

BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE
ORIGINAL APPLICATION NO. 109 OF 2023

IN THE MATTER OF: -

PRALHAD TUKARAM GAWANDE & ANR.

... APPLICANTS

VERSUS

STATE OF MAHARASHTRA AND OTHERS

... RESPONDENT(S)

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IN THE HON'BLE NATIONAL GREEN TRIBUNAL,
WESTERN ZONE BENCH, PUNE

ORIGINAL APPLICATION NO. 109 of 2023

IN THE MATTER OF: -

Pralhad Tukaram Gawande & Anr.

... Applicants

Versus

State of Maharashtra and Others

... Respondent(s)

3rd ADDITIONAL AFFIDAVIT ON BEHALF OF RESPONDENT NO. 2,
MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE

MOST RESPECTFULLY SHOWETH:

I, Surender Gugloth, S/o Shankar, aged about 40 years working as Scientist 'E' in the Ministry of Environment, Forest and Climate Change, Regional Office Nagpur, do hereby solemnly affirm on oath and state as under:

1. It is submitted that I am duly authorized to file this Affidavit on behalf of the Respondent No. 2 herein, i.e. the Ministry of Environment, Forest & Climate Change (hereinafter referred to as 'Ministry').
2. It is submitted that the present Application has been filed challenging the E-Tender Notice, bearing No. 01 for 2023-2024 dated 18.04.2023 issued by the Project authorities for the purpose of commencement of construction of Lower Penganga Irrigation Project at Yavatmal in Maharashtra, on account of violation of Environment Impact Assessment Notification, 2006 (hereinafter referred to as 'EIA Notification, 2006') as the validity of the Environmental Clearance (hereinafter referred to as 'EC') dated 17.05.2007 expired on 16.05.2017. In



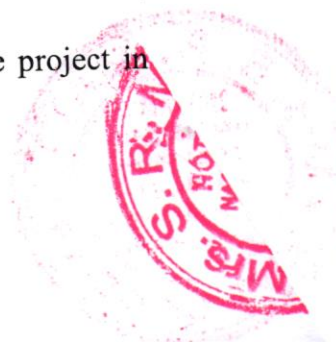
this regard, the applicant has prayed to revoke the aforesaid E-tender notice and direct the Project Proponent to not start any construction without obtaining fresh EC as mandated by the EIA Notification, 2006.

BACKGROUND OF THE PROJECT

3. That the Ministry, vide affidavit dated 05.02.2024, has already submitted before this Hon'ble Tribunal that the Environmental Clearance (EC) granted to the project in question was under the provisions of the EIA Notification, 2006, as amended, and in view of the corrigendum dated 27.09.2013 issued by the Ministry the EC dated 17.05.2007 stands expired as on date.
4. That subsequently, vide order dated 19.09.2024, this Hon'ble Tribunal sought clarification regarding the issuance of Circular dated 08.12.2006. The relevant extract of the order is reproduced herein below:

"...6. We would also like to have clarification from respondent No.2 - MoEF&CC, which is being represented today by learned counsel Mr. Pushkal Mishra as to whether the Circular dated 08.12.2006 has been issued by them as per which, in the case in hand, the provisions of EIA Notification, 1994 will be applicable or those of EIA Notification, 2006 will be applicable..."

5. That in compliance with the aforesaid order, the Ministry filed an additional affidavit dated 10.02.2025, wherein it was submitted that the project proposal was considered in accordance with the clarification given under Clause 2.1.1(i) of the Circular dated 13.10.2006, read with the EIA Notification, 2006. Since the Ministry did not grant any site clearance to the project in



question, Para (iii) of the Circular dated 08.12.2006 squarely applies to this project. The said Para provides as under:

"In respect of cases where site clearance has not been accorded but which were pending with the Ministry prior to 14th September, 2006 Notification; site clearance is not required and all such cases have to be processed as per EIA Notification, 2006."

6. That thereafter, the matter came up for hearing on 24.02.2025, when this Hon'ble Tribunal directed the Ministry to file a response explaining the deviation of the Ministry, to issue the EC under EIA Notification 2006, from the EAC consideration of the project in question under EIA Notification 1994.

The relevant extract is reproduced hereunder:

"5. We also would like to have a clear reply from respondent No.2-MOEF&CC as to how it happened that EAC has considered the grant of EC and recommended the same under EIA Notification 1994, which is reflected from the Minutes of 52nd & 53rd Meeting of the Expert Appraisal Committee and subsequently, EC came to be issued under EIA Notification 2006, para 8 (ii) of which provides "The regulatory authority shall normally accept the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee or District Level Expert Appraisal Committee concerned. In cases where it disagrees with the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee or District Level Expert Appraisal Committee concerned, the regulatory



authority shall request reconsideration by the Expert Appraisal Committee or State Level Expert Appraisal Committee or District Level Expert Appraisal Committee concerned within forty five days of the receipt of the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee or District Level Expert Appraisal Committee concerned while stating the reasons for the disagreement. An intimation of this decision shall be simultaneously conveyed to the applicant. The Expert Appraisal Committee or State Level Expert Appraisal Committee or District Level Expert Appraisal Committee concerned, in turn, shall consider the observations of the regulatory authority and furnish its views on the same within a further period of sixty days. The decision of the regulatory authority after considering the views of the Expert Appraisal Committee or State Level Expert Appraisal Committee or District Level Expert Appraisal Committee concerned shall be final and conveyed to the applicant by the regulatory authority concerned within the next thirty days". We expect that reply in this regard shall be filed by Respondent No.2 within two weeks and no more."

