

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL, SOUTHERN
ZONE AT CHENNAI**

APPEAL NO. 144 OF 2016 (SZ)

BETWEEN:

1. U. Kalimuthan,
S/o. Ulagan,
Uppoor South,
Uppoor Post,
Thiruvadanai Taluk,
Ramanathapuram District 623 525
2. R. Kathiresan
S/o. Ramaiya,
No. 1/1358 Valamavoor (South) Kothiyarkottai Post,
Thirupalaikudi (Via),
Thiruvadanai Taluk,
Ramanathapuram District 623 525
3. P. Thivakaran,
S/o. Panchavarnam,
No. 1/116, Naganendan Village Uppoor Post,
R.S. Mangalam (Via),
Thiruvadanai Taluk,
Ramanathapuram District 623 515
4. G. Tamilmaran,
S/o. Ganapathi,
No. 9/6, Naganendan Village Uppoor Post,
R.S. Mangalam (Via),
Thiruvadanai Taluk,
Ramanathapuram District 623 515
5. Anaithu Vivasayikal Paathukapu Nalasangam,
Represented by its President R. Karunanidhi,
Registration No. 60/2016,
Naganendan Village Uppoor Post,
R.S. Mangalam (Via),
Thiruvadanai Taluk,
Ramanathapuram District 623 515

... Appellants

AND

1. The Union of India,
Rep. by its Secretary to Government,
Ministry of Environment, Forest and Climate Change,


District Collector
Ramanathapuram,


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Government of India,
Indira Paryavaram Bhavan,
Jorbagh Road, New Delhi 110 003.

2. The State of Tamil Nadu,
Rep. by its Additional Chief Secretary to Government,
Energy Department,
Fort St. George, Secretariat,
Chennai 600 009
3. The Tamil Nadu Generation and Distribution Corporation Limited
(TANGEDCO Limited)
Rep. by its Chairman Cum Managing Director,
10th Floor, NPKRR Maaligai,
144, Anna Salai, Chennai 600 002.
4. The Tamil Nadu Pollution Control Board,
Rep. by its Member Secretary,
76, Mount Road,
Guindy,
Chennai 600 032.
5. The District Collector,
Ramanathapuram.
O/o District Collector,
Ramanathapuram

... Respondents

WRITTEN ARGUMENTS FILED ON BEHALF OF 5TH RESPONDENT

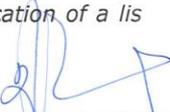
The present appeal has been filed challenging the Environmental clearance dated 18.05.2016, in J-13012/01/2012-IA.II(T), praying to set aside the same., and for a permanent injunction, restraining the Respondents from proceeding with the Uppoor Thermal Power Plant project at Ramanathapuram District, without conducting fresh Environment Impact Assessment study and public hearing in accordance with law after giving due notice to the local villages;


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1. It is most respectfully submitted that the Appeal is barred by limitation under Section 16 (h) of the National Green Tribunal Act, 2010. It is submitted that the environmental clearance was granted and communicated on 18th May, 2016 while the present appeal has been filed on 17.08.2016. There is a delay of One day beyond the period of 90 days, prescribed under Section 16 of the NGT Act and as such is beyond the condonable period and thus the appeal has been filed without valid jurisdiction and as such liable to be dismissed on that ground alone. In any event, the Appellant has not shown sufficient cause for condoning the delay in days that are even condonable by the Hon'ble Tribunal. In the case of **Ram Lal V. Rewa Coal Field Ltd., (AIR 1962 SC 361)**, the Hon'ble Supreme Court had held that each day's delay has to be explained. Hence the Appeal filed is barred by limitation.

2. The Appellant had stated that he had seen the impugned order from the office of the 5th Respondent only on 01.06.2016. It is the only reason stated for the delay in filling the Appeal. It is submitted that the Apex Court in the case of **Esha Bhattacharjee vs Mg.Commit.Of Raghunathpur Nafar Academy and others** had formed guidelines, while hearing an application for condone delay. The Hon'ble Court had stated that "*An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis*


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on merits is seminal to justice dispensation system." . The law of limitation fixes a lifespan for such legal remedy. Even according to the Appellant the Appeal has not been filed within 30 days from the day what he pleads to be the day of his knowledge to the impugned order. It is submitted that the framers of law have worded the limitation provision somewhat differently. It has been worded in the negative language by stating that the Tribunal could condone the delay where the appeal is filed beyond 30 days but not exceeding the further period of 60 days. It is necessary to state that there is no sufficient cause shown by the Appellant which prevented from filing the appeal within the prescribed period of 30 days.

