appeal before the Supreme Court and inter alia took up the plea that they were not heard on merits and imposition of penalties was not proper. The Supreme Court vide its order dated 20th May, 2015 passed in the case of Core Mind Software and Services Pvt. Ltd. vs. Forward Foundation and Ors., Civil Appeal No.4829/2015, granted liberty to them without setting aside the judgement and various directions issued by the Tribunal and also to approach the Tribunal for recalling of Order and in the meanwhile stayed the direction pertaining to payment of compensation. The order of the Supreme court reads as under:

“ORDER

One of the main contentions raised by the appellants in these appeals is that though the Tribunal had heard the matter only on preliminary issues and no arguments on merit were advanced, final judgement decides the merits of the disputes as well and above all a penalty of Rs.117.35 crores against original Respondent No.9 (the appellant in C.A.No.4832 of 2015) and Rs.22.50 crores against original Respondent No.10 (the appellant in C.A.No.4829 of 2015) is imposed.

On the aforesaid averment, we feel that it would be more appropriate for the appellant to file an application before the Tribunal with the prayer to recall the order on merits and decide the matter afresh after hearing the counsel for the parties, as the Tribunal knows better as to what transpired at the time of hearing.

With the aforesaid liberty granted to the petitioners, the appeals are disposed of. Certain preliminary issues are decided against the appellants which are also the subject matter of challenge. However, it is not necessary to deal with the same at this stage. We make it clear that in case the said application is decided against the appellants or if ultimately on merits, it would be open to the appellants to challenge those orders by filing the appeal and in that appeal all the issues which are decided in the impugned judgement can also be raised.

The counsel for the appellants state that they would file the requisite application within one week. Till the said application is decided by the Tribunal, there shall be stay of the direction pertaining to the payment of aforesaid penalty.

Mr.Raj Panjwani points out that the Tribunal has allowed the appellants to proceed with the construction only on the payment of the aforesaid fine/ penalty. We leave it to the Tribunal to pass whatever orders it deems fit in this behalf, after hearing the parties.”

156. The Applicants filed an application before the Tribunal upon which notice was issued, whereby the Tribunal while continuing the stay on the condition of payment of compensation, directed the Committee to file its report before the next date of hearing in terms of the judgement.

157. From the above judgements of the Supreme Court and the Tribunal, it is clear that in cases of the present kind, it would not be advisable to direct complete demolition of such properties. The project proponent claim to have invested huge amounts in raising these projects where it had obtained permission from other authorities and most importantly interest of 3rd party have been created in these properties. The Tribunal has to take a balanced approach while applying the principle of sustainable development and precautionary principle. Even in the case of A.P. Pollution Control Board (supra), the Supreme Court, laid great emphasis on the precautionary principle on the premise that it is always not possible to judge the environmental damage. (Emphasis supplied)

The Tribunal has also appointed a Committee for the purpose of assessing the actual damages caused to the environment so as to finally decide about the "polluter pays" principle. It however, directed 5% of the total cost to be paid under the principle of "polluter pays". We are also informed that the said aspect of the judgment of the Tribunal has been confirmed by the Hon'ble Apex Court and in fact subsequently the Principal Bench has also permitted some other construction companies to complete the construction on payment of environmental compensation under "polluter pays" principle and directed the authority competent to issue EC.

36. Applying the above said principles to the facts and circumstances, of the present case, we have to keep in mind that the project proponent in this case is none other than a governmental organisation. As it is seen on record that the purpose of the project is to provide electricity particularly to the farmers for irrigation purposes and there is indisputable evidence to show that the newly formed State is starving for power and there has been large number of suicides committed by the farmers for crop losses. In such circumstances, whether it will serve any purpose in directing the third respondent which is otherwise a governmental organisation to pay any amount on "polluter pays" concept eventhough it remains a fact that at this point of time on the peculiar facts and circumstances of the case it is not for this Tribunal to decide as to whether it is possible for EAC to make a proper appraisal. After all it is for the EAC which has to appraise on a spot inspection to find out as to whether an impact assessment in appropriate manner is possible or not. There is always a check and balance viz., that when once the EAC decides that by virtue of the activities carried on by the third respondent – project proponent before obtaining EC the

EAC is unable to carry on proper impact assessment and that correct baseline data are unable to be procured because of the conduct of the third respondent, it will be always open to the EAC to recommend to the regulatory authority about the same and the regulatory authority can always pass appropriate orders, including rejection of the proposal. Therefore, the legal check is always available even at this point of time for the EAC to decide. But before EAC makes such a decision, we are of the considered view that it may not be an appropriate case where the third respondent, being a governmental agency, must be directed to pay on the "polluter pays" which is only again an amount to be paid from the State exchequer viz., money of the common man. The position will be totally different if the project proponent is a private individual. Further, it is not the case of the applicant anywhere that by virtue of the conduct of the third respondent in carrying on such activities any environmental disaster has taken place. It is always open to the regulatory authority not to grant the EC or grant the EC with additional conditions to remediate the damage caused, if any depending on the outcome of spot inspection and appraisal by the EAC.

