* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
11.

\+ **LPA 277/2009**

% Decided on : **14th September, 2009**

VEDANTA ALUMINA LTD. ..... Appellant

Through: Dr. A.M. Singhvi, Sr. Adv. with Mr. P.C. Sen, Mr. Pallav Kumar Singh, Mr. Nitin Dahiya, Advocates

Versus

PRAFULLA SAMANTRA & ORS. ..... Respondents

Through: Mr. Sanjay Parekh, Mr. Ritwick Dutta, Mr. Rahul Chawdhary, Advocates for R-1
Mr. A.S. Chandhiok, ASG with Ms. Sweta Kakkad, Ms. Dimple Murria, Advocates for R-2/MoEF
Mr. J.R. Das, Mr. P.P. Nayak, Advs. for R-3/OPCB

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

1. Whether Reporters of local papers may be allowed to see the judgment?y
2. To be referred to the Reporter or not? y
3. Whether the judgment should be reported in Digest? y

Ajit Prakash Shah, Chief Justice (Oral) **:-**

The question that falls for consideration in this appeal is whether the first respondent (original writ petitioner) is a "person aggrieved" to maintain an appeal before the National Environment Appellate Authority (hereinafter referred to as the 'Authority') under Section 11 of the National Environment Authority Act, 1999 (hereinafter referred to as 'the Act').

2. The circumstances giving rise to this appeal are as follows:

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

working among the affected communities.

3. The second respondent, i.e. the Orissa State Pollution Control Board announced a public hearing on 20th October, 2005 for a proposed aluminum smelter plant under the provisions of the Environment Impact Assessment (EIA) Notification, 1994. The first respondent objected to the public hearing on the ground that this is not a separate project but the third stage of a Bauxite Mining Project. The public hearing was cancelled and re-scheduled for a later date on 09.12.2005. The first respondent made another representation challenging the faulty EIA of the project on 9.12.2005, *inter alia* stating the following:

> *"The Public Hearing for this Aluminum Smelter, an integral part of Vedanta's bauxite miming, alumina refinery and aluminum smelting project which is currently sub judice is legally wrong. State Pollution Control Board is going ahead with the Public Hearing without taking into account the recommendations of the Central Empowerment Committee to the Supreme Court of India which show that Vedanta has violated forest and conservation laws.*
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> *It may be recalled that the CEC in its recommendation to the Apex Court had asked for the withdrawal of the environmental clearance to the alumina refinery plant located in Lanjigarh and strictly recommended not to give the Niyamgiri Hills for bauxite mining to the company. The three phases of an aluminum plant involves necessarily the first step of having captive* ***bauxite mining*** *which would provide raw material for the second step that is the* ***alumina refinery*** *that in turn will be supplied to* ***aluminum smelter*** *in the third step. The following situation prevails with regard to the above three steps, which are essentially part of the same project.*
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> ***1. Bauxite mine:*** *License for mining not granted. The CEC says "It is of considered view that the use of the forest land in an ecologically sensitive area like Niyamgiri Hills should not be permitted (para 32, page 52)" and again the CEC says "The project may only be considered after an alternative bauxite mine site is identified (para 33, page 53)"*
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> ***2. Aluminum refinery:*** *The observation of the CEC is significant on the alumina plant when it says "The casual approach, lackadaisical manner and the haste with which the entire issues of the forests and environmental clearance for the alumina refinery project has been dealt with smacks of undue favour/leniency and does not inspire confidence with regard to the willingness and resolve of both the state government and the MoEF to deal with such matters keeping in view the ultimate goal of national and public interest. In the instant case had a proper study been conducted before embarking on a project of this nature and magnitude involving massive investment, the objections to this project from environmental/ ecological/ forest angle would have*

become known in the beginning itself and in all probability the project would have been abandoned at this site" (para 32, page 52). The CEC further states that "keeping in view all the facts and circumstances brought out in the preceding paragraphs it is recommended that this honourable court may consider ***revoking the environmental clearance dated 22.9.2004 granted by the MoEF for setting up of Alumina refinery plant by M/s Vedanta and directing them to stop work on the project*** *(para 33, page 53)"*

