

BEFORE THE NATIONAL GREEN TRIBUNAL

SOUTHERN ZONE, CHENNAI

Appeal No. 12 of 2015 (SZ)

IN THE MATTER OF:

1. V. Rajendra Prasad,
3-33, Devunigudi Thanda,
H/O Ippalapalli Village,
Papireddy Guda Post,
Keshampet Mandal via Shadnagar,
Mahabubnagar District,
Andhra Pradesh
2. V. Raju,
R/o. Devunigudi Thanda H/o. Ippalapalli village,
Papireddy Guda Post,
Keshampet Mandal via Shadnagar,
Mahabubnagar District,
Andhra Pradesh
4. K. Srinu,
R/o. Devunigudi thanda H/o. Ippalapalli village,
Papireddy Guda Post,
Keshampet Mandal via Shadnagar,
Mahabubnagar District,
Andhra Pradesh
5. V.Kishan
R/o. Devunigudi thanda H/o. Ippalapalli village,
Papireddy Guda Post,
Keshampet Mandal Via Shadnagar,
Mahabubnagar District,
Andhra Pradesh
- 6 . V.Badru,
R/o. Devunigudi thanda H/o. Ippalapalli village,
Papireddy Guda Post,
Keshampet Mandal Via Shadnagar,
Mahabubnagar District,
Andhra Pradesh
7. V. Ravi,
R/o. Devunigudi thanda H/o. Ippalapalli village,
Papireddy Guda Post,
Keshampet Mandal Via Shadnagar,
Mahabubnagar District,
Andhra Pradesh

8. V. Shiva Raju,
R/o. Devunigudi thanda H/o. Ippalapalli village,
Papireddy Guda Post,
Keshampet Mandal Via Shadnagar,
Mahabubnagar District,
Andhra Pradesh
9. R. Chander,
R/o. Devunigudi thanda H/o. Ippalapalli village,
Papireddy Guda Post,
Keshampet Mandal Via Shadnagar,
Mahabubnagar District,
Andhra Pradesh
10. V. Ravi,
R/o. Devunigudi thanda H/o. Ippalapalli village,
Papireddy Guda Post,
Keshampet Mandal Via Shadnagar,
Mahabubnagar District,
Andhra Pradesh
11. R. Hanmanthu,
R/o. Devunigudi thanda H/o. Ippalapalli village,
Papireddy Guda Post,
Keshampet Mandal Via Shadnagar,
Mahabubnagar District,
Andhra Pradesh
12. V.Umla,
R/o. Devunigudi thanda H/o. Ippalapalli village,
Papireddy Guda Post,
Keshampet Mandal Via Shadnagar,
Mahabubnagar District,
Andhra Pradesh
13. V. Laxman,
R/o. Devunigudi thanda H/o. Ippalapalli village,
Papireddy Guda Post,
Keshampet Mandal Via Shadnagar,
Mahabubnagar District, Andhra Pradesh
14. M. Jangayya,
R/o. Ippalapalli village,
Papireddy Guda Post,
Keshampet Mandal Via Shadnagar,
Mahabubnagar District,
Andhra Pradesh
15. V. Peerya Naik,
R/o. Devunigudi thanda H/o. Ippalapalli village,
Papireddy Guda Post,
Keshampet Mandal Via Shadnagar,
Mahabubnagar District,

Andhra Pradesh

16. V. Janya Naik,
R/o. Devunigudi thanda H/o. Ippalapalli village,
Papireddy Guda Post,
Keshampet Mandal Via Shadnagar,
Mahabubnagar District, Telangana
Andhra Pradesh
17. V. Peerya,
R/o. Devunigudi thanda H/o. Ippalapalli village,
Papireddy Guda Post,
Keshampet Mandal Via Shadnagar,
Mahabubnagar District, Telangana
Andhra Pradesh
18. V. Srinivasulu,
R/o. Devunigudi thanda H/o. Ippalapalli village,
Papireddy Guda Post,
Keshampet Mandal Via Shadnagar,
Mahabubnagar District, Telangana
Andhra Pradesh
19. V. Rukman,
R/o. Devunigudi thanda H/o. Ippalapalli village,
Papireddy Guda Post,
Keshampet Mandal Via Shadnagar,
Mahabubnagar District, Telangana
Andhra Pradesh
20. V. Hanmanthu,
R/o. Devunigudi thanda H/o. Ippalapalli village,
Papireddy Guda Post,
Keshampet Mandal Via Shadnagar,
Mahabubnagar District, Telangana
Andhra Pradesh
21. K. Raju,
R/o. Devunigudi thanda H/o. Ippalapalli village,
Papireddy Guda Post,
Keshampet Mandal Via Shadnagar,
Mahabubnagar District, Telangana
Andhra Pradesh
22. K. Shankar,
R/o. Devunigudi thanda H/o. Ippalapalli village,
Papireddy Guda Post,
Keshampet Mandal Via Shadnagar,
Mahabubnagar District, Telangana
Andhra Pradesh

23. V. Heerya,
R/o. Devunigudi thanda H/o. Ippalapalli village,
Papireddy Guda Post,
Keshampet Mandal Via Shadnagar,
Mahabubnagar District, Telangana
Andhra Pradesh
24. R. Dasharath,
R/o. Devunigudi thanda H/o. Ippalapalli village,
Papireddy Guda Post,
Keshampet Mandal Via Shadnagar,
Mahabubnagar District, Telangana
Andhra Pradesh
25. N. Kishan,
R/o. Devunigudi thanda H/o. Ippalapalli village,
Papireddy Guda Post,
Keshampet Mandal Via Shadnagar,
Mahabubnagar District, Telangana
Andhra Pradesh
26. V. Chinya,
R/o. Devunigudi thanda H/o. Ippalapalli village,
Papireddy Guda Post,
Keshampet Mandal Via Shadnagar,
Mahabubnagar District, Telangana
Andhra Pradesh
27. V. Goari,
R/o. Devunigudi thanda H/o. Ippalapalli village,
Papireddy Guda Post,
Keshampet Mandal Via Shadnagar,
Mahabubnagar District, Telangana
Andhra Pradesh
28. V. Kishan,
R/o. Devunigudi thanda H/o. Ippalapalli village,
Papireddy Guda Post,
Keshampet Mandal Via Shadnagar,
Mahabubnagar District, Telangana
Andhra Pradesh
29. P. Venkatesh,
R/o. Devunigudi thanda H/o. Ippalapalli village,
Papireddy Guda Post,
Keshampet Mandal Via Shadnagar,
Mahabubnagar District, Telangana
Andhra Pradesh