37. In such view of the matter, we are of the considered view that at this stage, it is not possible for this Tribunal to direct demolition of the entire structure stated to have been put up by the third respondent – project proponent and invoke "polluter pays" principle against the third respondent except to issue certain directions to the EAC to proceed with the appraisal and decide at the first instance as to whether the appraisal is possible in an appropriate manner because of the conduct of the third respondent in proceeding to carry out certain activities. In the event of EAC deciding that by virtue of the activities of the third respondent carried on before obtaining EC, an impediment has been created, resulting in the inability of carrying on the appraisal, the EAC shall recommend that fact to the regulatory authority which shall be entitled to pass appropriate orders accordingly. Issue Nos.1 and 2 are answered accordingly.

38. **Issue No.3:** In so far as it relates to this issue, we have no hesitation to come to a conclusion that appropriate penal action must be taken against the officers concerned who are responsible for undertaking such construction

activities before obtaining EC in accordance with Section 15 of the Environment (Protection) Act, 1986. We are at a loss to understand as to why the Board has not chosen to take any penal action against the officials of the third respondent who are responsible for such activity under the Water Act and Air Act which empowers the Board to take such action. Even if the government is eager to proceed with the construction activity and complete the project early in its desire to fulfil the needs of the people, it is the officials of the third respondent who are expected to properly advise the government in order to enforce rule of law. If only such proper precautionary measures have been taken by the officers of the third respondent such *fait accompli* situation would not have arisen. The Executive has to bear the responsibility for such violation of law. Under these circumstances, we direct the second respondent to initiate appropriate prosecution against the officials of the third respondent in accordance with the powers conferred under the Water Act and Air Act. That apart, the authorities have to take appropriate criminal action under Section 15, 16 and 17 of the Environment (Protection) Act, 1986 which are as follows:

“15. Penalty for contravention of the provisions of the Act and the rules, orders and directions.—(1) Whoever fails to comply with or contravenes any of the provisions of this Act or the rules made or orders or directions issued thereunder, shall, in respect of each such failure or contravention, be punishable with imprisonment for a term which may extend to five years or with fine which may extend to one lakh rupees, or with both, and in case the failure or contravention continues, with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues after the conviction for first such failure or contravention.

(2) If the failure or contravention referred to in sub-section (1) continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to seven years.

16. Offences by companies—(1) Where any offence under this Act has been committed by a company every person who at the time the offence was committed, was directly in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the

offence and shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is, attributable to any neglect on the part of, any director manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

- (a) “company” means any body corporate, and includes a firm or other association of individuals; and*
- (b) “director” in relation to a firm, means a partner in the firm.*

17. Offences by Government Department.—(1) Where an offence under this Act has been committed by any Department of Government, the Head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this section shall render such Head of the Department liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a Department of Government and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any officer, other than the Head of the Department, such officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.”

Such action shall be initiated by the authorities expeditiously in any event within a period of four weeks from today and the prosecution to be completed expeditiously.

39. Accordingly the application stands partly allowed with the following directions:

(1) It is not possible to direct the third respondent – project proponent to demolish the structures already put up. However, the first respondent shall through EAC proceed with the appraisal in which event EAC shall take a preliminary decision as to whether proper impact assessment is possible by virtue of the activities already carried out by the third respondent.

(2) In the event EAC deciding against the project proponent, the same shall be communicated to the regulatory authority viz., the first respondent which shall pass appropriate orders. Both are to be decided expeditiously by the first respondent in any event, within a period of eight weeks from today.

(3) In the event of EAC deciding that the appraisal can be carried on, in spite of the activities carried out by the third respondent, the EAC shall proceed further and complete the process and issue appropriate recommendations to the regulatory authority which shall pass appropriate orders accordingly.

(4) Till such orders are passed by the regulatory authority, the third respondent shall maintain *status quo* in respect of the construction, making it clear that no activity shall be proceeded with till the orders are passed by the regulatory authority.

