IN THE HIGH COURT OF DELHI AT NEW DELHI

WRIT PETITION (Civil) No. 9340/2009 &
CM APPL Nos. 7127/09, 12496/2009

UTKARSH MANDAL ..... PETITIONER
Through: Mr. Sanjay Parikh with
Mr. Ritwick Dutta and
Mr. Rahul Choudhary, Advocates

versus

UNION OF INDIA ..... RESPONDENTS
Through: Mr.A.S. Chandhiok, Addl. Solicitor General
with Mr. Atul Nanda, Mr. Bhagat Singh and
Mr. Nakul Sachdeva, Advocate for R-1/UOI.
Mr. Bhavanishankar V. Gadnis, Advocate for R-2.
Mr. Joaquim Reis with Mr. Santosh Paul,
Ms. Sabina Paul and
Mr. H.K. Bhat, Advocates for R-3.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE DR. JUSTICE S.MURALIDHAR

1. Whether reporters of the local news papers be allowed to see the order? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the order should be reported in the Digest? Yes

JUDGMENT
26.11.2009

S. Muralidhar J.(open court)

1. The challenge in this writ petition is to an order dated 14th October 2008 passed by the National Environmental Appellate Authority ('NEAA'), New Delhi dismissing the Appeal No. 12 of 2007 filed by the Appellant. The petitioners also seek the quashing of an order dated 26th July 2007 issued by the Ministry of Environment and Forests ('MoEF'), Government of India granting Environment Clearance to

M/s. Panduranga Timblo Industries, Margao, Goa, Respondent No.3 herein for renewal of the mining lease in respect of the Borga Iron Ore Mine (ML-II). The NEAA has in the impugned order affirmed the said order dated 26th July 2007 of the MoEF granting environmental clearance.

Background facts

2. The background facts leading to the petition are that the Respondent No.3 is the lessee of Borga Dongrachem Fall Mine [71.1980 hectares, TC No. 29/52] and Sociedade Timblo Irmaos Ltd is the lessee of Oiteiro Borga Do Bairro Queri Mine [89.5 hectares, TC No. 34/50]. The said mines produce 0.20 MTPA iron ore and are located at Village Rivona, Tehsil Sanguem in District South Goa in Goa. In the 1980s the leases were operated by Respondent No.3 for iron, manganese and ferro manganese. The mines are stated to have been worked till 1994. With the increase in the demand for iron ore from countries like China, South Korea and Japan, there was renewed interest in re-starting the mining operations. It is stated that on 13th January 2006 a Combined Mining Scheme along with a Progressive Mine Closure Plan was approved by the Government of Goa. On 17th April 2006 the Respondent No.2 applied for renewal of the lease which was due on 22nd November 2007.

The EIA Notification

3. On 14th September 2006 the MoEF issued the Environment Impact Assessment ('EIA') notification under Section 3 (1) and Section 3 (2) (v) of the Environment (Protection) Act 1986 ('EPA') read with Rule 5 (3) (d) of the Environment (Protection) Rules 1986 ('EP Rules'). The projects or activities falling under Category 'A' of the Schedule to the EIA notification were to mandatorily obtain "prior environmental clearance" from the MoEF. Category 'A' of the Schedule includes mining. In terms of the said notification, environmental clearance was to be obtained not only for new projects but for expansion and modernization of an existing project as well. In particular where mining was to take place in the area beyond 50 hectares, prior EIA clearance of the MoEF was mandatory. For mines over a smaller area and which fell in category 'B' of Schedule, approval was to be obtained from the State Environment Impact Assessment Authority.

4. In terms of the EIA Notification, the procedure for grant of EIA clearance involved:

(i) Preparation by the project proponent (in this case, Respondent No.3) of an Environment Impact Assessment (EIA) Report and Environment Management Plan (EMP).

(ii) For anyone wishing to raise any objection to the project, access to the Executive Summary and Environment Impact

Assessment Report at a designated place.

(iii) Notice by the State Pollution Control Board for a mandatory public hearing to be published in at least two local newspapers at least 30 days prior to the public hearing.

(iv) Evaluation of the EIA and EMP by the MoEF through its delegate, the specially constituted Expert Appraisal Committee (Mines) ['EAC (Mines)'].

(v) grant of approval or rejection of the permission by MoEF.

5. On 6th October 2006 the Office of the Controller of Mines in exercise of the powers under Section 5(2) (b) of the Mines and Minerals Development and Regulation Act 1957 read with the order dated 28th April 1987 of the Government of India, approved the progressive Mine Closure Plan in respect of Borga Iron Ore Mine (TC No. 34/50). It is stated that on 17th October 2006 the Controller of Mines also approved the mining plan. On 14th November 2006 the Executive Summary of the mining project prepared by the Respondent No.3 both in English and in Konkani along with annexures, drawings and forms were submitted for the purposes of public hearing held in terms of EIA notification.