30. K.Dasharath,
R/o. Devunigudi thanda H/o. Ippalapalli village,
Papireddy Guda Post,
Keshampet Mandal Via Shadnagar,
Mahabubnagar District, Telangana
Andhra Pradesh

..Appellants

AND

1. Union of India,
Through its Secretary,
Ministry of Environment and Forests,
C.G.O. Complex, Lodhi Road,
New Delhi – 110 003
2. Andhra Pradesh Pollution Control Board,
Through Member Secretary,
4th Floor, Podupu Bhavan,
Hyderabad CollecToRate Complex,
N.S. Road, Hyderabad – 500 001
3. M/s. MSN Laboratories Ltd.,
Through General Manager,
MSN House, Plot No.C-24,
Industrial Estate, Sannath Nagar,
Hyderabad – 500 018

... Respondents

Counsel appearing for the Appellants:

M/s. Ritwick Dutta & Rahul Chowdhary

Counsel appearing for the Respondents:

Mr. M.R. Gokul Krishnan for R1

Mr. T. Sai Krishnan for R2

M/s. V. Suthakar & K.S. Viswanathan for R3

J U D G E M E N T

PRESENT:

HON'BLE JUSTICE Dr. P. JYOTHIMANI, JUDICIAL MEMBER

HON'BLE SHRI P.S. RAO, EXPERT MEMBER

Judgement delivered by P. S. Rao, Expert Member

Dated: 12th October, 2017

Whether the Judgement is allowed to be published on the Internet – Yes/No

Whether the Judgement is to be published in the All India NGT Reporter – Yes/No

This appeal has been filed by one, V. Rajendra Prasad and 29 others belonging to Ippalapalli and nearby villages, Kesampet Mandal, Mahabubnagar District of Telangana with a prayer to pass an order thereby cancelling/quashing Environmental Clearance (for short 'EC') dated 07.03.2014 granted in favour of respondent No. 3 for establishing Bulk Drug and Intermediate Manufacturing unit with a capacity of 1500 tons per annum (TPA) at Survey No. 212 – 228 Ippalapalli Village, Kesampet Mandal, Mahabubnagar District contending that the proposed project will have large scale impact on groundwater resources, agricultural fields of the farmers in the locality and also on the environment.

2. It is contended by the appellants that the first respondent has granted the EC without application of mind ignoring a number of shortcomings in the Environment Impact Assessment (for short 'EIA') Report and inspite of violation of Terms of Reference (for short 'ToR'). A number of Clauses under ToR particularly Clause Nos. 7, 10, 29 and 32 which deal with important issues such as possibility of shifting the proposed industry to some other place, providing site map of 10 km area indicating the location of the project and details of various industries, water bodies, forests etc., exploring the possibility of drawing surface water/canal water as an alternate to groundwater, details of geological features and geo-hydrological status of the study area and ecological status, impact of groundwater level and other uses have not been complied with.

3. The appellants further find fault with the EIA report stating that the EIA is incomplete and does not adhere to the ToR and does not give a clear map showing the exact location of the areas of importance and the impact the industry is going to cause on the surrounding villages. There are

discrepancies on the distance from the site of proposed project to the nearest villages and the data furnished in EIA report on socio-economic study of the project area is improper. The appellants also contend that the farmers in the area are already facing scarcity of water for agricultural purposes and also there is acute power shortage. There is nothing to show that uninterrupted power supply to the project will be maintained. It is also the case of the appellants that there is a lacuna in the procedure of conducting Public Hearing (for short 'PH'). Though PH was conducted on 30.01.2013 at the project site and though 600 people are reported to have participated in the PH the voice of participants does not reflect properly and the proceedings of the PH do not disclose as to what exactly happened during the process of PH. The participants were not allowed to speak and express their opinion. Though there was large-scale opposition to the project by the villagers particularly by the farmers, most of the participants were denied to express their opinion. Thus the proceedings of the PH failed to reflect the ground reality. By pointing out the aforesaid alleged shortcomings / lapses the appellants made the prayer to quash the EC.

4. Subsequently, the appellants filed additional affidavit dated 26.08.2016 wherein it is stated that when they approached the Ministry of Environment, Forests and Climate Change (for short 'MoEF&CC') seeking certain information with respect to draft EIA report, final EIA report, minutes of the Expert Appraisal Committee (for short 'EAC') meetings, etc. they could not get favourable answer and the required information was not furnished by the Ministry stating that the file is not traceable. However, the appellants could only manage to access the draft report and Environment Management Plan (for short 'EMP'). The contention of the appellants is that the information provided by the Project Proponent that the project site

is a fully developed industrial location is false and misleading. In fact, it is not an industrial location and the project is proposed in agricultural land and there is only one industry in the vicinity namely, M/s. Sundar Ispat Ltd. There is also a discrepancy as to the exact location of the proposed industrial site with regard to the human habitations and water sources. Actually the distance from the boundary of the project site to the nearest human habitation is less than 1 km. It is a highly water intensive industry requiring 978 Kilo Litres per Day (for short 'KLD') water out of which 415 KLD is fresh water which is proposed to be made available by tapping groundwater. The site is located in the highly drought prone district of Mahabubnagar and if such intensive water consuming industry is allowed to tap groundwater it will cause severe impact on the agricultural activities of the farmers in the area and despite being aware of the scarce water resources in the region the project proponent has been granted with EC and permitted to extract the groundwater. One more aspect, the appellants found fault is that there is no Cumulative Impact Assessment (for short 'CIA') study. The draft EIA marks only two industries in the proximity of the project site located at a distance of 29.5 km. and 62.64 km. respectively. The project proponent suppressed the information that there is a Sponge Iron factory located in close proximity and no CIA has been conducted and the EAC has not applied its mind in not directing the project proponent to undertake the CIA.

