

Item No. 03

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, FINANCE CENTRE
KOLKATA**

(By Video Conference)

Original Application No. 94/2021/EZ

with

I.A. No. 01/2022/EZ

I.A. No. 29/2022/EZ

I.A. No. 193/2022/EZ

Chittaranjan Mahanta &Ors.

Applicant(s)

Versus

State of Odisha &Ors.

Respondent(s)

Date of hearing: 07.02.2023

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

Applicant(s): Mr. Sankar Prasad Pani, Advocate for Applicant

Respondents: Mr. Shakti Prasad Panda, AGA for R-1, 2, 3, 4, 5 & 7
Mr. Soumitra Mukherjee, Advocate for R-8
Mr. Sanwal Tibrewal, Advocate a/w Ms. Aparajita Rao, Advocate
for R-9

ORDER

1. Grievance in this application is against steps taken for setting up of Iron ore beneficiation plant by the Project Proponent (PP), M/s KAI International Pvt. Ltd in District Sundergarh, Orissa in violation of environmental norms, particularly without requisite EC. It is stated that without requisite Forest Clearance (FC) under Forest (Conservation) Act, 1980 from Central Government, trees have been cut, illegally treating the

area as 'non-forest' and permission granted by DFO is in violation of law laid down inter alia in TN Godavarman, (1997) 2 SCC 267.

2. Case set out in the application is that the PP proposes to set up Iron ore beneficiation plant with production capacity of 1.5 Million Tons Per Annum (MTPA), Iron ore Pelletisation Plant of 1.2 MTPA, Sponge Iron of 0.346 MTPA, Billet of 0.43 MTPA, Rolling Mill 0.417 MTPA, Captive Power Plant (CPP) of 75 MW, Producer Gas Plant 30,000 Nm³/hr and SMS Slag Crushing Unit 60,150 TPA in Kapand Mouza of Lahunipada Tahasil in Sundergarh District. Its proposal for EC was considered by EAC on 25-26 February, 2021. In view of high pollution potential, the proposal was returned. Still, the PP has felled large number of trees illegally which will adversely affect animal habitat and animal movement in the area. The area is contiguous to Kukia Reserve Forest which is also a habitat to wild animals with rare and endangered species. Other adjoining reserved forests are Kukia RF (NW) 0.4 km, Dhenkiam RF (W) 2.8 km Dhenkiam Block RF (NW) 4.3 km, Nalghati Rajabasa RE (SW) 52 km Dhanaghar Extension RF (NNE) 7.4km, Gurundia RE (SW) 8.7 km, Bhagoth RE (SSW) 7.1 km. Complaint was filed with the DFO, Rourkela on 01.10.2021 against illegal felling of trees but no action was taken. The PP is going ahead with the construction of the project without requisite EC.

3. Vide order dated 08.10.2021, the Tribunal considered the matter. Notice was also issued to all the respondents, including the PP, MoEF&CC, DFO, Rourkela and District Magistrate, Sundergarh. It was directed that since no EC had been granted, the PP may not raise any construction and may not fell any more trees without requisite clearance. The Tribunal also sought information from the State of Odisha about the number of trees already felled and action taken.

4. The said respondents have filed their respective replies.
5. Stand of the MoEF&CC is that the proposal for EIA was returned on recommendation of the EAC in its meeting held on 25 -26 February, 2021. The PP withdrew the application for EIA on 27.10.2021 on the ground that configuration of the plant had changed. Before that, fresh proposal was filed on 21.10.2021. The DFO, Rourkela had granted permission for felling of trees on 20.09.2021. The EAC considered the new proposal on 11 -12 November, 2021 and recommended grant of ToR which has been granted by the MoEF&CC on 29.11.2021. Final EIA report has not been filed with the MoEF&CC along with public hearing proceedings.
6. Stand of the DFO in affidavit dated 27.07.2022 is that land in question is *patit* (barren) land as per revenue record. 5856 trees are enumerated and permission granted for felling of trees was under Odisha Timber and other Forest Produce Transit Rules, 1980. PP has uprooted stumps of all 1500 trees and destroyed the evidence from the land. There is no scope for any further verification. Land is having moderately dense forest growth. Kukia Reserve Forest is not contiguous to the land in question and it is 0.12 Km away.
7. Stand of the PP is that on its application IDCO allotted land for the plant which is non forest land on 6.8.2021 against payment. It applied for EC on 16.2.2021 which was returned due to defects but another application has been filed on which TOR has been granted. The project involves investment of Rs.341 crore and generation of employment for 225 persons. DFO has granted permission for felling trees on the land and the PP has felled 1500 trees and deposited replantation charges (Rs.62 lacs).
8. The applicants in their rejoinder filed on 06.072022 have submitted that grant of permission by the DFO is illegal as the land is deemed forest

in view of order of Hon'ble Supreme Court in *T.N. Godavarman Thirumulpad (Supra)*. Description in revenue record that land is barren is not final as dictionary meaning of 'forest' will include land where trees actually exist, as in the case of the land in question. As held in *Lafarge (2011) 7 SCC 338*, the DFO cannot grant permission by treating such land as non forest merely on the basis of revenue record. Moreover, appraisal has to be conducted by the MoEF&CC as per directions in the said judgment which has not been done before felling trees. Further, in terms of Forest Policy, 1988 and directions in *Lafarge, (supra)*, forest is not to be treated as mere resource but national asset to prevent erosion and degradation of land. Thus, permission for felling trees by the DFO is illegal and it affects elephant movement and habitats of endangered flora and fauna. Number of trees actually cut by the PP is much more than those permitted by the DFO. Thus, ToR have been granted without considering these facts and pendency of these proceedings. Reasons for which the proposal was earlier returned on 26.02.2021 still hold good and have not been considered while granting TOR.