7. That in compliance with the directions of this Hon'ble Tribunal, the Ministry filed an additional affidavit dated 26.04.2025, wherein it was respectfully submitted that the EAC considered the proposal in its 52nd meeting held on 21.02.2007. The EAC while making certain observations opined that the proposal was considered for EC under EIA Notification 1994 and deferred the project for want of certain technical information pertaining to the environment. Thereafter, the project was reconsidered on 22.03.2007 in the



53rd EAC meeting. The EAC considered all the information furnished by the project proponent and thus finally recommended the said project for grant of EC. Here it is pertinent to mention that the statement mentioned in the minutes of 52nd EAC meeting were mere observation of the EAC and may not be viewed as the final recommendation of the EAC. The project was recommended for grant of EC in its 53rd minutes of meeting wherein the EAC did not make any such observation/recommendation regarding applicability /non- applicability of 1994 Notification for the project in question.

8. That while considering the aforesaid submissions, this Hon'ble Tribunal, vide order dated 28.04.2025, observed as under:

"In view of above reply, we find that there is no mention made as to why in the Minutes of 52nd and 53rd Meeting of the Expert Appraisal Committee, there is a reference of EIA Notification 1994. In this regard, learned counsel for Respondent No.2 submits that he will file another affidavit making this point clear, for which two weeks' time may allowed.

We allow him the said time. "

9. That in this regard, it is submitted that the remarks made in the 52nd EAC meeting with reference to the 1994 Notification were only preliminary observations and were not intended to be construed as the final recommendation of the Committee. It is pertinent to emphasize that in the final recommendations of the EAC made during 53rd meeting held during 21-22 March, 2007 there is no mention of EIA Notification, 1994.



10. That in the previous affidavit dated 05.02.2024 the Ministry had referred to a corrigendum to the EC letter dated 17.05.2007 issued on 27.09.2013, whereas another corrigendum had been issued by the Ministry dated 12.12.2013 in supersession of the aforementioned corrigendum dated 27.09.2013 which clarifies the duration of its validity and also the date from which it is to be counted.

A copy of the final corrigendum dated 12.12.2013 is enclosed herewith as ***Annexure R-2/1.***

11. That it is further respectfully submitted that this Hon'ble Tribunal has extensively deliberated upon various issues, including validity of EC of the Lower Penganga irrigation Project granted by the answering respondent, under Application No. 13(THC)/2013 (WZ), titled *Lower Painganga Dharan Virodhi & Anr. vs. The State of Maharashtra & Ors.*

12. That the Ministry had previously filed an affidavit dated 13.11.2013 in the above mentioned Application No. 13(THC)/2013 (WZ), titled *Lower Painganga Dharan Virodhi & Anr. vs. The State of Maharashtra & Ors.*, inter-alia, clarifying that the validity period of EC is till 16.05.2017.

A copy of the affidavit dated 13.11.2013 is enclosed herewith as ***Annexure R-2/2.***

13. That this Hon'ble Tribunal, vide judgment dated 10.03.2014 in the Application No. 13(THC)/2013 (WZ), titled *Lower Painganga Dharan Virodhi & Anr. vs. The State of Maharashtra & Ors.*, inter-alia, observed as under:



“45.....As per the EIA Notification of 2006, in case of river valley project validity of the EC is ten (10) years for facilitating the Project Proponent for commissioning i.e. beginning of operation of the project. Thus, correct validity has now been communicated through the amendment dated 27.9.2013, to the Project Proponent and therefore the EC is revalidated upto 16.5.2017 for commissioning of the project i.e. beginning of operation of the project. It is, therefore necessary that the project Authorities shall look into the time frame for earlier completion of the project.....”

A copy of the judgment dated 10.03.2014 is enclosed herewith as **Annexure R-2/3**.

14. That in view of the aforesaid, it is respectfully submitted that the EC dated 17.05.2007 granted by the Ministry has already expired on 16.05.2017, accordingly, the Project Authorities are required to obtain a fresh Environmental Clearance under the provisions of the EIA Notification, 2006, as amended.
15. It is submitted that the present additional affidavit may kindly be taken on record and into consideration and the Hon'ble Tribunal may pass appropriate order(s), direction(s) as deemed fit and proper under the facts and circumstances of the present case.
16. That the Ministry seeks leave to make additional submissions, if required, during the course of the proceedings.