5. The appellants further contend that the whole EIA process has been rendered into a formality since the land was already purchased for establishing the industry prior to the grant of EC and no geological and geo-hydrological study has been conducted at the site. The EIA study should have given the details about the surface water and canal water

sources available instead of giving a vague statement. Sole dependency on groundwater which is already scarce in such drought prone area, will have severe impact on the farming activity in the nearby villages and such huge requirement of fresh water will lead to further depletion of groundwater. The annual quantum of the rainwater harvest is only 5029843 litres which amounts to 13777 litres per day. As provided in the EIA report it becomes apparent that the groundwater consumption will far exceed recharge. Added to this, the location of the Sponge Iron industry at a distance of 1 km from the project site will add further pressure on the scarce resources and lead to pollution and no CIA study has been done in this regard. The appellants in support of their contentions have relied on certain judgments of the Hon'ble Supreme Court, various High Courts and the National Green Tribunal (NGT) which are as follows:

- 1) Subhash Kumar Vs. State of Bihar (1991) 1 SCC 598)
- 2) M.C. Mehta Vs. Union of India (2004) 12 SCC 118)
- 3) KIADB Vs. C.Kenchappa (2006) 6 SCC 371)
- 4) Research Foundation for Science Technology and Ecology Vs. Union of India
- 5) State of Uttar Pradesh Vs. Singhara Singh (1963 AIR 358, 1964 SCR (4) 485)
- 5) Samata Vs Union of India and others (Appeal No.2 of 2011of NGT)
- 7) Krishi Vigyan Arogya Kendra & Ors. Vs. MoEF (Appeal No.7 of 2011 of NGT)
- 8) S.P. Muthuraman Vs. Union of India (Application No.37 of 2015 and Application No.213 of 2014 of NGT)
- 9) Rudresh Naik Vs. Goa State CZMA (Appeal No.20/2013of NGT)
- 10) Delhi High Court judgment in Uttakarsh Mandal Vs. Union of India (W.P. (C) 9340 / 2009)
- 11) Delhi High Court judgment in Ramesh Gauns Vs. Union of India (W.P. 3208 of 2010)

- 12) NGT judgment Samata Vs. Union of India (Appeal No.9 of 2011)
- 13) NGT judgment in T. Muruganandam Vs. MoEF (Appeal No.17 of 2011)
- 14) NGT judgment in Ossie Fernandes Vs. MoEF (Appeal No.12 of 2012)
- 15) NGT judgment in Gram Panchayat, Tiroda Vs. MoEF (Appeal No.3 of 2011)
- 16) NGT judgment Vimal Bhai and others Vs. MoEF and others, (Appeal No.5 of 2011)

6. In the written submissions dated 22.08.2017, the appellants have again found fault that there is non-compliance of ToR with regard to possibility of shifting the site to some other location since the proposed area is drought prone. With regard to detailed study on geological features and geo-hydrological status of the project area the work undertaken by the State Groundwater Department is imperfect. The area where the site is located predominantly consist agricultural land and it is not a fully developed industrial location. The appellants contend that there are contradictory statements in the EIA report as to the distance of the nearest village from the project site and there are certain contradictions with reference to the distance of nearest human habitation known as Raga Thanda which is a hamlet of Pomalpally village and also to the nearest Ambient Air Quality (for short 'AAQ') monitoring locations. Thus, there is wrong information as well as concealment of facts by the project proponent based on which the EC was granted and therefore the EC has to be quashed.

7. The first respondent MoEF&CC in its reply affidavit dated September 2015, has stated that the main prayer of the appellants is to cancel the EC on the grounds of (i) Non-compliance of ToR, (ii) Inadequate EIA report which does not give the clear map showing the exact location of areas of

importance which are important consideration for grant of EC, (iii) the minutes of the PH held on 30.01.2013 do not reflect the exact proceedings and the events that occurred during the course of PH. Contradicting the aforesaid averments made by the appellants it is stated by the MoEF &CC that public consultation was done as per the provisions of EIA Regulations 2006 and the consent of the public have been incorporated in the EIA – EMP report and discussed by EAC in its 8th and 13th meetings held on 16th – 17th May 2013 and 18th – 20th November 2013 respectively and the due procedure was followed for appraisal of the project and then only the EC was granted subject to stipulation of various environmental safeguards. Finally the MoEF&CC has prayed to dismiss the appeal.

8. The 2nd respondent, Telangana State Pollution Control Board (for short 'PCB') in its reply dated September 2015 stated that the MoEF&CC issued the ToR for establishment of the proposed Bulk Drug and Intermediate Manufacturing unit (out of a total of 94 Bulk Drugs and Intermediaries any 30 will be manufactured at a time) in an area of 120 acres with a total investment of Rs.540 crores. The industry has obtained permission to draw groundwater from the State Groundwater Department. Initially, PH was proposed to be conducted on 25.06.2012 at the project site itself and was notified well in advance by publishing in daily newspapers. When the process of PH started the mob gathered at the site prevented the proceedings. Therefore it was postponed on the request of the project proponent. Subsequently on 21.12.2012 the project proponent submitted a representation to the Board enclosing the letters given by the villagers expressing their willingness for conducting PH. Therefore new date was fixed to conduct the PH on 30.01.2013 and notified in the daily newspapers on 28.12.2012. Accordingly PH was conducted on 30.01.2013. Minutes of

the PH along with the representations / objections received from the members of public were furnished to MoEF&CC for taking necessary further action. The allegations of the appellants that the people were not allowed to speak and not allowed to express their opinion during the PH, are false and incorrect. The minutes of the PH truly reflect the proceedings.