9. On pleadings of the parties, issues which arise for consideration are legality of permission for cutting of trees and granting of TOR without considering relevant facts. We have heard learned Counsel for the appearing parties, perused the record and considered the matter.

10. We first refer to minutes of meeting of EAC for consideration of the proposal for the project. The EAC decided to return the proposal on 26.02.2021 with following observations:-

“Observations of the Committee

31.10.13 The Committee noted the following:

- i. Form I is not complete as most of the details sought in the Form I are not provided.*

- ii. Pre-feasibility report found to be incomplete as the details relating to environment settings for the proposed site has not been furnished.**
- iii. As per the records submitted, no alternate site details were furnished whereas PP during presentation referred three alternative sites for the proposed unit without any review by established methods of site selection.**
- iv. There are lots of trees in the proposed site that would be cut as observed from KML file and site photographs submitted during the presentation.**
- v. Management of phenolic water and tar recovered from PGP has not been described.*
- vi. Kukia RF is only 400 m from plant.**
- vii. 10 Nos of IFs are proposed (4x10 and 6x 15T capacity) to produce 0.43 MTPA steel which are having high pollution potential. PP should explore feasibility of installation of higher configuration of Induction Furnace.”**

11. As against above, the minutes of the reconstituted EAC dated 11-12 November, 2021 show that ToRs have been recommended without considering validity of permission granted by the DFO for cutting of the trees and also the pollution potential as earlier considered. There is no change of circumstance for revisiting decision of EAC dated 26.2.2021. Thus, grant of TOR is prima facie vulnerable.

12. Further, permission for felling of trees by the DFO is prima facie against the mandate of law laid down in judgement of the Hon'ble Supreme Court in *T.N Godavarman (Supra)* and *Lafarge Umiam Mining Pvt. Ltd (Supra)*. The said view has been reiterated inter alia in *TN Godavarman (2014) 4 SCC 61*, *BDA v. Sudhakar Hegde (2020) 15 SCC 63* and *TN Godavarman (2022) 4 SCC 289*. When there are large number of trees in the land, it has to be treated as forest notwithstanding its description as 'barren' in revenue record. Thus, matter is governed by the Forest (Conservation) Act, 1980 attracting prohibition against its use for non forest purpose without requisite Forest Clearance (FC) from Central Government on consideration of Forest Policy 1988 and other relevant

factors including that such activity will have adverse impact on animal habitat and elephant movement which view finds mention in minutes of EAC dated 26.2.2021 which is not shown to have been duly considered.

13. Thus, there being prima facie strong case in favour of the applicants, we continue the interim order dated 08.10.2021 and also direct that no further steps for the project be taken by the PP without requisite EC and permissions. Process of consideration by EAC ignoring earlier view dated 26.2.2021 will be illegal. At the same time, instead of straightaway quashing the project at this stage, we consider it necessary to obtain an independent appraisal of the issue in the interest of protection of the environment under section 15 read with section 20 of the NGT Act, 2010.

14. Accordingly, we constitute a joint Committee of nominee of DG Forest, MoEF&CC (not below the rank of ADG), Integrated Regional Officer of MoEF&CC, Bhubaneswar, PCCF (HoFF), Odisha, Chief Wildlife Warden, Odisha and the District Magistrate, Sundergarh. The Committee may undertake visit to the site, ascertain impact of the project on the wildlife, forest and environment including the adjoining rivers and other environmentally sensitive areas. The Committee may meet within one month. It will be free to associate any other individual/institution/agency and interact with the stake holders. The nodal agency for coordination and compliance will be the Integrated Regional officer of MoEF&CC, Bhubaneswar for coordination and compliance. The Committee may give its report within two months by email to the NGT Registrar, EZB by email with a copy thereof to the PP. The report may also be placed on the website of Integrated Regional Office of MoEF&CC for being accessed by the applicants or any other interested persons who will be free to respond to the report before the next date. The EC proceedings will remain stayed till further orders.

List for further consideration on 19.05.2023.

A copy of this order be forwarded to the DG Forest, MoEF&CC, Integrated Regional Officer of MoEF&CC, Bhubaneswar, PCCF (HoFF), Odisha, Chief Wildlife Warden, Odisha and the District Magistrate, Sundergarh by email for compliance.

I.A. No. 01/2022/EZ is for assessing number of trees and suitability of area for the project which will stand disposed of in terms of the above order. **I.A. No. 29/2022/EZ** is for revoking ToR which cannot be straightway directed but is to be considered after the report is received. The IA is disposed of. **I.A. No. 193/2022/EZ** is for action against the PP for violations which matter will be considered after the report is received. The said IA is also disposed of.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

B. Amit Sthalekar, JM

PROF. A. Senthil Vel, EM

Dr. Afroz Ahmad, EM

February 07, 2023
Original Application No. 94/2021/EZ
& I.A. No. 01/2022/EZ
I.A No. 29/2022/EZ
I.A. No. 193/2022/EZ
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