3. It is most respectfully submitted that the Appellants herein had previously filed many Writ Petitions, before the Hon'ble Madurai Bench of Madras High Court, against the very same project, right from the initiation of land acquisition proceedings and to the extent praying to forebear authorities from granting Environmental clearance. Further a Writ Petition in W.P No. 33821/2017, was also filed for a similar relief before the Hon'ble High Court of Madras, and which is pending till date. It could be clearly seen that the Petitioners herein are continuously in follow-up of the issue, and are now forum shopping with a malafide intention to stall the project, which had undergone the required steps for obtaining the environmental clearance.

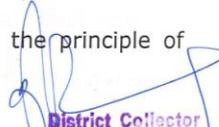

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4.It is submitted that the impugned order has been issued by the 1st Respondent herein, as deemed under the Environment Impact Assessment Notification, 2006, under 1(d) category of the Schedule, for setting up of 2 X 800 MW Capacity, super critical coal based Thermal power plant at the villages of Upper, Valamavur and Thirupalaikudi of Ramanathapuram District.

5.it is most respectfully submitted that vide G.O No. 2, dt. 21.04.2014 the Energy Department, the 2nd Respondent had sanctioned for acquisition of 543.36.5 Hectares of land, for the said project. It is submitted that after due considerations by the authorities, the impugned site was selected for the project. Out of the above mentioned extent of lands, only one fourth of the same was in use for agriculture and that too, it is only single crop per annum practice. It is submitted that the developmental programme are intended to benefit the citizens.

6.It is most respectfully submitted that the present project would increase the power generation in the state and proportionately add support the development of the state. **In Vellore Citizens Welfare Forum v. Union of India, [1996] 5 SCC 647, and in M C Mehta v. Union of India, [2002] 4 SCC 356**, it was observed that the balance between environmental protection and developmental activities could only be maintained by strictly following the principle of

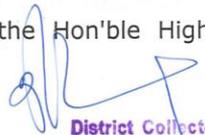

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sustainable development. This is a development strategy that caters the needs of the present without negotiating the ability of upcoming generations to satisfy their needs. The strict observance of sustainable development will put us on a path that ensures development while protecting the environment, a path that works for all peoples and for all generations. It is a guarantee to the present and a bequeath to the future. All environmental related developmental activities should benefit more people while maintaining the environmental balance. It is necessary to state that the right to development is also declared as a component of Article 21 in cases like ***Samata v. State of Andhra Pradesh, [1997] 8 SCC 191, and in Madhu Kishore v. State of Bihar, [1996] 5 SCC 125.*** Hence the impugned Environmental Clearance was issued, only after the tests, as deemed under the EIA Notification, 2006, and was issued following the due process of law.

7. It is submitted that vide G.O No.2, Energy (C1) Department, dt. 21.01.2014, administrative sanctions were issued for acquisition of lands for the impugned project. Out of the lands acquired for the project, approximately 1/4 of it is agricultural. Further, challenging the said acquisition, Writ Petitions in W.P. Nos. 21323 of 2015, 7975 of 2018, 5893 of 2018 and 12535 of 2018 were filed before the Hon'ble Madras High Court of Madurai bench. Wherein by order dt. 03.07.2019, the Hon'ble High

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Court was pleased to dispose the said Writ petitions, stating that *all the acquisition made under the three impugned enactments, made on or after 27.09.2013, are to be illegal.*

8. It is submitted that challenging the above said orders, Appeal was filed by the State in SLP (C) Nos. 22727-22730/2019. On 27.09.2019 the Hon'ble Supreme Court was pleased to pass the following orders;

" In the meantime, we stay the operation of the first part of paragraph 158.8 of the impugned common order dated 03.07.2019, which reads as under:

"Consequently, all the acquisitions made under the three impugned enactments made on or after 27.09.2013, are held to be illegal and quashed."