9. When the appellants approached the Hon'ble High Court of Andhra Pradesh by filing Writ Petition No. 5668 of 2013 against the 3rd respondent industry, the Hon'ble High Court in its order dated 14.11.2013 disposed the Writ Petition directing the respondent PCB to enquire into the complaints made by the appellants and take appropriate action. Pursuant to the directions of the Hon'ble High Court, the Joint Chief Environmental Engineer, Zonal Office, Hyderabad conducted enquiry along with experts in the field and during the enquiry and site visit about 20 appellants were present and also 4 representatives from industry attended the inspection. It was concluded after enquiry that the main plant extending to about 43 acres is proposed to be established in the middle of the 120 acres of the site and if greenbelt of 50 meters width is developed all around the industry in an area of about 40 acres and on establishment of effective Effluent Treatment Plant (for short 'ETP'), Reverse Osmosis (for short 'RO'), Multiple Effect Evaporator (for short 'MEE') and Agitated Thin Film Dryer (for short 'ATFD') there may not be any pollution problems by the industry and the chances of the surrounding agricultural lands getting affected are less. It was also observed that the industry has to provide 2 stage water / caustic scrubbers to control the process of emissions.

10. The 3rd respondent project proponent filed reply statement dated 5.08.2015 stating that the 3rd respondent company based in Hyderabad, was founded in the year 2003 and is presently one of the fastest growing manufacturers of Active Pharmaceutical Ingredients (for short 'API') and finished dosages in India. The project proponent submitted application to respondent No.1 in the year 2011 for grant of EC for the Bulk Drug and Intermediary Manufacturing Unit with a capacity of 1500 TPA with a request that eventually the capacity will be increased from 1500 to 2500 TPA. Based on the Form-1 proposals, the first respondent issued ToR dated 02.09.2011. PH was conducted on 30.01.2013 wherein more than 600 people from the Ippalapalli village, where the proposed project is to be located, along with the public from the surrounding villagers, including the appellants participated in the PH. The officials have given all the necessary clarifications on the issues raised by the members of public. After completion of all the formalities and based on the recommendation of the EAC, the first respondent granted EC on 07.03.2014 stipulating various conditions.

11. It is further stated by the 3rd respondent project proponent that the MoEF&CC granted EC only after considering all the materials on record and after satisfying with the clarifications furnished by the project proponent on various issues that have been raised in the EAC meetings. There is no National Park or Wildlife Sanctuary or Biosphere Reserve or Tiger Reserve within 20 km. from the project site. The lands forming part of the project site are owned by the company and are already in their possession. The total water requirement will be 978 KLD out of which fresh water requirement is 415 KLD. In their letter dated 26.04.2012 the State Groundwater Department has permitted to draw 436 KLD water from the 7 bore wells

that already exist at the site. The effluent discharged by the unit will be treated in a full-fledged ETP and the treated water will be recycled and reused reducing the demand for fresh water consumption and thus making it a ZLD unit. The 3rd respondent also proposed to establish rainwater harvesting system. With regard to Clause 32 of ToR pertaining to geological features and geo-hydrological status of the project area, the project proponent states that a detailed study of the project area was already undertaken by the State Groundwater Department and it was only thereafter the department has permitted withdrawal of 436 KLD water from the existing 7 bore wells located in the premises. It was further stated by the respondent project proponent that there will be noise pollution in the nearby villages.

12. Baseline study was conducted during December 2011 – February 2012 based on the latest census data for the year 2011 which was only made available at that time. The requirement of power will be drawn from the State grid and there is an assurance of 24 hours uninterrupted power supply by the state government. Coal is used for Boiler for steam requirement and the same is used for production, solvent recovery and for effluent treatment. Diesel is used for Diesel Gen Sets for standby power supply in case of power failure.

13. The 3rd respondent project proponent further stated that the contention of the appellants that they (appellants) have not been able to obtain various documents regarding the project clearance under RTI Act is not correct since they have been following up the project even prior to the grant of EC and approached the Hon'ble High Court of Andhra Pradesh and therefore they have complete knowledge of all the details regarding the project. Out

of the total proposed expenditure of Rs. 540 crores the cost towards environmental and pollution control measures would be around Rs. 40 crores with a recurring (Operational and Maintenance) cost of about Rs. 30 crores per annum. Finally, the project proponent stated in the reply that the project will create enormous employment potential in the villages around the project site and the company has not acquired any lands from the villagers and the establishment of the unit is in their own lands only. The proposed unit is a ZLD unit and no pollution will be caused. Majority of the villagers are welcoming the project and appellants have filed the appeal with vested interest and hence the appeal deserves to be dismissed.

14. The project proponent has also produced a statement indicating the water requirement of the unit and the details of various agricultural crops grown in the area and the rainwater harvesting structures proposed in the area.

15. In reply to the additional affidavit filed by the appellants, the 3rd respondent filed reply dated 03.08.2016 contesting the claims made by the appellants that the 3rd respondent has given written information for the appraisal of the project. The 3rd respondent stated that the statement made in the EIA report that the area is a "fully developed industrial location with all available infrastructure facilities to run the unit" is to be understood in the context of the accessibility of the site to the National Highway No.7 and the site is just 50 km away from Hyderabad city, and accessibility of the available resources for the establishment of not only the industry but also the availability of the ancillary activities such as engineering industries, supply of raw materials, transportation facilities for the employees and the overall infrastructure facilities. Since Hyderabad is a hub of the

pharmaceutical industries and known worldwide, a distance of 50 km is very reasonable to have such facility. Hence the purpose of showing the site as a "fully developed area" is in the context of proximity to the available resources for establishment and operation of Bulk Drug Manufacturing unit which is a process industry and it is not a misleading statement.

16. As for as CIA study is concerned the project proponent stated that the Sponge Iron unit M/s. Sundar Ispat Ltd already exists and was in operation during the period of collection of baseline data and this will take care of the issue as baseline data means that the sponge iron industry is already contributing to the existing environmental load in the area.