6. It is not in dispute that the Executive Summary was received by the Gram Panchayat of Village Rivona only on 22nd January 2007 i.e.

only nine days prior to the date of public hearing which was scheduled on 31st January 2007. It requires to be mentioned here that a notice dated 15th December 2006 was issued by the Goa State Pollution Control Board (GSPCB), Patto Panaji Goa in the Indian Express dated 18th December 2006 stating that public hearing was proposed to be conducted by the GSPCB in respect of as many as 14 projects. The Borga Iron Ore Mine project was mentioned at Sl. No.9 in the list of 14 projects in respect of which public hearings were to take place at the same venue i.e. Vithal Niketan, Vithal Devasthan, Sangauem, Goa. Public hearings in respect of five mines (including the Respondent No.3) were also to be held at the same date and time i.e. 31st January 2007 at 11.00 am. The notice mentioned that "the copies of the Executive Summary containing the salient features of the project in Konkani/English, and Rapid EIA/BMP report submitted by the project proponent", i.e. Respondent No.3, would be made available for reference at six different offices including the Office of the Village Panchayat.

Public Hearing and objections

7. At the public hearing on 31st January 2007, 67 persons submitted objections to the restarting of the Borga mine. The minutes of the proceeding dated 31st January 2007 signed by the Member Secretary GSPCB as well as the Additional Collector noticed that 237 members of the public were present at the hearing. It further recorded the

individual objections of several persons. It noticed as under:

> "67 nos. of applications have been received from the public objecting restarting of the mine.
>
> Not a single application nor a single member of the public was in favour of restarting of the mine due to grave environmental and social damage."

8. On 2nd February 2007 GSPCB wrote to the MoEF forwarding a copy of the attendance sheet and minutes of the public hearing reflecting the concerns expressed by those present. A copy of the said letter was marked to Respondent No.3. A letter dated 1st March 2007 was written by the GSPCB to the Respondent No.3 giving copies of 79 letters/objections received from the public regarding the operation of the Borga mine. The Respondent No.3 was asked to note the objections and furnish its clarification to the concerned Regulatory Authority.

9. In the meanwhile on 9th March 2007 representation was made by 57 residents of Village Rivona and nearby villages to the Collector, South Goa purportedly supporting the renewal of the lease of the Borga mine. These persons protested that "they did not get the opportunity to put forth their views due to large noisy crowd brought by interested persons to oppose the mining project in the area of Rivona, Colomb and other parts, who did not allow others to speak."

10. It needs to be noticed at this stage that the Goa State Agricultural Marketing Federation, a private association of agriculturists, was also apparently opposed to the grant of environmental clearance for the Borga mining project. In a letter dated 29th/31st July 2007 addressed to the Member Secretary of the GSPCB it inter alia stated:

> "We are also aware that the mining activity in Goa has brought down the production of horticulture and agriculture commodities. Employment generation due to mining is of temporary nature and destroys infrastructure of Agri-Horticulture Industry. Natural resources are destroyed in due course of time. Mining activity leaves behind huge quantity of rejection spreading debris in forest areas pasture lands and nullahs. Bicholim Sanguem and part of Quepem talukas are the live examples of this pollution, besides people are affected on health grounds.
>
> To avoid the above mentioned natural hazards, we, the Goa State Agricultural Marketing Board having more than ten thousand producer members (nearly 75% small and marginal farmers) hereby object the proposed mining activity which was totally idle for the last 25 years.
>
> It is therefore, requested not to grant the environmental clearance/renewal of lease to the activities of projects notified in the notice."

11. On 9th April 2007 the Government of Goa wrote to the Inspector

General of Forests (Forest Conservation), Government of India, MoEF stating that the proposal of Respondent No.3 was recommended for clearance under Section 2 of the Forest (Conservation) Act 1980.

Response of Respondent No.3 to the objections

12. On 15th April 2007 Respondent No.3 submitted to the MoEF the entire set of documents along with its application for environmental clearance. In Column 48 of this application Respondent No.3 responded to the objections raised at the public hearing. One of the objections pertained to a civil litigation involving Respondent No.3, and that the latter had not paid the compensation for the damage caused to the fields of certain villagers and also had not desilted the nallahs which had been polluted on account of the operation of the Borga mine. In response to this objection, Respondent No.3 acknowledged that there had been a dispute between it and one Premanath Damodar Prabhu Dessai, who had filed Special Civil Suit No. 28/80/A in the Court of the Civil Judge, Senior Division, Quepem.

13. From the papers enclosed with the application filed by Respondent No.3 for vacation of stay in these proceedings, it appears that the said suit was for damages and compensation on account of silting of the nallahs. In an appeal filed by the Respondent No.3 at an interlocutory

stage an order was passed by the High Court of Bombay, Panaji Bench, Goa on 24th June 1996 whereby an agreement was recorded that the Respondent No.3 would stop mining operations in such portion of the suit mine as would affect the suit properties and the first report of desilting would be filed before the Civil Judge, Senior Division, Quepem on 31st August 1996 and thereafter, every month till the desilting operation was completed. It was noted that the suit has been pending since 1980 and the trial court was directed to expedite suit and dispose of the same by June 1997. Thereafter on 21st June 1997 a compromise decree was passed in the suit whereby the Respondent No.3 agreed to pay to the Plaintiff a lump sum compensation of Rs. 8 lakhs as settlement of the damages in respect of the properties and also pay in addition Rs.4.50 lakhs for the work of desilting the nallahs.