DEPONENT

(डॉ. सुरेन्द्र गुगलोट)

(Dr. SURENDER GUGLOTH)

वैज्ञानिक 'ई' / Scientist 'E'

पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय
Min. of Environment, Forest and Climate Change
क्षे.का., नागपूर - R.O., Nagpur

VERIFICATION

I, the above named deponent do hereby solemnly affirm and state that the contents of the aforesaid affidavit are true and correct to my personal knowledge and have been derived from the official records maintained by the Respondent. No part of it is false nor has anything material been concealed there from.

Verified at Nagpur on this 29 day of August, 2025

[Handwritten Signature]

(**DEPONENT**)
(**Dr. SURENDER GUGLOTH**)

वैज्ञानिक 'ई' / Scientist 'E'
पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय
Min. of Environment, Forest and Climate Change
क्षे.का., नागपूर - R.O., Nagpur

SWORN BEFORE ME ON THIS 29th DAY OF Aug 2025 AT NAGPUR BY SHRI / SMT/ KU. Surender Gugloth R/O NAGPUR WHO HAS BEEN IDENTIFIED BY SHRI / SMT. [Signature] ADVOCATE, NAGPUR.

Mrs. S. R. MATTA
ADVOCATE & NOTARY
#18-B, Clarke Town, Nagpur-4

NOTARIAL REG
ENTRY No. 2415
DATE 29/8/2025

MRS. S. R. MATTA
NOTARY
NAGPUR DIST.
(M.S.) INDIA
Reg. No. 6776
My Term Expires on 21/9/2028
GOVT. OF INDIA

NOTARY
MRS. S. R. MATTA
DIST. NAGPUR (M.S.)
REGD. NO. 6776
GOVT. OF INDIA

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No. J-12011/68/2006-IA.III
Government of India
Ministry of Environment & Forests
(IA-I Division)

Paryavaran Bhawan,
CGO Complex, Lodhi Road,
New Delhi-110 003.

Dated: 12th December, 2013

CORRIGENDUM

Subject: Lower Penganga Irrigation Project in District Yavatmal of Maharashtra by M/s. Yavatmal Irrigation Circle, Yavatmal, Government of Maharashtra - Environmental Clearance (EC)-regarding.

This is in supersession of this Ministry's earlier corrigendum letter of even number dated 27.9.2013 on the above mentioned subject. This has reference to the letter no. 4193/YIC/T-6/LPP/ECC/2012 of Superintending Engineer, Yavatmal Irrigation Circle, Yavatmal, Government of Maharashtra dated 18.6.2012 with regard to the validity of environmental clearance to the above mentioned project. As per Para-8 of the EC of even number dated 17.5.2007, the validity was mentioned as 5 years for commencement of construction work. In this context, the following amendment in para-8 of the EC of even number dated 17.5.2007 is hereby made:

- The environmental clearance is valid for a period of 10 years from the date of issue of the letter (i.e. dated 17.5.2007) for commissioning of the project.


Instead of

The environmental clearance is valid for a period of 5 years from the date of issue of the letter (i.e. dated 17.5.2007) for commencement of construction work.

2. All other terms and conditions of the Environmental Clearance Letter No. J-12011/68/2006-IA-I dated 17.5.2007 remains unchanged.

3. This issues with the approval of the Competent Authority.

Yours faithfully,


(B. B. Barman)
Director

Copy to :

1. Secretary, Min. of Water Resources, Shram Shakti, Bhawan, Rāfi Marg, New Delhi-1.
2. The Adviser (I & CAD), Planning Commission, Yojna Bhawan, New Delhi - 1
3. The Chief Engineer, Project Appraisal Directorate, Central Water Commission, Sewa Bhawan, R.K. Puram, New Delhi-110066.
4. The Superintending Engineer, Yavatmal irrigation Circle, Yavatmal, Maharashtra.

5. The Secretary, Department of Environment & Forests, Government of Maharashtra, Mantralaya, Mumbai.
6. The Member Secretary, Maharashtra State Pollution Control Board, Kalpataru Point, 3rd Floor, Near Sion Circle, Opp. Cine Planet Cinema, Sion(E), Mumbai.
7. The Regional Office, Ministry of Environment & Forests, Bhopal.
8. EI- Division, MoEF, New Delhi-110003.
9. PS to JS (MS)/Director(BB)/ PV Subba Rao (Sci-B)
10. Guard file.