17. Compliance of ToR was submitted to EAC along with EIA report. It has been accepted and the EC has been granted. The issue of possibility of shifting the industry to some other location was initially suggested by the EAC in the light of initial projection of requirement of 1500 KLD water but subsequently the requirement was brought down to 415 KLD and therefore having satisfied, the EAC did not look into the issue again and not insisted for shifting the location.

18. It was further mentioned by 3rd respondent in his additional reply, that in the table 4.13 given in Chapter 4 page No. C4-34 of EIA report regarding the Runoff volume of the Rainwater Harvesting System, a typographical error has crept in mentioning "peak annual rainfall" in place of "peak hourly rainfall" and it is not a deliberate attempt to mislead the EAC.

19. It is the contention of the project proponent that due to imposition of ban on establishment of new industries which are of highly polluting nature, vide G.O. Ms. No.62 dated 28.04.1999, which also include Bulk drug Industry, there is no other option left to the project proponent to identify

some waste lands outside the banned area to establish the industry. The site selected is more than 25 km away from the banned area and is about 60 km from Bollaram and 65 km from Patancheru the area where a large number of Bulk Drug manufacturing units have been functioning which caused pollution in the past. However the issue regarding the shifting the site may not be necessary as the requirement of water which was initially estimated as 1500 KLD, has come down to 415 KLD and hence the EAC did not find it necessary to insist for exploring the option of shifting the unit.

20. After hearing the counsel appearing for the parties and also after going through the material papers and documents produced before us it is pertinent to examine the following points to arrive at a conclusion:

- (1) Is there any deliberate suppression / concealment of information by the project proponent which vitiates the whole process of appraisal of the project and granting of EC?
- (2) Alleged incomplete information on geological features and geo - hydrological and ecological status of the study area, impact on groundwater level and other uses etc. will have any bearing on appraisal of the project and granting of EC and whether allowing such water intensive industry in the drought prone District of Mahabubnagar will cause further depletion of groundwater adversely affecting the farming activities in the nearby villages?
- (3) Whether the existence of Sponge Iron factory M/s.Sundar Ispat Ltd. near the proposed project site will add pollution load and adversely affect the environment?

- (4) Whether the project proponent not complied with the ToR in preparing the EIA report and whether non appreciation of such lapses by EAC lead to wrong appraisal of the project and vitiated the whole process of granting EC?
- (5) Whether the whole process of PH is subverted by not allowing the participants to express their opinion and thus the PH is a farce and should not have been considered for appraisal of the project and in recommending the case for granting EC?
- (6). Whether the alleged granting of EC without CIA study makes the EC ineligible to be operated?

21. We may now examine each of the points in detail:

Point No.1:

The project proponent made an application in Form - I proposal dated 29-3-2011 along with Pre-feasibility report, Draft ToR etc. and after examining the proposals by the EAC in its 25th meeting held from 28th to 30th July 2011 and based on its recommendation, the MoEF&CC issued ToR dated 2-9-2011. It is true that there are some discrepancies in the figures initially furnished by the project proponent particularly with regard to the distance from the nearest human habitation, location of sponge iron plant etc. However, with reference to Chapter 6, page C6-1 point No. 6.2 of the EIA report that the project site is 1 km. away from human habitation, it is stated by the respondent project proponent that the nearest village from the periphery of the project site is Ippalapalli which is at a distance of 1.6 km and Ippalapalli Thanda is at a distance of 0.6 km which has been clearly mentioned in Chapter 3 page No. C3-24 Table 3.6.1 and the same are again given on page C3 -33, Table 3.8.1. The distances are based as

per Topo Sheet – Google imagery. In table 1.1 at page C1-3 the nearest village is rightly shown as Ippalapalli village at 1.6 km. and not Pomalpalli as wrongly stated by the appellants. Thus the project proponent has shown all human habitations in the project area. It is not the case of the appellants that there is any statutory violation with reference to distance criteria from the nearest human habitation. The allegation made by the appellants that there is a misrepresentation and concealment of facts, is strongly denied by the 3rd respondent. It is by mistake that instead of showing fig. 3 with 10 km radius Google imagery with the existing industries it was shown as fig.1.4. But actually fig.1.4 shows the distance of project site to Shamshabad, Outer Ring Road and Patancheru as well as Bollaram industrial area which is a critically polluted area and it appears to be a typographical error and there is no concealment of facts. With regard to fig.1.4 in the draft EIA report even though it shows above locations, it was mentioned as Google image – project site and nearby industries. However the satellite imagery at fig. 1.3 is that of 10 km radius of project site and nearby industries and the figure clearly shows sponge iron plant, M/s Sundar Ispat Ltd. and there is no concealment of fact by the project proponent. Therefore the information on the location of sponge iron factory in the vicinity of 10 km radius is not suppressed. Even during the presentation made before the EAC on 17-5-2013 the project proponent has submitted and explained the large version of the site map indicating the presence of sponge iron plant. Fig 1.3 is a satellite imagery clearly showing the presence of industries within 10 km radius. In draft EIA report it was wrongly shown as Fig 1.4 but the final EIA and presentation made before EAC clears the position. The discrepancies appear to be unintentional and not that severe one to conclude that the project proponent has deliberately

misled the authorities to influence them to pass an order in his favour. As seen from the successive minutes of the EAC meetings, Form-I proposals, EIA report, PH proceedings, presentation made by the project proponent before the EAC have been examined by the EAC and the discrepancies were not found to be deliberate attempts made by the project proponent to mislead the EAC.

22. In our view the allegation of the appellants that the project proponent misled the EAC by stating that it is a fully developed industrial location is also not sustainable as the project proponent clearly explained to the EAC that the use of phrase “fully developed industrial location” is in the context of convenient accessibility not only the required to resources for establishing the industry but also the availability of the ancillary activities such as engineering industries, supply of raw materials, transportation facilities and overall infrastructure facilities. The presence of water bodies is clearly depicted in fig. 1.2 of the EIA report. Therefore we hold the Point No. 1 in negative.