14. In response to the objection raised at the public hearing that the High Court's directions had been ignored and that no compensation has been paid, Respondent No.3 stated in its application that all the claims had been settled with the legal representatives of the original plaintiff that payment had been made for desilting the nallahs and since then the mine was not under operation. It was undertaken that "any damages attributed to this mine working, if certified by revenue authorities/agricultural experts, adequate compensation will be paid and necessary protective measures will be undertaken to prevent any

further damage." It was further submitted that "presently there are other mines operating within buffer zone and this mine is not under operation since 1994."

15. As regards the other objections of Gram Sabha, the Respondent No.3 contended that these were politically motivated and that the project proponent was "committed to take all protective measures listed in EIA/EMP." In response to the objection that the ground water was affected; that no water existed in the nallah due to operation of the mines; that the nallah had changed its course and that the springs for which the village was famous would be further destroyed, Respondent No.3 stated that since the mine was above the ground water table, the flow of nallah and its course had not changed and that since the mine was not in operation since 1994, no destruction was likely. As regards the objection that environmental clearance should not be granted in the larger public interest, Respondent No.3 stated that "larger interests of the people and national interests will be better served by operating mines carefully without affecting the environmental adversely." As regards the objection that eco-tourism was going to be affected and export of fruits would be banned due to the stringent phyto-sanitary norms, the Respondent No.3 replied that there were a number of mines in operation in the neighbourhood and that there was no such effect.

16. The above objections raised in the public hearing, and the response thereto of Respondent No.3, along with other documents, were placed before the EAC (Mines). It was headed by one Mr. M.L. Majumdar. The EAC met on 14th June 2007 when, according to Respondent No.3, a representation was made to the EAC by a representative of Respondent No.3 regarding the features of the project as well as the EMP submitted by it. The EAC okayed the proposal for environmental clearance. A note was prepared by the Director in the MoEF on 19th July 2007 for approval of the Minister of State (MOS) for Environment and Forests. The approval was granted by the MOS, MoEF on 24th July 2007. On 26th July 2007, a letter was issued by the MoEF to Respondent No.3 granting environmental clearance subject to certain conditions.

Proceedings before the NEAA

17. The grant of environmental clearance by the order dated 26th July 2007 was challenged by the Appellant before the NEAA by filing an appeal which has been dismissed by the impugned order. Before the NEAA, the Appellant challenged the grant of environmental clearance on three main grounds. The first was that the EIA report was defective/deficient. After considering the rival contentions of the parties on this aspect, the NEAA held that EIA report was not defective on the points raised by the Appellant. It was held that the EIA had largely covered "all the critical aspects of mining project."

18. The second ground was that the public hearing conducted by the Respondent No.2 was defective. Inter alia it was contended that the Gram Panchayat received the executive summary only on 22nd January 2008 i.e. nine days prior to the date of public hearing and that this was in violation of the requirement of 30 days' advance notice as stipulated by the EIA notification dated 14th September 2006. This was countered by Respondent No.3 by contending that the letter dated 9th March 2007 addressed to the Collector, South Goa by 57 persons of the Village Rivona and neighbouring villages showed that they had supported the project considering the job opportunities available to the villages. It was further pointed out that "there are nine other mines operating in the area and none of them is being opposed by the Appellant and operation of this mine alone is subjected to scrutiny." According to Respondent No.3 the objections to the mine were based on a 1984 report which had "since been made redundant by the orders of the High Court" in the civil suit referred to hereinbefore. As regards the objection of the Goa State Agricultural Marketing Federation it was stated that it had no statutory powers to have an opinion in respect of mining activities and therefore, the objections were motivated.

19. The NEAA held that in terms of para 2.4 of the Appendix IV to the EIA notification dated 14th September 2006 although there was an

obligation on the part of State Pollution Control Board to give publicity about the project within the State and make available the Summary of the Draft EIA report for inspection, there was no mandatory time frame prescribed for making the said documents available. The only time frame was that there should be minimum notice of 30 days of the public hearing which was required to be advertised in one national newspaper (daily) and one regional newspaper. It was accordingly held by making the Executive Summary available only nine days prior to the date of public hearing, there was no violation of EIA notification dated 14th September 2006 passed by the Respondent No.3.

20. The third issue dealt with by the NEAA was whether the project would have an adverse environmental impact on the neighbourhood. After weighing the arguments of the Appellant and Respondent No.3, the NEAA held that Respondent No.1 had prescribed "adequate and stringent safeguards in their EC Order with a view to protect the fragile environment of the Project Area. The contention of the Appellants therefore, fails to convince this Authority."

