

## IN THE SUPREME COURT OF INDIA

## CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6829 OF 2013

DHEERU POWERGEN LTD.

Appellant(s)

VERSUS

JEET SINGH KANWAR &amp; ORS.

Respondent(s)

O R D E R

The respondent has approached proponents as proposed to set up a 1050 MW super thermal power project at Korba in Chhatisgarh. The National Green Tribunal ("the Tribunal") by its judgment and order passed on 16 April 2013 quashed a decision of the Ministry of Environment and Forests to grant an Environment Clearance ("EC") for setting up the coal based thermal power plant.

The operative portion of the order passed by the Tribunal reads thus;

"30. Taking a stock of the foregoing discussion, we have arrived at the conclusion that the impugned order of the MoEF, granting EC to set up the coal-based Thermal Power Plant as sought by the Project Proponent is illegal and liable to be quashed. Needless to say, the Appeal succeeds and must be allowed.

In the result, we allow the Appeal and quash the impugned order of EC dated 18.01.2010. The parties to bear their own costs.

The project proponent is, however, at liberty to apply afresh and pursue his request for grant of EC in accordance with law after lifting the moratorium, if it is found that there is a substantial reduction in pollution below the prescribed levels. That, such application, if so filed, may be considered on its own merits."

During the course of the hearing, the attention of the Court is drawn to an Office Memorandum dated 17 September 2013 of the Government of India in the Ministry of Environment & Forests.

Clause (4) and (5) of the O.M. reads thus;

"4. The evaluation of the CEPI score in the 17 areas where moratorium is still in place indicates that the CEPI score in 10 areas namely Bhiwadi (Rajasthan), Dhanbad (Jharkhand), Manali (Tamilnadu), Ahmedabad (Gujarat), Korba (Chhattisgarh), Asansole (West Bengal), Haldia (West Bengal), Howrah (West Bengal), Vishakapatnam (Andhra Pradesh) and Kanpur (UP) is below 80 and has shown a decreasing trend as compared to the CEPI score assessed by CPCB in 2011. In rest of the seven areas namely Ankleshwar (Maharashtra), Chandrapur (Maharashtra), Pali (Rajasthan), Vatva (Gujarat), Vellore (Tamil Nadu), Najafgarh Drain Basin (UT Delhi) and Jodhpur (Rajasthan), the CEPI score is either above 80 or is above 70 and showing either increasing trend or no change as compare to values observed in 2011.

5. In view of the re-assessment of CEPI score and taking into consideration that action plans for improving environment quality take time to yield results, it has been decided to lift the moratorium on consideration of projects for environmental clearance in respect of projects to be located in the above mentioned 10 clusters/areas namely Bhiwadi (Rajasthan), Dhanbad (Jharkhand), Manali (Tamilnadu), Ahmedabad (Gujarat), Korba (Chhattisgarh), Asansole (West Bengal), Haldia (West Bengal), Howrah (West Bengal), Vishakapatnam (Andhra Pradesh) and Kanpur (U.P.) where CEPI score of 2011 is below 80 and has shown a decreasing trend as compared to the CEPI score of 2011, subject to the following conditions :

i. The concerned SPCB to ensure that any new project/activity or any expansion or modernization of existing project or activity or any change in product mix is in line with the overall approved action plan of the concerned CPA.

ii. The implementation of action plan of every CPA to be reviewed by the concerned Chairman, SPCB on quarterly basis and report sent to CPCB by the 7<sup>th</sup> day of the month succeeding the end of quarter.

iii. Monitoring in CPAs be got done by SPCB through a third party on annual basis for computing CEPI. The monitoring be done during December-February and the report sent to CPCB by April. CPCB, in turn, to submit its report to MoEF.

iv. Monitoring in CPAs be got done by CPCB through a third party on biennial basis for computing CEPI and report submitted to MoEF for taking an appropriate view."

In the event, as it appears, the moratorium in respect of Korba, Chhattisgarh has been lifted in consequence of clauses 4 and 5 of the above O.M. dated 17 September 2013, it is open to the project proponent, in terms of the liberty granted by the Tribunal, to apply afresh and pursue its request for the grant of an E.C. in accordance with law.

In that view of the matter, we see no reason to keep the civil appeal pending.

The civil appeal is, accordingly, disposed of in terms of the liberty granted above. There shall be no order as to costs.

.....J.  
(DR. DHANANJAYA Y. CHANDRACHUD)

.....J.  
(HEMANT GUPTA)

NEW DELHI,  
January 3, 2019

ITEM NO.38

COURT NO.12

SECTION XVII

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

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(IA 2/2013-STAY APPLICATION, IA 42395/2014, IA 3/2014)

Date : 03-01-2019 These matters were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD  
HON'BLE MR. JUSTICE HEMANT GUPTA

For Appellant(s)

Mr. Ajit Pudussery, AOR  
Mr. K. Vijayan, Adv.  
Mr. Ajeet Singh Verma, Adv.

For Respondent(s)

Ms. Yogmaya Agnihotri, Adv.  
Mr. Rohit K. Singh, AOR

Ms. Anitha Shenoy, AOR  
Ms. Srishti Agnihotri, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

The civil appeal is disposed of in terms of the signed order.

Pending application(s), if any, shall also stand disposed of.

(MANISH SETHI)  
COURT MASTER (SH)

(SAROJ KUMARI GAUR)  
BRANCH OFFICER

(Signed order is placed on the file)