In the EIA of this project it has been mentioned in page 27, point 2.3.1 that the ***proposed aluminum smelter plant will receive alumina from the alumina refinery at Lanjigarh, Kalahandi*** *district of Orissa which is about 240 kms away from the smelter plant. So public hearing of for an aluminum smelter whose raw material is planned to be drawn from sub judice Lanjigarh refinery is completely contingent on the orders of the Honourable Supreme Court on the Lanjigarh Alumina Refinery. By holding a public hearing on the aluminum smelter, the Orissa State Pollution Control Board is exceeding its brief and disrespecting the Honourable Supreme Court. Therefore, you are requested to kindly consider this public hearing on 9th December, 2005 null and void."*

4. It is also the case of the first respondent that the appellant illegally started construction work for its proposed aluminum smelter plant at Brindamal, Jharsuguda, Orissa without obtaining the mandatory environmental clearance and, therefore, he again objected before the second respondent by his letter dated 5.6.2006; the receipt of the said communication is not denied by the second respondent. By its letter dated 8.2.2007, the second respondent directed the appellant to stop all construction activities till the appellant obtains environmental clearance from the MoEF.

5. The environmental clearance for the project was granted on 7.3.2007 and aggrieved by this, the first respondent filed an appeal before the Authority on 5.4.2007. The Authority, by an order dated 29.1.2008, dismissed his appeal stating that first respondent is not a "person aggrieved" under Section 11 of the Act. The relevant paragraphs of the impugned order are extracted hereunder:

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

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

(a) He should be a person aggrieved by the environmental clearance order.
(b) He should file appeal with stipulated time.

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

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

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

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

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

6. Aggrieved by the order of the Authority, the petitioner preferred a writ petition being CWP No. 3126/2008. The writ petition was allowed by S. Ravindra Bhat, J. by the order under appeal. S. Ravindra Bhat, J., on a detailed analysis of the scheme and

provisions of the Act, came to the conclusion that first respondent has the locus standi to maintain an appeal before the Authority. The learned Judge observed:

> *"16. ……the expression "person aggrieved" has to be given a panoptic import and be understood to include persons like the petitioner who display interest in social and environmental causes. This is established by the fact that his organization was closely following the issue of setting up of aluminum smelter plant during various stages of the project to the extent that it had, on two occasions objected to the holding of the 'public hearing' and sent a detailed letter elucidating the objections and further when it learnt about alleged unauthorized construction at the project site, he wrote to the second respondent, which later directed the third respondent to stop such activities.*
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> *17. …..In the impugned order the Authority acknowledged that the petitioner had on several occasions in the past made representations before the Orissa State Pollution Control Board challenging the holding of public hearing and that the petitioner could not attend the hearing due to personal reasons. Public hearings, in such cases, are organized to elicit comments from the members of public before granting clearance to a project in order to assess the nature of environmental damage, if any, due to the likely execution of project and its impact on the rights of inhabitants and the persons who depend on that area for livelihood or otherwise. A person who participates in the public hearing, and thus in the process of decision-making, potentially becomes an aggrieved person if his grievances are not properly addressed. The petitioner, though not participating in the public hearing, had presented his detailed objections before the second respondent against the holding of public hearing on the ground of faulty environmental impact assessment report. At one stage, his representations were found substantial by the authorities. Denial of the right to appeal would also lead to a highly incongruous situation whereby someone like him, allowed to participate in the principal decision making process, is denied the right to question the findings of the primary decision maker, in the appellate proceedings."*

Consequently the impugned order of the Authority was quashed and the Authority was directed to entertain and dispose of the appeal of first respondent in accordance with law.

7. Dr. A.M. Singhvi, learned senior counsel appearing for the appellant, relying upon the decision in **Thammanna V/s. K. Veera Reddy & Others**, (1980) 4 SCC 62, emphasized that "a person aggrieved has to be a person with a legal grievance". He submitted that in the instant case, it is not even the contention of the first respondent that he is representing any local population which is affected by the project. The first respondent is not even a local resident of the area. His only contention is that he is working among the affected communities. It is nowhere his case that any of the affected

persons either asked him to appear on their behalf or raised any grievance to him about the project. Dr. Singhvi further submitted that Section 11(1) only gives locus to a person aggrieved to file an appeal. According to him the predominant purpose of Section 11 is the quick redressal of public grievances. In order to prevent the delays, the Act has circumscribed the kind of person who can file an appeal against the environmental clearance. If the objective of the statute was to allow appeals by anyone then instead of the phrase "person aggrieved", the phrase "any person" would have been used. He submitted that a person not falling under the definition of 'person aggrieved' under the Act can always approach the High Court by way of PIL under Article 226 of the Constitution of India or the Supreme Court under Article 32 of the Constitution of India. He also placed reliance on the decisions in **Krishna Swami v. Union of India** (1992) 4 SCC 605 and **Regina v. Secretary of State For Environment**, (1990) 2 WLR 187.

