

**NATIONAL GREEN TRIBUNAL,
NEW DELHI**

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M.A. NO. 32 OF 2011

ARISING OUT OF APPLICATION NO. 32 OF 2011

Husain Saleh Mahmad Usman Bhai Kara .. Applicant

Versus

Union of India & Ors. .. Respondent

ORDER

Date: 10th January, 2012

The State Level Environment Impact Assessment Authority, Gujarat (SLEIAA) by order dated 11th June, 2010 granted environmental clearance (EC) for establishing 300 MW (2x150 MW) imported / Indian coal based Thermal Power Plant at Village Bhadreshwar, Taluk Mundra, District Kutch in favour of M/s OPG Power Gujarat Pvt. Ltd., Respondent No.3.

Alleging violation of certain conditions stipulated in the aforesaid EC, more particularly violation of the guidelines issued under the Forest (Conservation) Act, 1980, the Applicant has filed an application, invoking jurisdiction of this

Tribunal under Section 14 of the National Green Tribunal Act, 2010. The said application has been registered as Application No.32 of 2011.

2. Along with the application, the Applicant has also filed a petition under Section 19 (4) (i) of the NGT Act, 2010 inter alia praying to restrain Respondent No.3 from carrying out any construction in consonance with the EC granted in its favour, on the ground that, it would cause irreparable damage to ecology and environment.

3. Mr. Panjwani, Learned Sr. Advocate appearing on behalf of the Applicant, referred to several documents annexed to the original application to substantiate his case that by suppressing vital facts the EC was procured. According to Mr. Panjwani, the land over which the project is proposed to be constructed involves both forest and non-forest lands, but the said aspect was not disclosed either in the EIA Report or in the EC letter, as it was intentionally suppressed by the Project Proponent (Respondent No.3). Drawing our attention to para 4.4 of the guideline on Forest (Conservation) Act, 1980, Mr. Panjwani submitted that as and when a project involves use of forest as well as non-forest land, work should not be started on non-forest land till approval of the Central Government for release of forest land is granted. In the case in hand a prayer is made to issue an Interim Order / direction restraining Respondent No.3 from

making any construction over the non-forest land, till necessary permission is obtained from the Central government.

4. Respondent No. 2 & 3 have entered appearance and have filed a detailed reply in the main case. So far as this MA is concerned, Mr. Ramchandran, Learned Advocate appearing for Respondent No.3 agreed to make oral submissions. Drawing attention to letter dated 21st March, 2011 issued by Assistant Inspection General of Forest to Chief Secretaries / Administrator of all State and Union Territories (Annexure-3), learned counsel submitted that the restrictions imposed in the said guidelines should be confined only to State Govt. / project authorities, and not to projects undertaken by private entrepreneurs.

Elaborating the said submission, Mr. Ramchandran submitted that the restrictions have been imposed to avoid loss likely to be caused to the public exchequer in the event that permission to release the forest land required for the project is refused and consequently the project is abandoned. According to Mr. Ramchandran, the said provision cannot be made applicable to private entrepreneurs who are willing to take a risk at their own cost, thus the balance of convenience tilts in their favour, and it is a fit case where the MA should be dismissed.

5. Perusal of the records reveal that 3.68 ha of forest land out of 300 acres of forest lands, are involved in the aforesaid project. The forest land, it is submitted would be used only for laying pipelines without causing any damage to the existing forest.

6. Mr. Krishnan Venugopal, Learned Sr. Counsel, advancing the cause of the Project Proponent submitted that Para 4.4 of the circular issued under the Forest (Conservation) Act, 1980 is only a guideline and it has neither any statutory force nor can it be said to be binding upon Respondent No.3. Repudiating the submissions advanced by Learned Counsel for the Applicant it was argued that if any restraining order is issued at this stage, the same would cause irreparable loss to Respondent No.3 in as much as not only the cost of construction would escalate by afflux of time but also there would be delay in completion of the project, thereby causing harassment, irreparable loss and prejudice to the Respondent No.3 which has a prima facie cause in its favour.

7. In course of hearing, however, Mr. Ramchandran, Learned Counsel for Respondent No.3, fairly submitted that if the said Respondent is permitted to carry on construction over the non-forest land for which EC has already been issued, it shall not claim any equity in as much as the construction undertaken would be purely at its own risk. It is

also submitted that alternative steps are being taken not to use the reserve forest land and instead use other land situated in the vicinity for laying down the pipe lines, and as such, if the construction work is stalled Respondent No.3 would suffer insurmountable hardship.

In the case of **Dalpat Kumar & Anr. Vs Prahlad Singh & Ors. AIR 1993 SC 276**, the Supreme Court explained the scope of granting Interim protection and observed as follows:

“The phrases ‘prima facie case’, ‘balance of convenience’ and ‘irreparable loss’ are not rhetoric phrases for incantation, but words of width and elasticity, to meet myriad situations presented by man’s ingenuity in given facts and circumstances, but always is hedged with sound exercise of judicial discretion to meet the ends of justice.”

8. Heard Learned Counsel for the parties at length, and perused the documents annexed to the pleadings meticulously. Considered the principle governing the grant of Interim Orders as well as all the *pros and cons* of the case in the touch-stone of the ratio laid down by the Supreme Court in the case of Dalpat Kumar (Supra). Admittedly EC has been granted in favour of Respondent No.3 to construct

the Thermal Power Plant. After perusing the documents we are satisfied that as per the existing sanction some forest lands needed to be utilized /involved for construction of the said project. Para 4.4 of the guidelines on Forest (Conservation) Act, 1980, creates certain embargo with regard to commencement of construction so far as projects which involve forest and non-forest land. The question as to whether, the said guidelines would have mandatory effect or otherwise would have to be decided in the main application. Thus making any observation at this stage with regard to the applicability of the aforesaid guidelines to private proponents or otherwise according to us, would amount to prejudging the issue. We therefore refrain from responding to the said question at this stage.

9. Mr. Ramchandran, in course of his submission, undertook on behalf of the Respondent to take steps to utilize other land and not to use any forest land for the purpose of the project. Learned Counsel also submitted that the construction made in the meanwhile would be strictly at the risk of Respondent No.3. He also undertook that Respondent No.3 shall not claim any equity in future with regard to the construction made in the interregnum period.

10. Considering the submissions made in Court, and the facts and circumstances, we feel that the balance of convenience tilts in favour of Respondent No.3. We are also

satisfied that irreparable loss and prejudice would be caused if the said Respondent is restrained from raising any construction over the non-forest land at this stage. We, therefore, dispose of this Misc. application with a direction that if Respondent No.3 carries any construction in connection with the Thermal Power Plant over non-forest land at Village Bhadreshwar, the same would be at the risk of said Respondent. It is also made clear that in future, Respondent No.3 shall not claim any equity with regard to the constructions made, and we order accordingly.

11. To avoid prejudice to the parties we direct that the Original Application be listed on **18th January, 2012** for hearing and final disposal alongwith other analogous matters.

(VIJAI SHARMA)
Expert Member

(JUSTICE A.S. NAIDU)
Acting Chairperson

Durga Malhotra
10th January, 2012