21. Thereafter, the NEAA took up for consideration the submissions of learned counsel for the Appellant that the EAC (Mines) "has failed to consider the wholesale opposition of the participants of the Public Hearing to the Project as evident from the minutes of the EAC." In

this regard the NEAA held in para 8.3 of the impugned order as under:

> "8.3 A perusal of these arguments reveals that the thrust of the argument of counsel for Appellant is that EAC (Mines), an instrument of Respondent 1 has not undertaken a detailed scrutiny of the wholesale opposition from the public and the concerned Gram Sabha and the reasons for overruling such opposing views should have been recorded in the Minutes of the EAC. The Authority finds that the said committee has done a detailed analysis of various technical and environmental issues it is not apparent on the face of the record that the "opposition of the Project" has passed such a rigorous test. In other words the said committee has not indicated any reasons for overruling the Public objection to the Project. As held by the Hon'ble Supreme Court in *M.J. Sivani and Others v. State of Karnataka and Others (1995) 6 SCC 289* "Reasons are the link between the order and the mind of its maker. When rules direct to record reasons, it is a sine qua non and condition precedent for valid order. Appropriate brief reasons, though not like a judgment, are a necessary concomitant for a valid order in support of the action or decision taken by the authority or its instrumentality or the state."
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> Further, the Authority notes that "the reasons are harbinger between the mind of the maker of the order to the controversy in question and the decision or conclusion arrived at. It also excludes the chances to reach arbitrary, whimsical or

capricious decision or conclusion."

> The authority also would like to record the above much desired link between the issues and decision, as far as the public opposition to the project is concerned, is conspicuously missing in the minutes of the said committee. To this extent the argument of the appellants has come force. In view of the increasing environmental awareness of the public neither Respondent 1 nor any of its instruments like EAC's can afford to brush aside the public opposition to the various developmental/ instrumental projects and schemes. Further having enlarged the scope of public hearing into public consultation in their revised EAI notification dated 14th September 2006, Respondent 1 (MoEF) would do well to advice its various committees to record the reasons for their recommendations in an appropriate manner, especially in respect of public opposition to the Project. The Authority however holds that the above omission does not vitiate orders of Respondent 1 in this case in any manner."

22. Before concluding the impugned order dismissing the appeal, the NEAA observed that the MoEF and its various Advisory Committees should indicate in their minutes/proceedings/orders "the link between the issues raised and decision thereon, and wherever the public objections are involved, they should clearly indicate such public concerns have been addressed while arriving at final

recommendations/decision."

Proceedings before this Court

23. While directing notice to issue in this writ petition on 11th September 2009, this Court by a detailed order stayed the operation of the impugned order of the NEAA and restrained the Respondent No.3 from carrying out any mining activity in Village Rivona, Tehsil Sanguem in District South Goa in terms of the permission granted by MoEF in its order dated 26th July 2007. Thereafter the Respondent No.3 filed CM Application No. 12496 of 2009 for vacating the stay order.

Submissions of counsel

24. On behalf of the Appellant Mr. Sanjay Parikh and Mr. Rahul Choudhary, learned counsel submitted that the holding of the public hearing by the GSPCB was reduced to a farce particularly when none of the objections raised at the public hearing were dealt with by the EAC. It was submitted that the environmental clearance had been granted thereafter by the MoEF without application of mind and ought to be set aside. It is submitted that the spirit of requirement of 30 days' advance notice of public hearing in terms of para 3 of the Appendix IV of the EIA notification dated 14th September 2006 mandated making available the Executive Summary as well 30 days prior to the date of public hearing. With the Executive Summary being

made available only on 22nd January 2007 i.e. nine days prior to the date of the public hearing, the objectors could not be expected to respond meaningfully to the notice. Since the procedure for granting clearance was in violation of the letter and spirit of the EIA notification, the impugned order of the MoEF granting EIA clearance stood vitiated.

25. It was next submitted by learned counsel for the petitioners that Mr.Majumdar, the Chairperson of the EAC (Mines) which had cleared the proposal for grant of EIA clearance was at the relevant time himself a Director of four mining companies, viz., Uranium Corporation of India Limited, R.B.G. Minerals Industries Limited, Hindustan Dorr-Oliver Limited and Adhunik Metaliks Limited. This was confirmed by a letter dated 7th August 2009 sent by the MoEF in response to an application under Right to Information Act 2005 ('RTI Act'). A copy of the said letter has been placed on record. This letter additionally informed that the Additional EAC on mining had cleared 410 mining projects till June 2009 and that four site visits were undertaken by the Additional EAC Committee on mining till date. The fairness of the procedure adopted was doubted on the above ground as well.

26. On behalf of the Respondent No.1 Union of India, Mr. A.S. Chandhiok, learned Additional Solicitor General (ASG) submitted

that although the EAC meeting may not have discussed the objections raised at the public hearing and the response of the Respondent No.3 thereto, note prepared by the Director MoEF for approval by the MOS was a detailed one which considered the various objections raised at the public hearing. The said note explained why the objections were not tenable. He submitted that as long as the MoEF had applied its mind to the objections raised, no fault could be found with the impugned order dated 26th July 2007 issued by the MoEF granting environmental clearance to Respondent No.3. The learned ASG sought to defend the Chairman of the EAC (Mines) being a Director of four mining companies as not being material as it was a twelve member committee and in any event the view of the majority would prevail.