We further order that the High Court shall not proceed with the hearing of any writ petition pending before it or to be filed hereafter concerning the subject matter considered vide impugned judgment, until further orders to be passed by this Court.

It is pointed out to us that interim protection was granted to the writ petitioner(s) before the High Court such as the order dated 8.09.2014 passed in Writ Petition No.24182/2014 in the following terms: "Proceedings can go on, but no final order will be passed and status quo as to possession of the land will be maintained." The same shall continue to operate until further orders to be passed by this Court.

This arrangement shall apply in respect of all the writ petitions filed before the High Court concerning the subject matter considered by the impugned order."

The above said SLP are pending till date.

9. It is submitted that mandatory public hearings were conducted, where large number of people participated. A wide intimation of the hearing was made to the public, so as to enable the public in large to

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participate in the same and list their grievances. Following which the same was conducted on the date fixed in the said venue. The public were explained on the impact of establishment of such an industry at that location and the long run effects, that will arise on the same, in vernacular as well as English languages. It is submitted that the impugned project is beneficial to the public at large. It is necessary to state that many participated in the said public hearing, and from the minutes of the said Public hearing meeting, dt. 04.07.2014, it could be clearly seen that the Third Petitioner herein had also made his participation. Wherein the same was considered by the authorities and proper response was also given.

10. It is most respectfully submitted that apart from the conversion of the lands to a thermal power plant, the other concern is the disposal of the effluent. But when the effluent is treated properly and let after it reaching the average temperature, there will not be any impact on the ecology. The same has been scientifically appraised, assessed and has been permitted vide the Impugned Clearance order.

11. It is submitted that the four major tanks near the impugned site are;

1. Thiruppalaikudi tank,
2. Mavilankaiyenthal tank,
3. Valamavoor tank and
4. Naganendal tank.

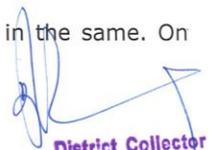

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These tanks have channels connecting one with another for distribution of surplus water from one to another. One such channel is running across the project site. It is necessary to state that based on which, even at the TOR stage, a condition was imposed that Water channel passing across the site shall not be disturbed or if in case has to be diverted, it shall be ensured that the diversion does not disturb the natural drainage pattern of the area, after getting approval from the concerned department. In the case of **K.Ammasai vs The Government Of Tamilnadu** it is stated that, as per Revenue Standing Order 26 (15), "diversions of plan marked channel from its original course, with a view to consolidate its holding or to facilitate irrigation of the portions which would be otherwise severed need not be treated as encroachment". Hence a diversion of a water channel in a private land is permissible, on the condition that the same does not alter the facility of the said water channel.

12. It is necessary to state that, regarding the issue of construction of a bridge in the sea, for drawl of water to the impugned project there happened to be representations from the fishermen of the area. Hence peace committee meetings were conducted at collectorate , wherein the TANGEDCO Officials, Revenue Officials, Fisheries Department, Forest Department, Police Department, fishermen and representatives of the local fishermen participated in the same. On

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the issue of using traditional boats in the area, where the said bridge is being constructed, the meeting was conducted. An inspection was made on the site, for assessing the height of the boat and the bridge. A report on the said issue was submitted to the Deputy Director of Fisheries of Ramanathapuram. The out come of the same is that, it was directed to raise the height to 10 meters in between 4-5 km, in order to enable the traditional method fishermen to have free movement. As a result of which the District Collector, vide communication dated Nil. July, 2020 had requested the TANGEDCO to raise the bridge height from 6 to 10 meters for a stretch of 150 meters between 3.5km to 4.5km for the benefit of the fishermen.

13. It is most respectfully submitted that upon the setting up of the impugned thermal power plant, the same shall fulfil the requirement of electricity generation in the state and in parallel shall also increase the employment opportunities in the area. The same will facilitate the growth of economy, and power supply to the state, when the state is already facing power shortage.

It is therefore prayed that this Hon'ble National Green Tribunal may be pleased to pass appropriate orders and thus render Justice.

Dated at Chennai on this the 21st day of December, 2020.

COUNSEL FOR THE 2ND AND 5TH RESPONDENTS


District Collector
Ramanathapuram,


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