Point No.2:

23. The record placed before us shows that Mahabubnagar district is predominantly dependent on agriculture and it is drought prone. The annual average rainfall in the district is 604 mm. Therefore initially in the ToR it has been specifically mentioned at clause 7 for considering the possibility of shifting the project site to some other location since it is a water intensive industry. Later, as the project proponent has reduced the water requirement from 1500 KLD to 415 KLD of fresh water and got the clearance from State Groundwater Department the EAC appears to have not insisted for shifting the project site and recommended the case. Under

clause 7 of ToR the project proponent replied that “since the land is already purchased they will identify the additional sources of water supply if required” and under clause 29 of the ToR the project proponent replied that they are identifying lands with more water resources in order to draw water and transport to the unit. In the EIA report while describing the hydrology of the project area the persistent drought conditions including the decrease in agricultural yields including decrease of groundwater levels have been stated by the project proponent. Again under clause 28 of ToR the project proponent states that permission will be sought to draw 800 KLD of groundwater from the Central Groundwater Authority. This indicates that the project proponent is in full knowledge of scarcity of water in the region and still wanted to proceed with the project as the lands were already purchased and are in his possession. He also dug bore wells and even cultivating some portion of the land. The villagers residing in the area are already suffering scarcity of water due to drought prone nature of the area. The local people wholly depend on groundwater and there is no assured canal water.

24. With regard to geological features and geo-hydrological status of the study area as prescribed under ToR clause No. 32, the project proponent has stated in written submissions that a detailed study was undertaken by the State Groundwater Department (para 35 of the written representation). As per the instructions of the Director, Groundwater Department, Hyderabad, the Deputy Director, Groundwater Department, Mahabubnagar, undertook groundwater investigations in the study area and submitted a report on various aspects i.e., location of the project, topography and changing climate and rainfall, requirement of water, category of villages, water quality, geology and geo-hydrology. Based on

the study the Deputy Director recommended the water requirement by the industry with a reduction of capacity from 800 KLD to 436 KLD. The project proponent argues that besides recommending establishment of rainwater harvesting system, there is no other necessity for the 3rd respondent to conduct a separate geological and geo-hydrological study. In any case the project proponent failed to comply the ToR and relied only on the report of the Groundwater Department.

25. As per the ToR the EIA consultant was required to undertake the study which is clearly not done. A perusal of chapter 3.0 of the EIA report it is clear that the project proponent has relied on the State Groundwater Department report with respect to 129 deep exploratory boreholes dug up by the Board. However, there is no specific mention as to whether any of these boreholes are located in the 10 km radius i.e. the study area. The EIA consultant therefore, failed to comply with the ToR which required the consultant to undertake a study of geological features and geo-hydrological status in the area specifically on the ecological aspect as well as impact of groundwater drawl on other uses. Therefore without specific study in the project area the exact impact of groundwater drawl at the project site cannot be ascertained and this is a lapse on the part of the project proponent which EAC should have pointed out more so in the context of project being allowed to come up in the drought prone district.

26. The appellants relied on the orders of Hon'ble Apex Court in the case of *Narmada Bachao Andolan Vs. Union of India* (2000) SCC 571 that the water is the basic need for survival of human beings and therefore a part of the right to life is ensured under article 21 of the constitution and allowing such water intensive industry in the drought prone district of

Mahabubnagar amidst agricultural fields and allowing to tap groundwater for industrial purpose, will severely affect the groundwater table. Consequently the farming activities of the villagers and ultimately their livelihood will be affected. The appellants have also furnished various data to show as to how the people in the district are migrating to other places in search of livelihood due to acute drought conditions and scarcity of water.

27. We fully subscribe to the contention raised by the appellants. The EAC should have gone into this crucial aspect before recommending the case and unless alternate assured surface/canal water source is made available, the EAC should not have recommended the project at the site and the MoEF&CC shouldn't have granted EC. The unit cannot be allowed to come up and exploit the scant water resources and first priority should be for drinking and agricultural purpose of the local villagers.

28. The argument made by the project proponent that the requirement of 415 KLD of fresh water will be on achieving 100% production levels which requires more than 4-5 years at the least, till then, the overall water requirement will be about half or $2/3^{\text{rd}}$ of the fresh water requirement and this can be met by Rainwater as @ 415 KLD the rainwater will be sufficient for 240 days, i.e., $2/3^{\text{rd}}$ of the total requirement and with the development of new technologies and processes, manufacturing of products with low water requirement is on the anvil and consequently there will be less or no dependence on water, will not be an excuse to allow the project to come up at the site and it can't be relied on. What if there is a recurring drought over a period of 2-3 years? Therefore we hold this point in positive.

Point No.3

29. The annexure 4 depicting the industrial profile of Mahabubnagar district filed by the appellants lists M/s Sundar Ispat Ltd at sl. no. 31 which was established with an investment of Rs. 8.9 crores indicating that it as medium type industry with limited capacity with an EMP of 150. Though it is not a water intensive industry, if suitable pollution control measures are not implemented the plant will be causing air pollution in the area. Emissions from a sponge iron plant include CO₂, SO₂ and NO_x apart from particulate matter and if the emission is not met with the standards then the State PCB has the power to take necessary action even for issuing closure order. But no such situation is existing and no data is produced before us to show that the establishment of proposed project in the area will be leading to increase in the pollution load. Mere presence of sponge iron factory in the nearby area will not be a reason to reject the application of project proponent for granting EC. On this aspect we do not find any plausible reason explained by the appellants. It is not their case that they are already suffering from any pollution by the existing sponge iron plant and in addition to that the proposed project will complicate the situation in the area. Therefore we do not agree with the contention of appellants that EAC has failed to appraise the presence of sponge iron plant in the vicinity before recommending the EC. Thus we hold this point in negative.