BEFORE THE NATIONAL GREEN TRIBUNAL, PUNE

APPEAL NO.13 (THC) /2013

LOWER PAINGANGA DHARAN VIRODHI
SANGHARSHA SAMITI & ANR

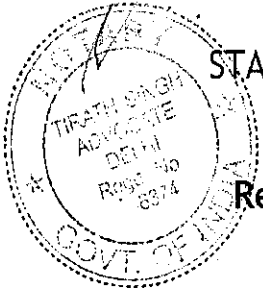
.....Petitioners

VERSUS

STATE OF MAHARASHTRA & ORS

.....Respondents

Reply on Behalf of Respondent No-7 in terms of the order
dated 30.10.2013



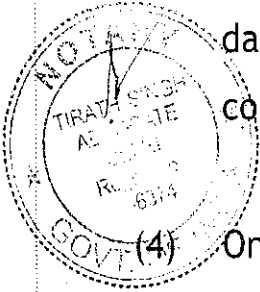
I, B. B. Barman S/O. Late M.C. Barman, Director in the Ministry of Environment & Forests, Paryavaran Bhavan, CGO.Complex, Lodi Road, New Delhi-110 003, do hereby solemnly affirm and state on oath as follows:

- (1) That I am working as Director in the Ministry of Environment and Forests (MoEF) and I am aware of the facts of the case and thus I am competent to depose on behalf of the Respondent No.7.
- (2) That I have gone through the Order of Hon'ble NGT, Pune Bench dated 30.10.2013 and submit hereunder :
- (3) That the Environmental Clearance (EC) for the project of Lower Penganga is covered under EIA Notification, 2006. The EC issued for the project by the Ministry of

B.B. Barman

Environment & Forests (MOEF) vide letter dated 17.5.2007 para-8 of the said order reads as under:

“the clearance is valid for a period of 5 years from the date of issue of this letter for commencement of construction work”



On a reference from the State Government of Maharashtra i.e. the project proponent, the MoEF has examined the case by revisiting the provisions of EC validity as per the provisions of the notification 2006. As such, the correct position was explained vide corrigendum letter dated 27.9.2013 on the EC validity and the following was, inter-alia mentioned in the corrigendum letter which reads as below:

“In this context, the following amendment in para-8 of the EC of even number dated 17.5.2007, is hereby made:

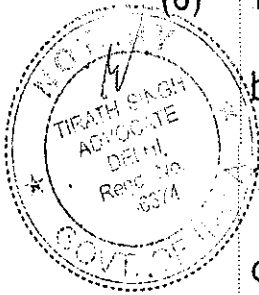
‘the environmental clearance is valid for a period of 10 years from the date of issue of this letter for commissioning of the project’

instead of

‘the environmental clearance is valid for a period of 5 years from the date of issue of this letter for commencement of construction work’ “

[Handwritten signature] 12

- (5) That, the above revised text has been incorporated under para-8 of the original EC letter dated 17.5.2007 and is therefore, to be read as a part of the original EC dated 17.5.2007.
- (6) That it is clarified that the validity period of 10 years begins from the date of issue of the original EC i.e. 17.5.2007 and not from the date of issue of the corrigendum i.e. from 27.9.2013. The corrigendum further stipulates that all terms and conditions of the original EC dated 17.5.2007 remain unchanged.
- (7) That as per the notification of 2006, in the case of river valley projects, the EC's validity is 10 years for facilitating the project proponent for commissioning i.e. beginning of operation of the project. Thus the correct validity of EC as stipulated in the EIA notification, 2006 has been communicated vide the corrigendum and the date starts from the date of issue of the original EC order and the date for computing validity becomes the reference date of the issuance of original EC letter dated 17.5.2007.



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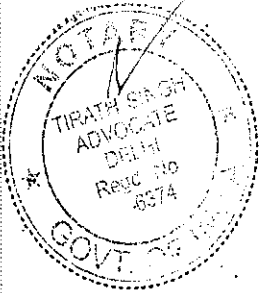
(8) Thus, the EC is valid for 10 years from the date of issue of original EC i.e. 17.5.2007 and up-to 16.5.2017 for commissioning of the project.

New Delhi

Dated:

बी.बी.बर्मन / B. B. Barmann
निदेशक / Director
भारत सरकार / Govt. of India
वन व जल विभाग, पर्यावरण एवं वन विभाग
N.R.C.D., Ministry of Env. and Forests
नई दिल्ली / New Delhi

Respondent No.7.



Through

Counsel for Respondent No.7

ATTESTED

NOTARY PUBLIC
DELHI (INDIA)

1766

BEFORE THE NATIONAL GREEN TRIBUNAL, PUNE

APPEAL NO.13/2013

**LOWER PAINGANGA DHARAN VIRODHI
SANGHARSHA SAMITI & ANR**

----Petitioners

VERSUS

STATE OF MAHARASHTRA & ORS

----Respondents

AFFIDAVIT

I B. B. Barman s/o. Late M. C. Barman working as Director,
Ministry of Environment and Forest, Paryavaran Bhavan, New
Delhi do hereby solemnly affirm and state as under:

1. I say that I am duly authorized to swear this affidavit as such conversant with the facts of the present case and competent to swear the present affidavit.
2. That I have read and understood the contents of the accompanying reply and state that the same has been drafted under my instructions based on the records maintained by the Respondent No. 7 in its normal course of business and the same are true and correct. Legal submissions made therein are based on legal advice received and believed to be correct.