8. In reply, Mr. Sanjay Parekh, learned senior counsel appearing for the first respondent submitted that the question of locus of an individual in our country, as far as environment is concerned, rests in the public and constitutional law domain. Such public and constitutional right cannot be curtailed by any statutory enactment. Any action which affects the environment can be questioned by individual/individuals as a matter of right as well as duty. Mr. Parekh submitted that the decision of the Supreme Court in **Thammanna V/s. K. Veera Reddy & Others** (supra) relied upon by Dr. Singhvi has no application to the present case where the issues of environment have been raised. According to him, the expression "person" for the purpose of the Act is used in a wide manner and includes anyone likely to be affected by the grant of environment clearance. The use of the word 'likely' in the Act, clearly establishes that there is no requirement to show a direct linkage between the activity proposed and the impact on the aggrieved person. He also referred to the Statement of Objects and Reasons of the Act which states that the necessity of setting up of National Environment Appellate Authority was due to Public Interest Litigations filed before the Supreme Court relating to environment and it was intended to provide quick redressal of public grievances, where the public could approach by means of petitions, complaints, representations or appeals.

The submission of Mr. Parekh is that the first respondent is working in the area in question on the environmental issues and following up the issues of this project since beginning. The first respondent, though was not able to participate in the public hearing in person, but objections were sent by him to the project authorities and also to Pollution Control Board. Learned counsel further submitted that welfare statutes have to be interpreted in a manner which serves the interest of those whom they are intended to benefit. The protection of forests and the natural environment is a fundamental duty of every citizen under Article 51-A(g) of the Constitution. The Authority provides a forum for redressal of grievances on environmental issues and at the same time for those who are concerned about taking proactive measures to protect the environment. He submitted that it is settled law that courts should favour an interpretation that promotes the general purpose of an Act rather than one that does not.

9. Mr. Chandhiok, learned ASG appearing for the Ministry of Environment and Forest supported the interpretation of Section 11 by S. Ravindra Bhat, J. and also drew our attention to the decisions of the Supreme Court in **Ghulam Qadir v. Special Tribunal & Others**, (2002) 1 SCC 33 and **N.D. Jayal v. Union of India & Ors.**, (2004) 9 SCC 362.

10. It is now well settled by a series of judgments of the Supreme Court that though the industrial development is of vital important to the country as it generates foreign exchange and provides employment avenues, it has no right to destroy the ecology, degrade the environment and pose as a health hazard. In **Vellore Citizens' Welfare Forum v. Union of India**, (1996) 5 SCC 647, the Supreme Court held that the traditional concept that development and ecology are opposed to each other is no longer acceptable. "Sustainable Development" is the answer. In the international sphere, "Sustainable Development" as a concept came to be known for the first time in Stockholm Declaration of 1972. Thereafter in 1987, the concept was given a definite shape by the World Commission on Environment and Development in its report called "Our Common Future" popularly known as "Brundtland Report". In 1991, the World Conservation Union, United Nations Environment Programme and World Wide Fund for Nature,

jointly came out with a document called "Caring for the Earth" which is a strategy for sustainable living. Finally, came the Earth Summit held in June, 1992 at Rio where as many as 153 nations signed two conventions, one on biological diversity and another on climate change. The delegates also approved by consensus three non-binding documents, namely, a Statement on Forestry Principles, a declaration of Principles on Environmental Policy and Development Initiatives and Agenda 21, a programme of action into the next century in areas like poverty, population and pollution. The Supreme Court noted that some of the salient principles of "Sustainable Development", as culled-out from Brundtland Report and other international documents, are Inter-Generational Equity, Use and Conservation of Natural Resources, Environmental Protection, the Precautionary Principle, Polluter Pays Principle, Obligation to Assist and Cooperate, Eradication of Poverty and Financial Assistance to the developing countries. The Court noticed that Article 21 of the Constitution of India guarantees protection of life and personal liberty. The Court also noticed that Article 48A of the Constitution cast a duty on the State to protect and improve the environment and safeguard the forests and wild life of the country and Article 51A(g) of the Constitution spells out duty of citizens to protect and improve the environment including forests, lakes, rivers and wild life, and to have compassion for living creatures. The Court also noted that apart from the constitutional mandate to protect and improve the environment, there are plenty of post independence legislations on the subject, namely, The Water (Prevention and Control of Pollution) Act, 1974, The Air (Prevention and Control of Pollution) Act, 1981 and the Environment Protection Act 1986. In view of the above mentioned constitutional and statutory provisions, the Court held that Precautionary Principle and the Polluter Pays Principle are part of the environmental law of the country.