Point No.4

30. As already stated above, the alleged non compliance of ToR conditions are exploring the possibility of shifting the proposed industry to some other place, providing site map of 10 km area indicating the location of the project and details of various industries, water bodies, forests etc.,

exploring the possibility of drawing surface water/canal water as an alternate to groundwater, details of geological features and geo-hydrological status of the study area and ecological status, impact of groundwater level and other uses etc. All these issues have been answered under various points we raised in this judgement and we hold that the alleged non compliance of clauses of ToR have been answered and PowerPoint presentations were made by the project proponent during the EAC meetings indicate that the EAC got satisfied and recommended the case, Therefore we hold that the EAC failed to take into account the crucial aspect of geological and hydro-geological survey and scarce groundwater resources in such drought prone area having poor average annual rainfall and recommended the project. However all other issues of alleged violation of clauses of ToR raised by the appellants in this appeal, do not have any substantial force to arrive at a conclusion that they influenced the decision making. The deviation if any is not substantial enough to influence the EAC in making a recommendation, except in respect of impact on groundwater as already stated above. Therefore, we hold this point partly negative.

Point No.5

31. It is a fact that initially PH was scheduled to be held on 25th June 2012 but there was a strong opposition from villagers of Devunigudi Thanda and the process could not be completed. Subsequently the villagers have given written undertaking to the project proponent that they are willing to allow PH. A Copy of the undertaking has been produced by the project proponent. Accordingly after giving wide publicity the PH was held again on 30th June 2013 and about 600 people including the

appellants participated in it. All the clarifications sought by the public on various issues, were explained by project proponent as well as officials. As verified from the proceedings of the PH in fact some of the appellants herein, have spoken in support of project. The villagers were concerned mainly with discharge of effluent and employment to the locals. Both these issues were addressed. The issues raised were mainly regarding pollution control arrangements, local employment, CSR activities, usage of groundwater, type of pharma products to be manufactured etc. During the PH the project proponent has assured the public that the project will not cause any harm to the environment, there will be no discharge of effluents on ground and there will be no impact on agriculture. In fact, the appellant at sl.no.1 V. Rajendra Prasad was already well informed about the project having obtained the summary of the project under RTI Act.

32. The villagers were also taken on a tour to some of the similar industries operated by the project proponent and were explained about the nature of working of industry, precautions taken to prevent pollution and also how latest technology will take care the pollution aspects as the apprehension is that the proposed project will be causing pollution and will damage the environment. Therefore we hold that there is no violation of any statutory provisions in conducting the PH and there are no substantial grounds raised by the appellants that PH was not conducted in accordance with law.

Point No.6

33. EIA report is filed as part of the Project Proponent's application and it is taken as a basis for appraisal of the project. Thus the EIA process is integrated with the approval process. Every EIA report will have its own

specific ToR set by the regulatory authority. EIA report is prepared in accordance with ToR and includes a description of potential positive and negative environmental, social, economic and cultural impacts of the proposed activity. Thus CIA is an approach to EIA that aims to consider the effects of multiple actions or impacts on the environment. CIAs are useful when information on the combined effects of projects is necessary to decide the long term environmental conditions likely to result from the proposed project. However, the methodologies for conducting CIAs are not standardised.

34. Baseline data provided by the project proponent can act as a benchmark against which potential impacts can be anticipated and change measured. Baseline data collected by the project proponent in this case as a part of EIA study, can provide details on the cumulative pressures of existing activities in the area and they can be used to inform impact prediction and identify priority areas for mitigation and management in future. The baseline data forms part of the EIA study and includes the level of development that has already occurred in the area and it will be useful in future. Except the sponge iron plant no other industry is located in the impact study area and the baseline data considers the existing impact.

35. The proposed project is not located amidst the industrial units having similar activities of producing bulk drugs or any other highly polluting industry. Therefore, it appears that at Scoping stage itself it was felt that there are no potential significant impacts on the environmental values from the interaction of the proposed project and no other relevant actions appear to have been identified. Unless we identify 'what is affecting what' and what is the starting point to identify the environmental values that may be affected by the project and what are the values that are affected by other

actions in the region, mere stating that CIA study has not been done and hence the appraisal is faulty, is not acceptable. Determining the baseline means understanding the current extent and/or condition of the environmental values within the project area and within the 10 km radius of study area. Apart from stating that no CIA is done, the appellants have not indicated as to what constitutes the threshold to arrive at combined effects of all actions within the project study area. The baseline data and EIA study in the impact study area has been taken into consideration by the EAC and having satisfied, recommended the proposal to the regulatory authority. It is not that CIA study is must in each of the cases. Each proposal for a project should be considered on its own merits. Generally the regulatory authorities while specifying the ToR do not intend to prescribe the use of specific CIA methodologies because the magnitude, extent and duration of environmental effects depend on the characteristics of the proposed project in a particular location. It is difficult for the MoEF&CC to appreciate the inherent uncertainties of predicting future developments. The project proponent compiling the EIA will not be responsible for many of the future activities and their impacts. The EIA study submitted by the project proponent and examined by the EAC before recommending the case to the regulatory authority appears to be a reasonable attempt to gather information.

36. The appellants have not brought to our notice that other projects or industrial activities in the vicinity including any proposed project in the near future are coming up in the area to warrant a more detailed EIA than the one presented to the EAC by the project proponent that may have a bearing on the environment. Therefore, we hold this point in negative.

37. The project proponent in his additional written submissions dated 5th Sept. 2017 has stated that in response to the ToR clause No. 7 it was informed to the EC that they will try and identify additional sources of water supply, if required. Now he says that additional water supply is made possible. His submissions are reproduced below:

“a) **Rainwater Harvesting:** The requirement of 415 KLD of fresh water is on achieving 100% production levels which requires more than 4-5 years at the least. Till then, the overall water requirement will be about half or 2/3rd of the fresh water requirement. This can be met by Rainwater as @ 415 KLD the rainwater will be sufficient for 240 days, i.e., 2/3rd of the total requirement. With development of new technologies and processes, manufacturing of products with low water requirement is on the anvil and consequentially less or no dependence on water. Point Nos. 42 to 46 in the written submissions already given explains this.