3. That the contents of the accompanying reply be treated as part of this affidavit and the same are not being repeated for the sake of brevity.



DEPONENT

VERIFICATION

I, the deponent above named, do hereby verify that the contents of the above affidavit are true to my knowledge, no part of it is false and nothing material has been concealed there from.

Verified at New Delhi on this the 13th day of November, 2013.



DEPONENT

**BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE) BENCH, PUNE**

.....

APPLICATION No. 13(THC)/2013 (WZ)

CORAM:

- 1. Hon'ble Shri Justice V.R. Kingaonkar
(Judicial Member)**
- 2. Hon'ble Dr. Ajay A. Deshpande
(Expert Member)**

B E T W E E N:

- 1. Lower Painganga Dharan Virodhi**
Sangharsha Samiti through its
Convener Shri. Balaji s/o Anantrao
Yerawar, Aged about 53 years,
Occ: Agriculturist, R/o At Post Sawali,
(Sadoba), Tah. Arni, District Yavatmal
- 2. Shri. Deorao s/o Daulat Meshram**
Age 50 years, Occ: Agriculturist,
R/o at Post Datodi (Thad)
TahArni, District Yavatmal.

.....Applicants

A N D

- 1. The State of Maharashtra,**
Through its Secretary Revenue and
Forest Department, Mantralaya,
Mumbai.
- 2. The State of Maharashtra,**
Through its Secretary Irrigation
Department, Mantralaya,
Mumbai.
- 3. The Collector Yeotmal,**
District Yavatmal.

4. **The Collector Nanded,**
District Nanded.
5. **The Chief Conservator of Forest,**
CCF office Civil Lines Nagpur.
6. **The Vidarbha Irrigation Development,**
Corporation Nagpur, through its
Executive Engineer, Yavatmal Circle,
Yavatmal.
7. **The Union of India,**
Through its Secretary Ministry of
Environment and Forest,
New Delhi.
8. **The Maharashtra Pollution Control Board,**
Through the Regional Officer, Regional Office
Udyog Bhavan, Civil Lines, Nagpur,

.....Respondents

Counsel for Applicant(s):

Mr. Asim Sarode
Mr. Vikas Shinde
Ms. Pallavi Talware

Counsel for Respondent(s):

Mr. D.M.Nargolkar for Respondent Nos.1 to 5,
Mr. S.G. Jagtap for Respondent No.6,
Mr. Krishna D. Ratnaparkhi, for Respondent No.7.
Mr. D.M.Gupte Adv w/Mrs, Supriya Dangre, Adv
for Respondent No.8.

Date: March 10th, 2014

J U D G M E N T

1. Lower Painganga Irrigation Project, was planned in 1971. Somewhere in 1975, a dispute over right to draw water from Godawari River was settled an Award of Godawari Water Dispute Tribunal. By that Award the Special Tribunal settled the dispute in

terms of Agreement signed by State of Maharashtra and State of Andhra Pradesh in October, 1975. Both the States reached common understanding that Lower Painganga Project, shall be an Inter State Project. A major part of the said project covered the area in State of Maharashtra, whereas a small part thereof covered the area of State of Andhra Pradesh, situated in Adilabad district. This major Irrigation Project was granted Environment Clearance (EC) in 2007. The Project work could not, however, commence within the EC period of five (5) years. Govt. of Maharashtra accorded administrative approval to its part of the project on June, 26, 1997.

2. Though earlier Forest Clearance (FC) was refused by the competent Authority, yet the MoEF vide decision in its Meeting dated 7.1.2009, granted FC for diverting of forest land to the extent of 1089.06 Ha for non-forest purpose. This FC was allegedly granted on re-appraisal of the project, on various aspects, including cost benefit, welfare of the agriculturists etc. qua loss of the forest, which could be recouped by way of afforestation.

3. By filing Writ Petition No.4025 of 2011, the Applicants challenged revival of EC dated May, 17, 2007, as well as FC dated January 7, 2009, granted by the MoEF (Respondent No.7). The Applicants

challenged the EC and FC, on various grounds, including procedural irregularities, viability of the project, violation of doctrine of public trust, absence of proper R&R plan, major threat to environment due to large number of tree cutting activities, so on and so forth.

4. By order dated February 4, 2013 the Hon'ble High Court of Bombay, Bench at Nagpur, transferred the said Writ Petition to this Tribunal, in view of the Judgment of Apex Court in "***Bhopal Gas Pideet Mahila Udhog Sanghatna Vs Union of India***" (2012) 8, SCC 326. Hence, it was registered as an Application under Section 14 read with Section 18 of the National Green Tribunal Act, 2010.