27. On behalf of Respondent No.3 Mr. Joaquim Reis, learned counsel raised serious objection to the bonafides of the Appellant. According to him, this was a motivated litigation at the instance of the legal representatives of late Mr. Premanath Damodar Prabhu Dessai with whom the settlement had been arrived in the civil suit way back in 1997. According to him, the objections at the public hearing were raised by those disgruntled litigants although they had received the compensation agreed upon. He pointed out that there are other nine mines operating in the area and it was the Borga Mine alone that was being singled out by the Appellant. He submitted that the

environmental clearance had been granted subject to various conditions which would duly be complied with by the Respondent No.3 thus allaying any apprehension of environmental damage. He submitted that each of the objections raised at the public hearing has been answered in the detailed application filed by the Respondent No.3. Further the Respondent No.3 had already proposed to undertake compensatory afforestation and it would abide by that undertaking. The grant of environmental clearance had been notified in the newspapers within seven days. It is submitted that the Respondent No.3 cannot be penalized for any procedural violation on the part of the EAC to state the precise reasons for negativing the objections raised at the public hearing.

The requirement of a fair public hearing

28. The scope of the powers of judicial review of the High Court under Article 226 of the Constitution of India is limited to examining the decision making process and not so much the decision itself. The classical statement of law to this effect can be found in the decision of the Supreme Court in ***Tata Cellular Co. v. Union of India (1994) 3 SCC 651*** (SCC, at p. 677-78)

> "77**.** The duty of the court is to confine itself to the question of legality. Its concern should be:
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> 1. Whether a decision-making authority exceeded its powers?
> 2. committed an error of law,
> 3. committed a breach of the rules of natural justice,

4. reached a decision which no reasonable tribunal would have reached or,
5. abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(*i*)Illegality: This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(*ii*)Irrationality, namely, *Wednesbury* unreasonableness.

(*iii*)Procedural impropriety."

29. As far as the present case is concerned, this Court is concerned with the third ground of procedural impropriety. This in turn, on the facts of the present case, raises three distinct issues. The first concerns the requirement of making available the Executive Summary at least 30 days prior to the date of the public hearing and whether the failure to do so in the present case vitiates the environment clearance. The second issue reflects the legal requirement of compliance with the principles of natural justice. It touches on the aspect of bias in the functioning of the EAC. It is whether the fact that the EAC (Mines) was chaired by a person who was the Director of four mining companies himself impaired the fairness and credibility of its decision. The third issue reflects the aspect of procedural fairness and

the requirement of the administrative decision-making body to furnish reasons for its decision. The ultimate question is whether the non-compliance with any of the above procedural requirements vitiates the grant of environmental clearance to Respondent No.3.

Whether the Executive Summary had to be made available 30 days in advance of the public hearing?

30. The relevant clauses of the EIA Notification dated 14th September 2006 requiring the publication of the notice concerning the public hearing as contained in paras 2.4 and 3 of the Appendix IV to the said notification read as under:

> "**2.4** The SPCB or UTPCC concerned shall also **make similar arrangements for giving publicity about the project within the State/Union Territory and make available the summary of the draft Environmental Impact Assessment report (Appendix III A) for inspection in select offices or public libraries or panchayats etc**. They shall also additionally make available a copy of the draft Environment Impact Assessment report to the above five authorities/offices viz Ministry of Environment and Forests, District Magistrate etc.
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> **3.0 Notice of Public Hearing:**
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> 3.1 The Member Secretary of the concerned SPCB or UTPCC shall finalize the date, time and exact venue for the conduct of public hearing within 7 (seven) days of the date of receipt of the draft Environmental Impact Assessment report from the project proponent and advertise the same in one major National Daily and one Regional Daily. A minimum notice period of 30 (thirty) days shall be provided to the public for furnishing their responses;
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> 3.2 The advertisement shall also inform the public about the places or offices where the public could

> access the draft Environmental Impact Assessment report and the Summary Environmental Impact Assessment report before the public hearing.
>
> 3.3 No postponement of the date, time, venue of the public hearing shall be undertaken, unless some untoward emergency situation occurs and only on the recommendation of the concerned District Magistrate the postponement shall be notified to the public through the same National and Regional vernacular dailies and also prominently displayed at all the identified offices by the concerned SPCB or Union Territory Pollution Control Commission.
>
> 3.4 In the above exceptional circumstances fresh date, time and venue for the public consultation shall be decided by the Member Secretary of the concerned SPCB or UTPCC only in consultation with the District Magistrate and notified afresh as per procedure under 3.1 above."

31. The purport of the above clauses is to make the public hearing a meaningful one with full participation of all interested persons who may have a point of view to state. The above clauses operationalise the de-centralised decision making in a democratic set up where the views of those who are likely to be affected by a decision are given a say and an opportunity to voice their concerns. This procedure is intended to render the decision fair and participative and not thrust from above on a people who may be unaware of the implications of the decision. In the above background, it is not possible to agree with the stand of the Respondents 1 and 3 that there is no requirement in terms of the above clauses to make available the Executive Summary of the EIA Report Project available to the persons likely to be affected at least 30 days in advance of the public hearing. If their participation

has to be meaningful, informed and meaningful, then they must have full information of the pros and cons of the proposed project and the impact it is likely to have on the environment in the area.

