

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
(Through Video Conferencing)**

Appeal No. 33/2015 (SZ)

In the matter of:

S.P. Mutturaman

S/o S. Ponnusamy,

No. 204, Railway Feeder Road,

Sankar Nagar Post- 627357,

Tirunelveli District.

Appellant(s)

Versus

1. Union of India & Ors.
Rep.by the Secretary to Government,
Ministry of Environment, Forest and Climate Change,
Government of India
Paryavaran Bhawan,
CGO Complex, Lodhi Road,
New Delhi- 110003.
2. The State of Tamil Nadu
Rep.by the Secretary to Government,
Department of Environment and Forest,
Fort St. George, Chennai- 600009
3. The Member Secretary,
Tamil Nadu Pollution Control Board,
No. 76, Mount Road,
Guindy, Chennai- 600032
4. State of Tamil Nadu
Rep.by the Secretary to Government,
Public Works Department,
(Water Resource Department),
Fort St. George, Chennai- 600009
5. The Chief Engineer
Public Works Department,
(Water Resource Department),
Madurai Region, Madurai- 625002

6. The Superintending Engineer,
Public Works Department,
(Water Resource Department),
Tamaraparani Badin Circle,
Palayamkottai Post,
Tirunelveli District- 627002

Respondent(s)

PRESENT:

Counsel for Applicant:

Mr. S. Muthu Vairam, Advocate

Counsel for Respondents:

Mr. G. M. Sayed Nurullah Sheriff, Advocate for Ministry of Environment, Forest and Climate Change.

Ms. Varalakshmi, Advocate for Mr. Abdul Saleem, Advocate for TNPCB.

Mr. Kamlesh Kannans, Advocate for State, R-2, 4, 5 & 6.

CORAM:

HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER

1. Whether the judgement is allowed to be published on the net?
2. Whether the judgement is allowed to be published in the National Green Tribunal Reporter?

JUDGEMENT

JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER

1. The above appeal has been filed by the appellant challenging the ex post facto Environmental Clearance granted evidenced by the Impugned Order of the Ministry of Environment, Forest and Climate Change dated 28.05.2015 to the Public Works Department of Tamil Nadu Government for formation of Flood Carrier Canal from Kannadian, Anicut Channel near Vellankuzhi to Theri Village to cater the drought prone areas of Sathankulam and Thisayanvilai. Taluks by interlinking Tamiraparani, Karumeniyar and Nambiyar Rivers in Tirunelveli and Thoothukudi Districts of Tamil Nadu.

2. The main allegation in the appeal memorandum challenging the notification was that the project was started as a new flood carrier canal from 6.50 km of the existing Kannadian anicut channel near village Vellankuzhi and end in Theri village for a distance of 73 Kms. It is also proposed to make a percolation pond at the Theri village and also to form flood bank, two new checks dams across Karumeniyar-one U/S and other D/S of Santhakulam Nazareth road, three links canals and three supply canals benefiting an area of 23,040 ha. The terms of reference is in respect of 18,225 ha of Wet land, 722.88 ha of dry land and 59.82 ha of poramboke land. As per Schedule 1 (c) of EIA Notification, 2006, any irrigation project having Culturable Command Area more than 10,000 ha will fall under category A which requires prior environment clearance which has not been obtained in this case. The Terms of Reference was issued vide letter No. J-12011/45/2010-1A-I, dated 14th December, 2012 by the Expert Appraisal Committee appointed by the Ministry of Environment, Forest and Climate Change but the public hearing was conducted only after two years beyond the validity period which is not legal. Further major portion of work has already been completed which affected the environment and the authorities are liable to be prosecuted for the violation. These aspects are not properly considered. So the above appeal has been filed with the following prayers:

(1) To quash the post facto Environmental Clearance issued by the 1st Respondent to the project of the inter linking of Tamiraparani, Karumeniyaru and Nambiyaru rivers of Tirunelveli and Thoothukudi districts which was issued belatedly in contravention of the EIA Notification, 2006.

(2) To stop all and any further process of the project work which was commenced in contravention of EIA Notification, 2006.

(3) To direct the 1st Respondent to initiate appropriate legal proceedings against the Expert Appraisal Committee who had recommended for the grant of Environmental Clearance.

(4) To direct the 1st Respondent to initiate legal proceedings against the Respondent 4 to 6 for the offence of violation committed by them.

(5) To pass any other suitable orders as this Hon'ble Tribunal deems fit and necessary in the circumstances of the case and thus render justice.