5. The Applicants have come out with a case that they are interested in welfare of the farmers and villagers, who are likely to be adversely affected due to proposed Irrigation Project. The Irrigation Project covers lands in Yavatmal, Wardha and Chandrapur districts. They have formed an Association called "Lower Painganga Dharan Virodhi Sanghtana Samittee". They submitted various representations to the concerned Authorities, opposing the construction of Irrigation Project (Dam), but same have not been considered. They have not been given proper hearing before reaching in impugned decision. They had filed

another Writ Petition (PIL) No.25 of 2010, but it was disposed of as withdrawn, as per the order of Hon'ble High Court of Bombay, dated December 20, 2010. However, the Hon'ble High Court of Bombay, granted liberty to them to approach again. The Irrigation Project contemplates construction of 35.63m high Earthen Dam with center gated masonry, spill-way at about 2km upper stream of Tadasavali village (district Yavatmal), across Painganga River.

6. According to the Applicants, proposed project would adversely affect reserved forest and therefore, the Forest Advisory Committee (FAC), decided in its Meeting dated 30th April, 2003, to reject the FC on the ground that the project would adversely affect 90,000 Ha land inclusive of 1089.06 Ha of forest land. The FAC took note of the fact that approximately more than 2 lakh trees were likely to be cut down and such a massive destruction of forest was unnecessary major environmental damage and uncalled for. So also, the project required implementation of massive rehabilitation plan involving 7102 families consisting of 35388 persons. By communication dated May 9, 2003, rejection of proposal for FC was communicated to State of Maharashtra. For identical reasons, request for grant of FC was rejected on reconsideration of the proposal, as per decision of FAC in its Meeting dated

July 26, 2004. Such a decision was informed to State of Maharashtra by communication dated August 16, 2004. Thus, the proposal for diversion of Forest Land was turned down on two occasions.

7. According to the Applicants, though there was no substantial change in the circumstances, nor anything new was revealed during further progression of the proposal, yet, in spite of stiff opposition of the local residents and the Applicants, the FAC cleared the proposal vide impugned order dated January 7, 2009. The said order is illegal, being without application of mind and devoid of reasons. The Applicants, therefore, say that the FC is liable to be struck down, in order to save the trees and reservation of forest area, which is major part of environment. The Applicants alleged that implementation of proposed project will cause irreversible damage to ecology and environment and as such, the project shall not be allowed to be made operational.

8. The Applicants submit that while obtaining the FC, State of Maharashtra invented ingenious method to get “work done” by bending the norms. State of Maharashtra got invited tenders to award consultancy service contract for obtaining FC from the MoEF. This kind of attempt on part of State of Maharashtra was deprecated by the MoEF.

9. The Forest Advisory Committee (FAC) called for explanation from State of Maharashtra on the report alleging award of consultancy for obtaining clearance from the MoEF, Govt. of India. Thus, all along the FAC was averse to the proposal for clearance of FC, mainly for the reasons that felling of 1.4 lakh trees had been proposed, as well as implementation of massive rehabilitation plan involving 7102 families comprising of 35,388 persons would be required.

10. The Applicants allege that there was no substantial change in the circumstances, when the FAC reconsidered the proposal in its Meeting held on June 19th, 2007. There was no reason for re-appraisal of the proposal when no substantial alternatives were presented and that diversion of the forest was not reduced to large extent. A small insignificant and cosmetic change in the proposal could not have changed opinion of the FAC, when the proposal was considered for third time in its Meeting, dated June 19th, 2007. The Applicants allege that the FAC granted the FC vide impugned communication, dated June 19th, 2007 in an arbitrary, illegal and improper manner. The FC is, therefore, liable to be quashed.

11. The Applicants have further challenged the process of public hearing. They have pointed out that under the MoEF Notification dated January 27th,

1994, it was essential to ensure due participation of the affected public members in the public consultation process, in accordance with the procedure envisaged under Schedule IV of the said Notification. According to the norms envisaged in Schedule IV, due Notice of hearing ought to have been published in at least two Newspapers having wide circulation in the relative Region, one thereof being in vernacular language. Another procedural requirement was that such Notice ought to have been given at least thirty (30) days before scheduled date of hearing. Third requirement was to hold the public hearing in proximity of the place of project, as far as possible. The grievances of the public members were required to be heard and addressed at the time of hearing in the process of public consultation. One of the significant procedural requirement was that a copy of Environment Impact Assessment (EIA) report ought to have been made available to the members of the public with extract thereof in vernacular language. According to the Applicants, all these procedural requirements were violated by the Respondents while holding the process of public consultation (hearing). The advertisement (Notice) of the proposed public hearing was first published by the Maharashtra Pollution Control Board (MPCB) in daily Newspapers namely "Daily Hitwada"