10. In **Indian Council for Enviro-Legal Action v. Union of India**, (1996) 5 SCC 281, the Court noted that even though laws have been passed for the protection of environment, the enforcement of the same has been tardy, to say the least. Environment degradation is best protected by the people themselves. The following observations of the Court are relevant:

> "41. With rapid industrialisation taking place, there is an increasing threat to the maintenance of the ecological balance. The general public is becoming aware of the need to protect environment. Even though, laws have been passed for the protection of environment, the enforcement of the same has been tardy, to say the least. With the governmental authorities not showing any concern with the enforcement of the said Acts, and with the development taking place for personal gains at the expense of environment and with disregard to the mandatory provisions of law, some public spirited persons have been initiating public interest litigations. The legal position relating to the exercise of jurisdiction by the Courts for preventing environmental degradation and thereby, seeking to protect the fundamental rights of the citizens, is now well settled by various decisions of this Court. The primary effort of the Court, while dealing with the environmental related issues, is to see that the enforcement agencies, whether it be the State or any other authority, take effective steps for the enforcement of the laws. The Courts, in a way, act as the guardian of the people's fundamental rights but in regard to many technical matters, the Courts may not be fully equipped. Perforce, it has to rely on outside agencies for reports and recommendations whereupon orders have been passed from time to time. Even though, it is not the function of the Court to see the day to day enforcement of the law, that being the function of the Executive, but because of the non-functioning of the enforcement agencies, the Courts as of necessity have had to pass orders directing the enforcement agencies to implement the law.
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> 47. With increasing threat to the environmental degradation taking place in different parts of the country, it may not be possible for any single authority to effectively control the same. Environmental degradation is best protected by the people themselves. In this connection, some of the non-governmental organisations (NGOs) and other environmentalists are doing singular service. Time has perhaps come when the Government can usefully draw upon the resources of such NGOs to help and assist in the implementation of the laws relating to protection of environment. Under Section 3 of the Act, the Central Government has the power to constitute one or more authorities for the purposes of exercising and performing such powers and functions, including the power to issue directions under Section 5 of the Act of the Central Government as may be delegated to them."

11. In **Essar Oil Limited v. Halar Utkarsh Samiti & Others**, (2004) 2 SCC 392, a two-Judges bench emphasizing the strong link between Article 21 and the right to know particularly about the environmental issues observed:

> “36. For this purpose the State Government must ask for and obtain an environmental impact report from expert bodies. The applicant must also come forward with an environmental management plan which must be cleared by the experts. To prevent possible future damage, the State Government must also be satisfied that the damage which may be caused is not irreversible and the applicant should be prepared and must sufficiently secure the cost of reversing any damage which might be caused. The State Government should also have in place the necessary infrastructure to maintain periodical surveys and enforce the stipulations subject to which the permit may be granted. In future the State Government should, before granting the approval, also call upon the applicant to publish its proposal so that public, particularly those who are likely to be affected, are made aware of the proposed action through the sanctuary or natural park. This will ensure transparency in the process and at least safeguard against a decision of the State Government based solely upon narrow political objectives. Besides the citizens who have been made responsible to protect the environment have a right to know. There is also a strong link between Article 21 and the right to know particularly where "secret Government decisions may affect health, life and livelihood". The role of voluntary organisations as protective watch-dogs to see that there is no unrestrained and unregulated development, cannot be over-emphasized. Voluntary organisations may of course be a front for competitive interests but they cannot alt be tarred with the same brush. Our jurisprudence is replete with instances where voluntary organisations have championed the cause of conservation and have been responsible for creating an awareness of the necessity to preserve the environment so that the earth as we know it and humanity may survive.”