3. First respondent filed their reply statement contending that the project covers in area of 1155.20 ha of which 24.80 ha is wet land, 1063.57 ha dry land and 66.83 ha poromboke land. There is no forest land involved in this project. The Public Works Department of Government of Tamil Nadu submitted an application for Environment Clearance and this project was examined by the Expert Appraisal Committee for river valley and Hydro Electronic Power Project in its meeting held on 11-12th November, 2011 and 20 – 21st July, 2012. After detailed deliberation, the Expert Appraisal Committee recommended scoping clearance for the project. Accordingly, Ministry of Environment, Forest and Climate Change accorded Terms of Reference (TOR) for this project on 14.11.2012 for preparation of EIA/EMP report. Since there was no controversy or legal issue regarding the project brought to the notice of the Ministry, they granted Environment Clearance by the Impugned Order dated 28.05.2015. So according to them, the Environment Clearance granted was proper and there is no illegality.

4. Respondent Nos. 4 to 6 filed their statement contending that the Government of Tamil Nadu had granted administrative sanction for an amount of Rs. 369 crores based on 2007 -2008 Price Index vide GO.

Ms. No. 204 PW (PF2)/ dated 12.06.2008 for the benefit programme in anticipation of fund from Central Government under the Accelerated Irrigation Benefit Programme (AIBP) for the drought prone areas. The purpose of the scheme was for diversion of the Surplus Flood water from Tamiraparani River at Kannadian Anicut to drought prone areas of Sathankulam and Thisaiyanvilai taluks of Thoothukudi and Tirunelveli Districts respectively increasing the carrying capacity of existing Kannadian Channel up to 6.50 km and excavating 73 km long Flood Carrier Canal upto M.L. Theri. According to them, 23,040 ha of land will be benefited by utilising this surplus flood water that is being drained in sea from Thamiraparani River. Further, by accumulating the water, the ground water replenishment also will be increased, thereby water level will raise in Thoothukudi and Tirunelveli Districts which will to some extent cater the need of drinking water scarcity in those areas as well. They also submitted that it is a Public oriented scheme and it will reduce sea water intrusion on massive scale and improve afforestation due to improving ground water. It is also an economically viable project. It is a novel pilot project for combined surface water and ground water improvement.

5. They have obtained clearance from various department including Central Water Commission, New Delhi which accorded clearance for the project in the year 2009 and 2010 after examining the detailed project report submitted. Efforts were taken to get environment clearance for the project from State Level Environment Impact Assessment Authority (SEIAA) of Tamil Nadu which was empowered to grant the clearance as it comes under category- B project covering an extent of only 6,677 ha. A rapid Environment Impact Assessment was conducted by the Centre of Environment Studies, Anna University, Chennai as per GO Ms No. 272 PW (ISW-2)/Dpt/ dated 24.11.2009 for getting an Environment Clearance for

the project. The draft EIA report was prepared in the year 2010 and the final report with form No. 1 was prepared and placed before State Level Expert Appraisal Committee (SEAC) held on 11.02.2011.

6. Since the Term of the Committee expired on 02.03.2011 and the Government of India had not reconstituted the Committee for a long time, as per the notification dated 15.09.2006 in Para 4 Sub Para (iii), it will have to be considered by the Ministry of Environment, Forest and Climate Change instead of SEIAA treating this as Category A Project. Accordingly the proposal was sent to MoEF, New Delhi by the Secretary to Government (PWD) vide letter No. 27431/ISW2/2008-31/ dated 12.09.2011. In the 59th meeting of Expert Appraisal Committee for River Valley and Hydro Power Projects held on 20th July, 2012, the Expert Appraisal Committee recommended Scoping clearance and approved the draft Terms of Reference (ToRs) for the preparation of Environmental Impact Assessment (EIA)/Environmental Management Plan (EMP) reports. Accordingly, the Environmental Impact Assessment (EIA) study of the Project was conducted for 03 seasons by M/s. WAPCOS Limited, Chennai vide GO.MS. No. 335 PW (I.SPl.2) Dept dated 27.12.2013 and Environment Clearance was granted as per by the Impugned Order dated 28.05.2015.

7. They further contended that anticipating clearance by the Ministry of Environment, Forest and Climate Change, PWD department had undertaken certain work for widening and lining of existing Kannadian Channel for the length of 6.5 Km but thereafter no work was done for the last four years. They further submitted that there was no willful neglect or default on the part of the department in compliance of the statutory provisions and they acted only in good faith and with *bonafide* for the benefit of poor people. The public meetings were conducted on 27.11.2014 at Tirunelveli and 23.12.2014 at Thoothukudi. There was no much objection. People welcomed the

project and it was thereafter that the clearance was granted. They prayed for sustaining the Environment Clearance granted.

8. The 3rd Respondent Pollution Control Board filed a statement more or less supporting the contentions of the Respondents 3 to 5.