(English) and “Lokmat” in its issues on January 13, 2006, January 12, 2006 and January 14, 2006, respectively. Under these published Notices, the proposed date of public hearing was scheduled on January 14, 2006. The Project Proponent, however, sought postponement of the Public Hearing. The request of the Project Proponent was allowed and thereafter second Notice of public hearing was published on March 21, 2006, whereby further date of public hearing was notified as April 20, 2006. Again the public hearing was postponed on the scheduled date of hearing. The third Notice for public hearing was published on April 28, 2006 for proposed date of hearing as May 6, 2006. On the said date the public hearing was held finally at Tahasil Office, Arni (district Wardha). The Applicants allege that the said public hearing was conducted in breach of norms of Notification dated January 27, 1994, inasmuch as third Notice was of less than thirty (30) days’ time, nor it was issued in relative areas which covered the affected public members, viz Nanded district. They also submitted that office of Tahasildar, Arni, is far away from the project site and the place was not convenient for project affected people. The copies of EIA Report, were not furnished to the Village Panchayats. The extracts of EIA Report were not made

available in vernacular language at the office of Village Panchayats. The net result was that people who were likely to be affected due to the proposed irrigation project, were unable to ventilate their grievances against the implementation of the project. The Applicants allege, therefore, that Public Hearing held on May 6, 2006, is laconic exercise, done by the Authorities which violate mandate of requirements given under Schedule IV of the MoEF Notification, dated January 27, 1994 and is no 'Public Hearing' in the eye of Law.

12. The Applicants further allege that proposed project of Dam over Painganga River is excessively costly inasmuch as the expenditure is shown to be of Rs.10,500 crores, whereas benefits of the Project are much less. The cost/benefit ratio, is not properly assessed when the EIA Report was prepared and that the irrigation project is sought to be implemented without properly appreciating viability thereof, requirement of R&R Plan, CAT Plan, large number of diversion of forest area and other important aspects.

13. The Applicants allege that there are large number of agricultural lands owned by the members of Scheduled Tribes in the scheduled area, which will be covered by the proposed project. The acquisition of

such lands, would be against the provisions of Panchayat Extension to Scheduled Areas Act, 1996 (PESA) Act, which prohibits any alienation of land in the scheduled areas. Under the said Act, it is essential to obtain specific permission of Gram-Sabha, prior to acquisition of lands in the scheduled areas. The Vidharbha Irrigation Development Corporation (VIDC– Respondent No.6), is, however, making attempts to acquire the lands in the scheduled areas without following due procedure. For this reason too, impugned order of EC, deserves to be quashed.

14. The Applicants further allege that the Respondents have not conducted any particular study through an Expert Agency on subject of “Induced seismicity” that would be caused due to pressure of huge quantity of accumulated water in the nearby areas, which are densely populated. The specific study of such kind was necessary so as to appraise the Environment Impact, as a result of major irrigation project, in order to anticipate whether the project may cause disastrous Earthquake or like calamity in the area. In absence of such study report, a general EIA Report, is of no much significance and should not have been acted upon by the MoEF. The irrigation project is directly opposed by 95 villages and yet such public opinion, is not being considered by the

Authorities. The VIDC (Respondent No.6) issued work orders in hasty manner, with a view to expedite irrigation project, irrespective of strong opposition of the public members and even without grant of EC, many work orders are issued. The Applicant alleges that the proposed irrigation project is against the interest of public members and was not required in the area, particularly, when small irrigation projects could be more effectively implemented by adopting austerity measures and avoiding diversion of forest areas, avoiding acquisition of tribal lands, so on and so forth. For all these reasons, the Applicants challenge the EC dated May 17, 2007 and the FC dated January 7, 2009. The Applicants also seek revocation of process of acquisition of lands in the scheduled areas by V.I.D.C. (Respondent No.6) in violation of the provisions of PESA Act. They sought prohibitory injunction against the Respondents from continuing the project activities in any manner. Hence the Application.

15. The main contesting Respondent (Respondent No.6-VIDC) is the Project Proponent. By filing its reply affidavit, the Project Proponent resisted the Application, chiefly on the ground that the Applicants have approached the Hon'ble High Court and this Tribunal with ulterior motive. It is the case of the

Project Proponent that original cost of the proposed project was Rs.14002.42 crores, as on June 26, 1997, which has been curtailed to Rs.10,429.29 crores, in the year 2008-09. It is alleged that more the delay more would be escalation in the project cost and the public money will be unnecessarily spent due to such frivolous litigations initiated by the Applicants. The project was attempted to be stalled by filing various Writ Petitions by different persons, but those attempts had failed and thereafter now, the Applicants have filed the present Petition/Application, with a view to scuttle the proposed project. According to the Project Proponent, the project will benefit 2 lakh Ha of land in the State of Maharashtra, will generate electricity, and will be useful to have installation of Industries and development of Vidharbha region. The Project Proponent submits that irrigation potentials of the project would outweigh other factors and, therefore, the project is more beneficial if "Sustainable Development" principle is applied. The Project Proponent alleges that alternative non forest land equivalent to the area of forest land which is to be diverted, has been made available to the forest department for afforestation and amount of Rs.8.87 crores, is transferred to the forest department for the purpose of afforestation. It is, therefore, denied that