12. In **N.D. Jayal v. Union of India** (supra), the Court held:

> 24. The right to development cannot be treated as a mere right to economic betterment or cannot be limited to as a misnomer to simple construction activities. The right to development encompasses much more than economic well being, and includes within its definition the guarantee of fundamental human rights. The 'development' is not related only to the growth of GNP. In the classic work, *Development As Freedom,* the Nobel prize winner Amartya Sen pointed out that 'the issue of development cannot be separated from the conceptual framework of human right'. This idea is also part of the UN Declaration on the Right to Development. The right to development includes the whole spectrum of civil, cultural, economic, political and social process, for the improvement of peoples' well being and realization of their full potential. It is an integral part of human right. Of course, construction of a dam or a mega project is definitely an attempt to achieve the goal of wholesome development. Such works could very well be treated as integral component for development.
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> 25. Therefore, the adherence to sustainable development principle is a *sine qua non* for the maintenance of the symbiotic balance between the rights to environment and development. Right to environment is a fundamental right. On the other hand, right to

> development is also one. Here the right to 'sustainable development' cannot be singled out. Therefore, the concept of 'sustainable development' is to be treated as an integral part of 'life' under Article 21. Weighty concepts like inter-generational equity (*State of HP v. Ganesh Wood Products*), public trust doctrine (*M.C. Mehta v. Kamal Nath*) and precautionary principle (*Vellore Citizens*), which we declared as inseparable ingredients of our environmental jurisprudence, could only be nurtured by ensuring sustainable development.
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> 26. To ensure sustainable development is one of the goals of Environmental (Protection) Act, 1986 (for short "the Act") and this is quite necessary to guarantee "right to life" under Article 21. If the Act is not armed with the powers to ensure sustainable development, it will become a barren shell. In other words, *sustainable development is one of the means to achieve the object and purpose of the Act as well as the protection of 'life' under Article 21*. Acknowledgment of this principle will breath new life into our environmental jurisprudence and constitutional resolve. Sustainable development could be achieved only by strict compliance with the directions under the Act. The object and purpose of the Act: "to provide for the protection and improvement of environment" could only be achieved by ensuring the strict compliance with its directions. The authorities concerned by exercising their powers under the Act will have to ensure the acquiescence of sustainable development. Therefore, the directions or conditions put forward by the Act need to be strictly complied with. Thus the power under the Act cannot be treated as a power simpliciter, but it is a power coupled with duty. It is the duty of the State to make sure the fulfillment of conditions or direction under the Act. Without strict compliance, right to environment under Article 21 could not be guaranteed and the purpose of the Act will also be defeated. The commitment to the conditions thereof is an obligation both under Article 21 and under the Act……"

13. Keeping in view these well settled principles, we may now proceed to examine the provisions of the Act. The Act in question is a remedial and also beneficial statute. It is clear from the scheme of the Statement of Objects and Reasons to the Act appended to the Bill. It states as under:

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

14. Section 11 of the Act, which is material for the purpose of this appeal, is reproduced hereinbelow:

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

15. On a plain reading of Section 11, it is seen that any person aggrieved by an order granting environmental clearance has a right to prefer an appeal to the Authority and the definition of 'person' as contained in sub-section (2) of Section 11 at Clause (a) thereto provides that any person who is likely to be affected by the grant of environmental clearance has an undoubted locus standi to file an appeal. Section 11(2)(c) is worded differently and is wider in scope than sub-clause (a). Sub-clause (c) speaks of "association of persons" (whether incorporated or not) who are likely to be affected by the impugned action and who work in the field of environment. In other words, sub-clause (a) talks of those who are affected or are likely to be affected and the emphasis is on the impact on an individual, though the sub-clause does not rule out more than one person likely to be affected who are actually aggrieved. In contrast, sub-clause (c) refers

to an association of persons, particularly an incorporated one. Such association of persons, particularly an incorporated association, cannot be said to be affected in the manner traditionally understood. Moreover, in environmental cases the damage is not necessarily confined to the local area where the industry is set up. The effect of environmental pollution or environmental degradation might have far-reaching effects going beyond the local area and might have national or global effects. For example, the destruction of forests is said to be one of the causes leading to global warming. Therefore, the aggrieved person need not be resident of the local area. Such an interpretation would also result in defeating the very objective of this enactment in terms of access to justice. As per the learned single Judge:

> *"….India, even today, lives largely in its villages. A project or scheme, which is likely to affect or impact a remote community, that may comprise even a cluster of villages, may or may not have an "association of persons" who work in the field of environment. The villagers, like most others, are unlikely to know about the project clearance, or possess the wherewithal to question it, through an appeal. If the third respondent's contention, and the authority's impugned order were to be accepted, and upheld, such community's right to appeal, meaningfully, would be rendered a chimera, an illusion. In their case, the Act would be a cruel joke, paying lip service, while promising access to justice, but in reality depriving such a right….."*

16. The expression "aggrieved person" denotes an elastic, and, to an extent, an elusive concept. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged (See **J.M. Desai v. Roshan Kumar**, AIR 1976 SC 578). In **Bar Council of Maharashtra v. M.V. Dabholkar & Ors.**, (1975) 2 SCC 702, the Court held that the words "person aggrieved" are found in several statutes and the meaning will have to be ascertained with reference to the purpose and the provisions of the statute. It has been noticed in **Ghulam Qadir v. Special Tribunal & Others**, (supra) that the orthodox rule of interpretation regarding the locus standi of a person to reach the court has undergone a sea change and the constitutional courts have been adopting a liberal approach in dealing with the cases or the claims of litigants cannot be dislodged merely on hypertechnical grounds. In **S.P. Gupta v. Union of India**, 1981 (Supp) SCC 87, the Constitution Bench held:

“20. Now, as pointed out by Cappellatti in Volume III of his classic work on "Access to Justice" at page 520, "The traditional doctrine of standing (legitimatio ad causam) attributes the right to sue either to the private individual who 'holds' the right which is in need of judicial protection or in case of public rights, to the State itself, which sues in courts through its organs". The principle underlying the traditional rule of standing is that only the holder of the right can sue and it is therefore, held in many jurisdictions that since the State representing the public is the holder of the public rights, it alone can sue for redress of public injury or vindication of public interest. It is on this principle that in the United Kingdom, the Attorney-General is entrusted with the function of enforcing due observance of the law. The Attorney-General represents the public interest in its entirety and as pointed out by S.A. de Smith in "Judicial Review of Administrative Action" (Third edition) at page 403; "the general public has an interest in seeing that the law is obeyed and for this purpose, the Attorney General represents the public." There is, therefore, a machinery in the United Kingdom for judicial redress for public injury and protection of social, collective, what Cappellatti calls 'diffuse' rights and interests. We have no such machinery here. We have undoubtedly an Attorney General as also Advocates General in the States, but they do not represent the public interest generally. They do so in a very limited field; see Sections 91 and 92 of the Civil Procedure Code, But, even if we had a provision empowering the Attorney General or the Advocate General to take action for vindicating public interest, I doubt very much whether it would be effective. The Attorney General or the Advocate General would be too dependent upon the political branches of Government to act as an advocate against abuses which are frequently generated at least tolerated by political and administrative bodies. Be that as it may, the fact remains that we have no such institution in our country and we have therefore to liberalise the rule of standing in order to provide judicial redress for public injury arising from breach of public duty or from other violation of the Constitution or the law. If public duties are to be enforced and social collective 'diffused' rights and interests are to be protected, we have to utilise the initiative and zeal of public-minded persons and organisations by allowing them to move the court and act for a general or group interest, even though they may not be directly injured in their own rights. It is for this reason that in public interest litigation -- litigation undertaken for the purpose of redressing public injury, enforcing public duty, protecting social, collective, 'diffused' rights and interests or vindicating public interest, any citizen who is acting bona fide and who has sufficient interest has to be accorded standing. What is sufficient interest to give standing to a member of the public would have to be determined by the Court in each individual case. It is not possible for the Court to lay down any hard and fast rule or any strait-jacket formula for the purpose of defining or delimiting 'sufficient interest', It has necessarily to be left to the discretion of the Court. The reason is that in a modern complex society which is seeking to bring about transformation of its social and economic structure and trying to reach social justice to the vulnerable sections of the people by creating new social, collective 'diffuse' rights and interests and imposing new public duties on the State and other public authorities, infinite number of situations are bound to arise which cannot be imprisoned in a rigid mould or a procrustean formula. The Judge who has the correct social

> perspective and who is on the same wavelength as the Constitution will be able to decide, without any difficulty and in consonance with the constitutional objectives, whether a member of the public moving the court in a particular case has sufficient interest to initiate the action.