(5) The plea of invoking "polluter pays" principle is negated.

(6) The authorities competent, including the second respondent shall initiate appropriate penal action against the officials of the third respondent for the violation of EIA Notification, 2006 and Water Act and Air Act and such action shall be initiated within four weeks from today and the prosecution shall be expeditiously completed.

There shall be no order as to cost.

Justice Dr.P. Jyothimani

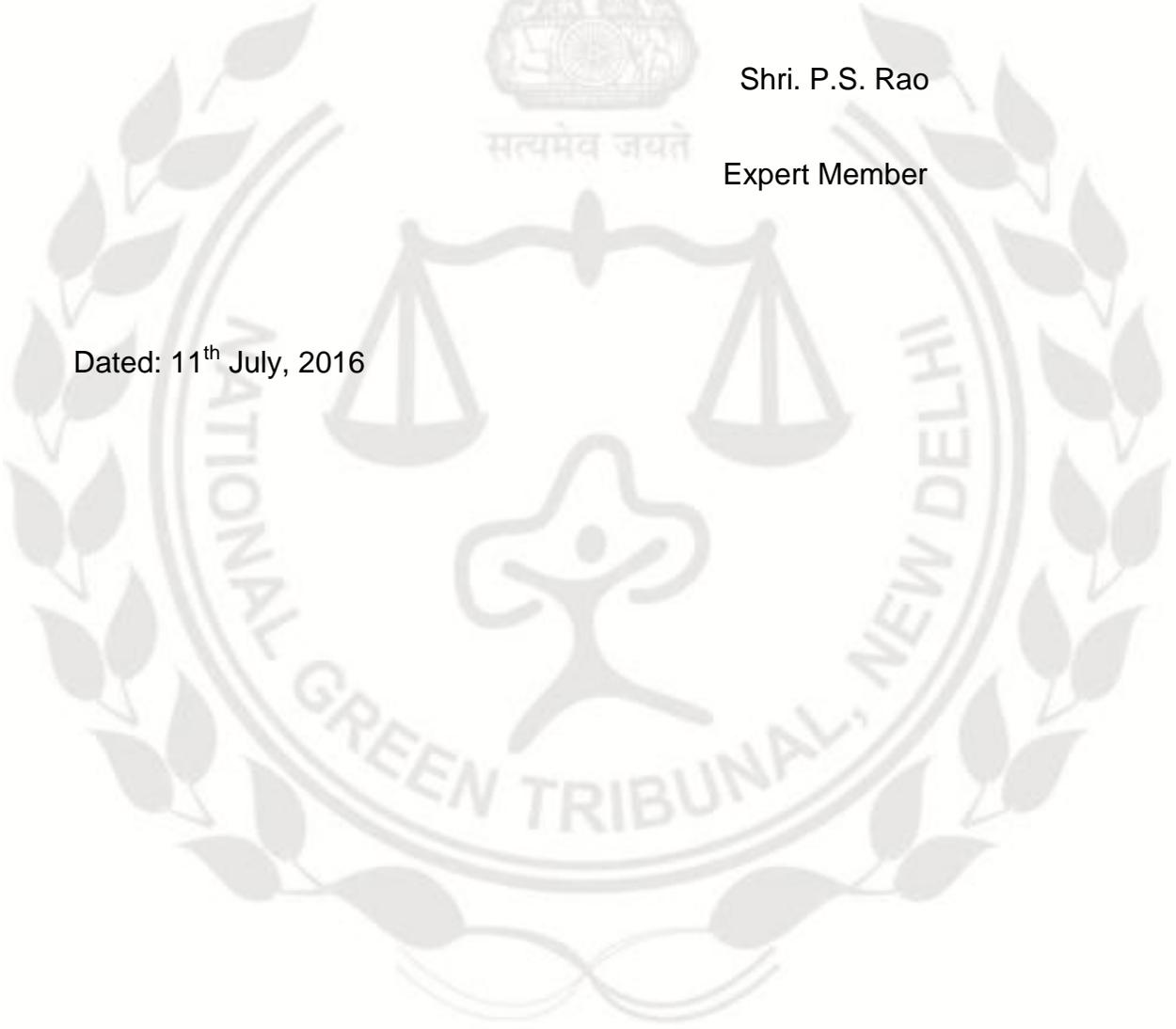
Judicial Member



Shri. P.S. Rao

Expert Member

Dated: 11th July, 2016



NGT