9. Second respondent filed a memo stating that they are adopting the contentions of the Respondent Nos. 4 to 6.

10. Heard the Counsel for the appellant, the MoEF, Government of Tamil Nadu and the Tamil Nadu Pollution Control Board.

11. The Counsel for the appellant submitted in support of his contentions in the appeal memorandum stating that ex-post facto Environment Clearance is not known to law and action will have to be taken for violation for proceedings with work without getting prior clearance.

12. On the other hand the counsel for the Ministry of Environment, Forest and Climate Change, State of Tamil Nadu and Pollution Control Board have supported their contentions in their respective reply statements.

14. It is an admitted fact that the project mentioned above namely formation of flood carrier canal from Kannadian channel to drought prone areas of Sathankulam, Thisayanvillai by interlinking Tamirabarani, Karuneniya and Nambiyar rivers in Tirunelveli and Thoothukudi districts, is a project benefiting irrigation by streamlining the surplus flood water that goes to the sea from Tamirabarani River. There is no dispute regarding the fact that this project requires prior Environmental Clearance before commencing the work. It is also in a way admitted in the reply statement filed by the Tamil Nadu State Government that certain work was proceeded with anticipating clearance from the department. They also explained the delay in getting the clearance as well. There is no dispute regarding the fact

that first public hearing was conducted on 27.11.2014 within two years of approving the Terms of Reference (TOR) and the second meeting was conducted on 23.10.2014 after which the scheme was recommended for clearance and thereafter this was accepted by the Ministry and the impugned order was issued. There is no case for the appellant, that there was no public hearing conducted and the objection were not discussed in the public hearing. In fact the present appellant himself had attended the public meetings and in fact welcomed the project. His only grievance was that the work of the project was started without getting prior Environment Clearance. He had attended the two meetings held on 27.11.2014 and 23.12.2014 in respect of the same. Even the minutes of Public hearing held on 23.12.2014 which was produced by the Appellant himself shows the participation of the appellant and his remarks were noted as follows:

“As per the Environmental Impact Assessment Notification 2006, the construction of new Projects listed in the Schedule under section 17 of this notification shall be undertaken in any part of India only after prior Environmental Clearance from the Central Government. He said that this project was initiated without adhering to the EIA notification 2006 and without obtaining proper clearance. But this is a Good Project and he welcomed the project. Further, he has furnished his opinion in writing”

15. Most of the participants welcomed the project and they wanted that this will have to be implemented quickly also. Even the paper report produced by the appellant published in Thinamalar dated 08.04.2015 itself shows that even the High

Court of Madras had expressed hope that the Government would implement the scheme at the earliest.

16. In the decision reported in Common Cause Vs. Union of India and Others and connected cases (2017) 9 Supreme Court Cases 499, it has been held that there is no provision for granting retrospective effect for the Environment Clearance and it can be treated only as though the Environment Clearance will come into force not earlier than the date of grant.

17. It is clear from the statement of the Government of Tamil Nadu that except doing some preliminary work, no other major work was done by the Public Work Department in implementing the scheme (anticipating Environment Clearance from the MoEF) and thereafter it was stopped in the year 2011 itself. Except some technical flaw that has been pointed by the appellant, there is nothing to show that the project was not considered by the Expert Appraisal Committee on the Environmental angle and the condition imposed were not sufficient to protect the environment as well. Even the appellant had no such case. Though the appellant had stated that 60 % of the work was completed without getting prior Environment Clearance, there is no evidence to prove this fact. In view of the above discussion, we do not find any reason to quash the impugned environment clearance granted by the Ministry of Environment, Forest and Climate Change for the project on the ground of technical lapses considering the fact that the scheme is going to help farmers and it is intended for using the surplus flood water flowing from Tamiraparani river to the sea in a beneficial way benefiting large number of farmers and also for the agricultural purposes.

18. In the result, we do not find any reason to set aside the Impugned Environment Clearance granted by the MoEF for the project. We do not also want to impose any penalty or compensation against the department as it was done by the officers in good faith for the benefit of the Society at large. We feel that since it involves some bio diversity areas as well, instead of providing a blanket condition of steps must be taken for bio diversity conservation, making it clear to establish biodiversity park will be more appropriate and we direct the Tamil Nadu Government through its public works department to establish bio diversity park in the project area to conserve and protect the bio diversity available in that area which will be sufficient to safeguard the impact on environment. This condition is also imposed which has to be implemented by the Tamil Nadu Government while completing the project as a part of the implementation of project.

With the above direction, this appeal is disposed of. Considering the circumstances, parties are directed to bear the respective cost in the appeal.

Adarsh Kumar Goel, CP

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

February 01, 2019
Appeal No. 33/2015 (SZ)
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