17. In **Municipal Council, Ratlam v. Shri Vardichan & Ors.**, (1980) 4 SCC 162, Krishna Iyer, J. quoted with approval the following passage from Access to Justice by Cappelletti and B. Garth which reads thus:

> "The recognition of this urgent need reflects a fundamental change in the concept of "procedural justice".... The new attitude to procedural justice reflects what Professor Adolf Homburger has called "a radical change in the hierarchy of values served by civil procedure"; the paramount concern is increasingly with "social justice," i.e., with finding procedures which are conducive to the pursuit and protection of the rights of ordinary people. While the implications of this change are dramatic-for instance, insofar as the role of the adjudicator is concerned-it is worth emphasizing at the outset that the core values of the more traditional procedural justice must be retained. "Access to justice" must encompass both forms of procedural justice."

18. In **M.C. Mehta (II) v. Union of India**, (1988) 1 SCC 471, the Court observed:

> "16. …..The petitioner in the case before us is no doubt not a riparian owner. He is a person interested in protecting the lives of the people who make use of the water flowing in the river Ganga and his right to maintain the petition cannot be disputed. The nuisance caused by the pollution of the river Ganga is a public nuisance, which is wide spread in range and indiscriminate in its effect and it would not be reasonable to expect any particular person to take proceedings to stop it as distinct from the community at large. The petition has been entertained as a Public Interest Litigation. On the facts and in the circumstances of the case we are of the view that the petitioner is entitled to move this Court in order to enforce the statutory provisions which impose duties on the municipal authorities and the Board constituted under the Water Act…."

19. It is well settled that in construing remedial statute the courts ought to give to it widest operation which its language will permit. The words of such a statute must be so construed as to give the most complete remedy which the phraseology will permit, so as to secure that the relief contemplated by the statute shall not be denied to the class intended to be relieved. The statute being remedial in nature is given liberal construction to promote the beneficient object behind it. In **Workman of American Express International Banking Corporation v. Management of American Express**

International Banking Corporation, (1985) 4 SCC 71, O. Chinnappa Reddy, J, speaking for the Court observed:

> "The principles of statutory construction are well settled. Words occurring in statutes of liberal import such as social welfare legislation and 'Human Rights' legislation are not to be put in Procrustean beds or shrunk to Liliputian dimensions. In construing these legislations the imposture of literal construction must be avoided and the prodigality of its mis-application must be recognised and reduced. Judges ought to be more concerned with the 'colour', the 'content' and the 'context' of such statutes (we have borrowed the words from Lord Wilberforce's opinion in *Prenn v. Simmonds).* In the same opinion Lord Wilberforce pointed out that law is not to be left behind in some island of literal interpretation but is to enquire beyond the language, un-isolated from the matrix of facts in which they are set; the law is not to be interpreted purely on internal linguistic considerations. In one of the cases cited before us, that is, *Surendra Kumar Verma v. Central Government Industrial Tribunal cum-Labour Court*, we had occasion to say,
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> > "Semantic luxuries are misplaced in the interpretation of "bread and butter" statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the Court is not to make inroads by making etymological excursions".

20. Insofar as the present case is concerned, it is seen that even in the impugned order, the Authority acknowledged that the first respondent had on several occasions in the past made representations before the Orissa Pollution Control Board challenging the holding of public hearing and that he could not attend the hearing due to personal reasons. The first respondent, though not participating in the public hearing, had presented his detailed objections before the Pollution Control Board against the holding of public hearing on the ground of faulty environmental impact assessment report. At one stage, his representations were found substantial by the authorities.

21. The organization of the first respondent is working in the area in question and has been closely following the issue of setting up of aluminium smelter plant. During various stages of the project it had complained to the second respondent about the alleged unauthorized construction at the project site, which later directed the appellant to stop such activities. In the circumstances it is not right to say that the first respondent is not an aggrieved person within the meaning of Section 11 of the Act. Denial of the right to appeal would virtually defeat the legislative intention of granting access to the expert

appellate authority in the matter of grant of EIA. In our opinion, the appeal is devoid of any substance and the same is hereby dismissed with costs quantified at Rs.25,000/-.

CHIEF JUSTICE

MANMOHAN, J

SEPTEMBER 14, 2009
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