32. What is important to understand in this context is that the information about the project and in particular about the EIA report is not available to anyone in the public domain till the time of the public hearing. Till such time it is available only to the project proponent and the MoEF. Unless it is required to be made available mandatorily, it is unlikely that any member of the affected public can have access to such information. It is imperative for the affected person to be fully informed of the proposal (the EMP) submitted by the project proponent for dealing with the likely environmental damage that can be caused if the project is granted clearance. If this is the intent behind the introduction of the above clause in the EIA notification, then the contention of the Union of India that there is no need for the Executive Summary to be made available 30 days prior to the date of the public hearing is not legally tenable.

33. In this context a reference may be made to the decision of the Supreme Court in ***People's Union for Civil Liberties v. Union of India (2003) 4 SCC 399*** where in the context of declaring the right to vote as being part of the fundamental right of expression of the voter

under Article 19 (1) (a) of the Constitution of India, it was held that "a well informed voter is the foundation of democratic structure." In his leading opinion M.B.Shah., J. observed (SCC, p. 432):

> "(the) right to participate by casting vote at the time of election would be meaningless unless the voters are well informed about all sides of the issues, in respect of which they are called upon to express their views by casting their votes. Disinformation, misinformation, non-information, all equally create an uninformed citizenry which would finally make democracy a mobocracy and farce."

In his concurring opinion P.V.Reddi. J., explained that (SCC, p.454) "the right of the citizens to obtain information on matters relating to public acts flows from the fundamental right enshrined in Article 19(1) (*a*)."

34. The public hearings conducted by the MOEF in terms of the EIA Notification dated 14th September 2006 is indeed a public act and the EIA Report is certainly a matter relating to such a public act of the central government. The construction that has to be placed on the Clause 2.4 read with Clause 3 must be such that will enhance the quality of the ultimate decision taken and also consistent with the requirement of the participation of those affected in a fully informed and effective manner. The opportunity to participate and voice an opinion on the project has to be a meaningful one. It can be rendered ineffective by not insisting that the Executive Summary should also be made available 30 days in advance of the public hearing. We are therefore unable to agree with the conclusion of the NEAA that

merely because no time limit is expressly provided for making available the Executive Summary, there was no procedural infraction in making it available only 9 days prior to the date of public hearing in the present case.

35. It was contended by the Respondent No.3 that the Executive Summary was indeed made available at least 30 days prior to the date of public hearing. Nevertheless the NEAA appears to have proceeded on the basis that it was made available only 9 days prior to the date of the public hearing. However, considering the fact that the public hearing was in fact attended by a large number of people and as many as 67 written objections were submitted, this Court does not find it necessary to require the public hearing in the present case to be conducted again only on the ground that the Executive Summary was not made available 30 days prior to the date of the public hearing.

The requirement of the EAC to give reasons

36. The next issue concerns the failure on the part of the EAC (Mines) to deal with the objections raised at the public hearing and the effect of such failure on the grant of environmental clearance. In the first place it needs to be noted that the MoEF has constituted the EAC (Mines) as a twelve member body for evaluating the Project proposal as well as the EIA Report and advise the government on whether environmental clearance should be granted. It is in essence a delegate

of the MoEF performing an "outsourced" task of evaluation. The decision of the EAC may not necessarily be binding on the MoEF but is certainly an input into the decision making process. Considering that it constitutes the view of the expert body, its advice would be a valuable input. In terms of the procedure evolved by the MoEF to deal with applications for EIA clearance, the objections at the public hearing and the response thereto of the project proponent are placed before the EAC (Mines) for evaluation and for taking a decision which will constitute the advice to the MoEF on such project proposal. The EAC is therefore performing a public law function and is expected to adhere to those very standards which law requires the MoEF to adhere to.

37. The requirement of an administrative decision making body to give reasons has been viewed as an essential concomitant of acting fairly. Given that such a decision is in any event amenable to judicial review, the failure to make known the reasons for the decision makes it difficult for the judicial body entrusted with the power of reviewing such decision as to its reasonableness and fairness. The decision must reflect the consideration of the materials available before the decision maker and the opinion formed on such material.