(b) **Kammadanam WTP Scheme:** The office of the Executive Engineer, TDWSP (RWS) Division, Kalwakurthy has informed the Superintending Engineer, TDWSP Circle, Mahabubnagar by his letter dated 11.01.2017 that there is provision of allotment of 3.6 MLD of water for industrial purpose under the WTP of Shadnagar out of the 48 MLD. It has also been stated in the letter that already an allotment of 0.60 MLD of water has been made in favour of M/s. Johnson & Johnson project proponent also. Thus, the project proponent is in a position to obtain an allotment of water for industrial use by a separate network that will be laid from Kammadanam WTP for this purpose.

(c) **Krishna Water Supply Scheme:** In addition, water supply is assured under the Krishna Water Supply Scheme to be made to NIMZ Pharma City, Mucherla, Ranga Reddy District. The Govt. Of India has accorded in-principal approval on 22.01.2016 for setting up of the proposed pharma city under the National Investment Manufacturing Zones (NIMZ) scheme. Among other things, the water source for the project will be Gunagal Reservoir under the Krishna Water Supply Scheme. The pharma city is proposed to be established within 50 km from the present site.

(d) **Mission Bhagiratha:** In August 2016 Mission Bhagiratha, a Rs.4200/- crore piped drinking water project has been launched in Medak District of Telangana. The project interlinks Krishna and Godavari rivers with reservoirs in the State to supply water along a pipeline length of 1,30,000 kms. 10% of the project water is allotted for industrial use. The project pipelines pass through the area where the site of the

project proponent is located. Thus the plant will have an easy access to meet any further water demand”.

38. Therefore, considering the scarcity of water in the area and also taking into account that the villagers are dependent on agriculture by tapping groundwater, we feel it is appropriate to permit the project to be established provided the water is allowed to be drawn from anyone of the aforesaid alternate sources which the project proponent himself has informed and he is exploring all the possibilities. He should make an application to the State Government in this regard and once the government allots the water from any one of the aforesaid sources, he can go ahead with the establishment of the project. The respondent PCB shall consider granting Consent only after the project proponent produces orders issued by the government allotting the water with the condition that out of 7 borewells already existing at the site, 6 borewells should be made defunct and shall be sealed by the State Groundwater Department. The project proponent may be permitted to operate only one borewell for domestic use and the entire water requirement for the industrial plant shall be made available from the surface/canal water sources based on the permission granted by the government.

39. Apart from the main grounds raised by the appellants on the location of the project in a drought prone area and permitting to tap groundwater which requires a serious thought, there is no other significant issue raised by the appellants which deserves attention. The judgements cited on behalf of the appellants are not applicable to the facts of the present case nor do they lay down any general proposition of law to be adopted in all cases of granting EC. The contention of the appellants that the project proponent deliberately suppressed certain information and also

furnished wrong information is not substantiated to come to a conclusion that such alleged suppression and false information influenced the decision making process which ultimately lead to granting of EC. The grounds vary from case to case. In Appeal No. 04 of 2012 the Principal Bench of NGT in the matter of *Nirma Ltd. Vs. Union of India and Ors.* in its judgement dated 14th January 2015 had on occasion to deal with the facts whether the concealment of facts and submission of false information has got bearing on the decision making process in granting EC. Para 35, 36 of the judgement are reproduced below:

“35. However, the revocation of EC granted as per EIA Notification 2006 ought to have been done in the manner provided under para 8 sub-para (vi) of the Regulation, 2006 which reads as under:

“(vi) Deliberate concealment and/or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection, and cancellation of prior environmental clearance granted on that basis. Rejection of an application or cancellation of a prior environmental clearance already granted, on such ground, shall be decided by the regulatory authority, after giving a personal hearing to the applicant, and following the principles of natural justice”.

36. Reading of this provision makes it abundantly clear that the prior environmental clearance granted following deliberate concealment and/or submission of false or misleading information or data, which is material to any of the stages leading to the grant of environmental clearance qualifies for cancellation of such clearance. Act of concealment and or submission of false or misleading information or data, however, should be a deliberate one”.

40. In the present case also it is difficult to hold that there was any deliberate concealment and/or submission of false or misleading information or data to the authorities to influence them in granting EC in favour of the project proponent.

41. No doubt, one has to keep in mind the 'precautionary principle' before allowing any industry to come up in a particular locality but apprehending that the industry is going to cause pollution and consequently damaging the environment, one cannot stop establishing the industries more so in cases where advanced technology including ZLD system is proposed to be implemented. There are various mechanisms and statutory provisions to ensure compliance of various conditions and for meeting the standards of environmental parameters by the industry. For that matter, any industry that is permitted to be established is allowed to operate only subject to following the pollution control norms. Statutory authorities are empowered to regularly monitor the industries and take action on erring units including issuing closure orders. Past action of any particular industry located elsewhere and which was found to be responsible for causing damage to the environment, cannot be a reason not to allow a new industry to come up for which EC is granted after following the due process of law and after duly verifying the impact it is going to cause on the environment. The concept of 'sustainable development' comes into picture here and there are innumerable judgements of the Hon'ble Apex court for invoking this concept and allowing the industries to come up subject to fulfilment of the conditions. It is not the case of the appellants that the site is located in/near any ecologically sensitive area nor any protected area or water body which may be likely to get affected. For striking a balance between environmental interest and sustainable development one has to follow a path which should permit industrial growth and still protect the environment without allowing any irretrievable injury to the environment.

42. Consideration of all the above facts leads us not to agree with the contentions raised by the appellants that the EAC failed to apply its mind

while undertaking the appraisal of the project and eventually recommending to the MoEF&CC for granting the EC and therefore the EC should be quashed. However, as we have made it very clear, the 3rd respondent industry shall not be permitted to be set up by tapping the groundwater in such drought prone area. As and when the 3rd respondent is supplied with the surface/canal water from any one of the water supply schemes of the State government as stated in para 37, the industry may be allowed to be established. Otherwise, we do not find any other strong reason to set aside the EC.

With the above observations, the appeal stands dismissed. No order as to costs.

.....,JM
(Justice Dr. P. Jyothimani)

.....,EM
(Shri P.S. Rao)

NGT