38. The treatise **Environmental Law**, David Woolley et al (eds.)

(Oxford University Press, 2000) traces the origins of the requirement to carry out an environmental impact assessment in the United Kingdom to a 1985 Directive of the European Economic Commission on the "Assessment of the Effects of Certain Public and Private Projects on the Environment." This Directive is implemented in the U.K. by way of Regulations. The above treatise notes (p.703-04) that as part of the said Directive "the competent authorities are required to give their reasons regarding the decisions they make on an EIA application. In particular the 1999 Regulations requires that the planning authority provides a statement containing the content of the decision, the conditions, 'the main reasons and considerations on which the decision is based', and a description of the main mitigation measures where necessary." In ***R v. Lambeth LBC ex p Walters (1994) 26 HLR 170*** it was observed that under English law there was general duty to give reasons. Our courts have been more categorical as can be seen from the decision in ***M.J. Sivani v. State of Karnataka (1995) 6 SCC 289*** referred to by the NEAA in the impugned order. In the classical treatise on **Administrative Law** (Eighth Edition, Oxford University Press, 2000) by H.W.R. Wade and C.F.Forsyth it is explained (p.519):

> "An important consideration underlying the extension of the duty to give reasons referred to in many cases, is that in the absence of reasons the person affected may be unable to judge whether there has been 'justiciable flaw in the decision making process' and thus whether an appeal should be instituted or an

application for judicial review made. Since today there are few exercises of governmental power which are not subjected to judicial review it would be rare of a person affected by a decision- for which reasons were not given- will not be able to say that the absence of reasons has denied him effective recourse to judicial review. General duty to give reasons is latent in this argument; and the courts seem willing to see sufficient weight given to it to enable such a duty to develop."

39. Bernard Schwartz in his book on **Administrative Law** (3rd Edn., Little Brown & Co.,) notes (at p.463) that even in the U.S.A. the "system may be moving toward a more general requirement for reasoned administrative decisions." He quotes Judge Posner observing in ***Hameetman v. Chicago 776 F.2d 636,645 (7th Cir.1985)*** that the non-judicial decision maker "should state the reasons for his determination and indicate the evidence he relied on." This was "a back-up safeguard, designed to make sure, so far as it is possible to do so, that the hearing which due process requires is a meaningful one.."

40. Para 4 of the EIA notification defines Appraisal as:

> "Appraisal means the detailed scrutiny by the Expert Appraisal Committee or State Level Expert Appraisal Committee of the application and other documents like the EIA report, **outcome of the public consultations including public hearing proceedings**, submitted by the applicant to the regulatory authority concerned for grant of environmental clearance....." (emphasis supplied)

Consequently, the exercise expected to be performed by the EAC (Mines) is a serious one and has to include a consideration on merits of the objections raised at the public hearing. Its decision must reflect this. We do not accept the contention of the learned ASG that as long as the MoEF while taking the ultimate decision has applied its mind to the objections raised at the public hearing, the requirement in law would be satisfied. The whole purpose of "outsourcing" the task to an EAC comprised of experts was to have a proper evaluation of such objectives on the basis of some objective criteria. It is that body that has to apply its collective mind to the objections and not merely the MoEF which has to consider such objections at the second stage. We therefore hold that in the context of the EIA Notification dated 14th September 2006 and the mandatory requirement of holding public hearings to invite objections it is the duty of the EAC, to whom the task of evaluating such objections has been delegated, to indicate in its decision the fact that such objections, and the response thereto of the project proponent, were considered and the reasons why any or all of such objections were accepted or negatived. The failure to give such reasons would render the decision vulnerable to attack on the ground of being vitiated due to non-application of mind to relevant materials and therefore arbitrary.

41. Turning to the case on hand, the minutes of the public hearing that

took place on 31st January 2007 reveal that the objections were both of specific and general nature. The minutes prepared by the Collector and Member Secretary of GSPCB sets out a short summary of the objections expressed by the residents of the area. Their apprehension was that "the fields are already destroyed and if (the mines are) operated there will be still more destruction." There was apprehension that "the fields and fruits are going to be destroyed." One of them stated that the ground water table was rendered too low to be tapped. The springs had dried up "and whatever existing too shall face the same problem."

42. Although it was sought to be contended by the Respondent No.3 that these objections were motivated by the Plaintiff in Special Suit No. 28/80A, we do not find any substance in that objection. Moreover, the NEAA has also not based its decision on such objection. What however is surprising is that after holding that the EAC ought to have given reasons why it was not accepting any of the objections, the NEAA simply concluded that as far as the present case is concerned the failure to give reasons would not affect the final decision. Having examined the records of the case and the minutes of the EAC (Mines), we find that there is only a passing reference to the public hearing. There is absolutely no discussion of the objections at the public hearing and the responses of Respondent No.3 thereto. Given the spirit of the EIA notification dated 14th September 2006 this

conclusion of the NEAA, in our view, is totally unacceptable. The decision of the NEAA, if allowed to stand, will reduce every public hearing to a farce. The unacceptable consequence would be that notwithstanding any number of objections that may be raised, environmental clearance would nevertheless be granted.

43. While on this aspect this Court would like to make observations. We find from the notice of the public hearing in the present case that as many as six public hearings were scheduled in regard to projects (including that of the Respondent No.3) by the GSPCB on the same date and time and at the same venue. It is a matter of concern that the requirement of public hearing under the EIA notification has been taken so lightly by the MoEF. This needs immediate correction. If the hearing has to have adequate publicity then the notices would have to be repeated and spread over a period of ten days so that as many people as possible are made aware of such public hearing. Secondly, the Executive Summary which is required to be commented by the participants of the public hearing has to be made available at least 30 days prior to the date of the public hearing. Thirdly, there is no question of scheduling several hearings relating to different projects at the same date, time and venue. This can possibly result in avoidable chaos at such hearings. It also reduces the whole exercise to empty formality. We expect the MoEF to immediately issue necessary instructions in this regard so that public hearings in terms of the EIA

notification dated 14th September 2006 take place with the seriousness which they deserve.

Functioning of the EAC

44. As regards the EAC (Mines) it is surprising that the 12 member EAC was chaired by a person who happened to be Director of four mining companies. It matters little that the said four mining companies were not in Goa. Appointing a person who has a direct interest in the promotion of the mining industry as Chairperson of the EAC (Mines) is in our view an unhealthy practice that will rob the EAC of its credibility since there is an obvious and direct conflict of interest. It is another matter that Mr. Majumdar is no longer the Chairman of the EAC (Mines) and therefore the fresh decision in the present case will be taken by the present EAC under a new Chairman.

45. As regards the functioning of the EAC, from the response of the MoEF to the RTI application referred to hereinbefore, it appears that the EAC granted as many as 410 mining approvals in the first six months of 2009. This is indeed a very large number of approvals in a fairly short time. We were informed that the EAC usually takes up the applications seeking environmental clearance in bulk and several projects are given clearance in one day. This comes across as an unsatisfactory state of affairs. The unseemly rush to grant environmental clearances for several mining projects in a single day

should not be at the cost of environment itself. The spirit of the EAC has to be respected. We do not see how more than five applications for EIA clearance can be taken up for consideration at a single meeting of the EAC. This is another matter which deserves serious consideration at the hands of MoEF.

46. Lastly, we are not sure if the EAC undertook any site visit while evaluating the present project proposal of Respondent No.3. The response to the RTI application indicates that EAC undertook four site visits. It is not clear if this included the present project. In the present case, the villagers apprehend that there has been large scale destruction of the environment in the area. In fact the Respondent No.3 repeatedly urged before us that there are nine other mines operating in the said area. Given this background it is important for the EAC to assess what has been the overall impact on environment in the area on account of the operation of the nine mines and whether the permission for renewal of one more lease will adversely impact the environment. We, therefore, require the EAC to undertake, either by itself or through a sub-committee of some of its members, site visit or visits to assess what has been the impact on the environment in the area on account of the operation of the mines.

47. Before the conclusions, there is another aspect which requires to

be commented upon. We find that in this case the impugned order dated 26th July 2007 issued by the MOEF was one granting "conditional" environment clearance to Respondent No.3. However, it is not as if Respondent No.3 had to **first** comply with those conditions before being permitted to operate the mine. In other words, it was open to Respondent No.3 to operate the mine and simultaneously comply with the conditions. Given the nature of some of these conditions, it is undesirable that the mining operation should be permitted to start without first requiring compliance. If for some reason after one year of commencement of mining, it were to be discovered that many or all of the conditions have not been fulfilled, then the damage to the environment that would result till then would be irreversible. Given the general poor level of enforcement, it is important for the MoEF to review its practice of granting such "conditional" clearances without specifying which of the conditions have to be mandatorily complied with **before** mining can commence.

Conclusions and directions

48. We have, therefore, no hesitation in setting aside the impugned order dated 26th July 2007 passed by the MoEF. We are of the view that while the NEAA was right in its conclusion that the EAC (Mines) ought to have given reasons for its decision, we are unable to concur with the NEAA that the failure to give reasons did not vitiate the decision to grant environment clearance. Consequently, we set aside

the impugned order dated 14th October 2008 of the NEAA affirming the order dated 26th July 2007 issued by the MoEF granting environmental clearance to the Respondent No.3.

49. The matter is remanded to the EAC (Mines) which will be constituted by the MoEF afresh keeping in view the observations made in this order. The EAC (Mines) will consider each of the objections raised at the public hearing held on 31st January 2007 as well as the response thereto by the Respondent No.3. Before taking a fresh decision, the EAC (Mines) will undertake a site visit or visits, either by itself or through a sub-committee of itself comprising not less than three members. The EAC (Mines) will render its fresh reasoned decision within a period of twelve weeks from the date of the receipt of this order by the Secretary, MoEF. The final decision thereon will be taken by the MoEF within eight weeks thereafter in accordance with law. The MoEF will keep in view the observations made in this judgment. The fresh decision of the MoEF will be communicated to Respondent No.3 as well as the Appellants within a week thereafter. It will be open to the party aggrieved by such decision to seek whatever remedies are available to such party in law. We make it clear that if the MoEF reiterates its decision to grant environment clearance then there will be no need for Respondent No.3 to again obtain fresh consequential permissions from other authorities. If not, then the grant of such permissions will not by

themselves give any right to the Respondent No.3 to operate the mine in question.

50. The petition is accordingly allowed with the above directions with costs of Rs.10,000/- which will be paid by each of the Respondents to the Appellants within a period of four weeks. A certified copy of this order be delivered by the Registry through a Special Messenger to the Secretary, MoEF within a period of seven days from today.

CHIEF JUSTICE

S. MURALIDHAR, J.

NOVEMBER 26, 2009
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