huge forest area would be destroyed, as a result of implementation of the project in question. The Project Proponent further submits that a concrete plan for rehabilitation and resettlement of the Project Affected Persons, is already submitted to the Ministry of Tribal Affairs, (MoTA) GoI, on August 16, 2010, and all care is being taken to ensure that affected people will be given due compensation/rehabilitation and other benefits. The Project Proponent categorically denied that Public Hearing was held without following parameters, as indicated in Schedule IV of the MoEF Notification, dated January 27, 1994. It is contended that a large number of public members participated in the public consultation process and their grievances were duly considered in the hearing. According to the Project Proponent, some of the officers of department were assaulted during visit to site for joint measurement. It is contended that office of Tahasildar, Arni, was convenient place for Public Hearing and there was no prejudice caused to the members of public or the Applicants, due to venue of Public Hearing being the said place.

16. According to the Project Proponent, original project was conceived in the year 1975, and then there was no requirement of consent for transfer of lands in the scheduled areas under the PESA Act,

which was brought into force in the year 1996. The Project Proponent says that irrespective of non-requirement of such permissions, required formalities of obtaining the permissions, have been completed in the year 2000, and as such, there is no violation of the PESA Act. It is denied that the EIA Report was improperly prepared. It is also denied that the Public Hearing was merely a farce and against the norms of Schedule IV, appended to the MoEF Notification, dated January 27th, 1994. According to Project Proponent, the project of Painganga Dam, is most essential for development of Vidharbha region and would be cost effective solution for many economic problems of the said region. On these premises, the Project Proponent i.e. Respondent No.6, sought dismissal of the Application.

17. By filing his reply affidavit, the Respondent No.4, i.e. Collector, Nanded, resisted the Application. The Respondent No.4, also supports the case of the Project Proponent. The Respondent No.4 contended that the lands to be acquired from the Nanded district, were being acquired by the Project Proponent by way of private negotiations, so that the prices would be paid to the owners as per the market value. In fact, the Respondent No.4, is not directly concerned with the implementation of the project in question.

18. According to the Respondent No.8, (MPCB), the public hearing was conducted as per the directions issued to it by the Respondent No.7, i.e. Union of India. It is alleged that the public hearing was conducted in terms of the MoEF Notification, dated January 27th, 1994, issued under Rule-5 (3) of the Environment (Protection) Rules, 1986. The MPCB duly issued the Notices for the public hearing. The first public hearing scheduled was cancelled on the request of the Project Proponent, who wanted more time to conduct a revised study and explore possibility of reducing the diversion of forest areas. The public hearing was properly held having regard to good response of the public members, who had given 173 suggestions and 80 objections in writing. It is denied that the public hearing was arbitrary, farcical and cosmetic in nature. It is further denied that the Notice of the public hearing was not given as per requirement of the MoEF Notification, dated January 27th, 1994.

19. By filing joint affidavit in reply, the Respondent Nos. 1 and 5, resisted the Application on the ground that the FAC considered the proposal in the earlier two (2) Meetings in context of reduction of forest area due to diversion of the forest and felling of trees, but in the third Meeting, the FAC reconsidered the proposal on June 19th, 2007, because other land

was being made available by the State Government for afforestation purpose and appropriate funds were also being made available for such purpose. The proposal was cleared in view of change of circumstances. It is contended that the cost of compensatory afforestation, cost of survey demarcation, cost of ATS and Ad-hoc CAMPA, was considered during 3rd (third) Meeting along with the fact that alternate land was being made available by State of Maharashtra for afforestation purpose. The Respondent Nos.1 and 5, therefore supported the impugned action of granting FC during course of third Meeting held in 2007, on the ground that there were substantial intervening developments and changes in the circumstances, which persuaded the Authority to reconsider earlier decisions and grant the FC. It is denied, therefore, that impugned order of the FC is illegal and liable to be quashed.

20. The Respondent No.7, filed additional affidavit in this Tribunal after transfer of the matter to the Tribunal by order of the Hon'ble High Court. In the additional affidavit, Mr. B.B.Barman, Director of the MoEF, states that the EC to the project pertaining to Maharashtra portion was accorded on May, 17th,2007, subject to strict compliances of specific and general conditions, as stipulated in the communication of the EC letter. It is further stated that the public hearing

was held only for Maharashtra on April, 25th, 2006 and at that time, proposal for irrigation in Andhra Pradesh area was not considered by the EAC for grant of EC to the extent of Andhra Pradesh portion. According to the Respondent No.7, the Application is liable to be dismissed, inasmuch as no order has been passed by State of Maharashtra under Section 2 of the Forest (Conservation) Act, 1980. It is further pleaded that the FAC, reconsidered comprehensive EIA Report, PH Report, EC in the Meetings held on 25-8-2005, 28-9-2005, 31-7-2006 and 29-6-2007. It was found that the rehabilitation package for the displaced families, as per the provisions of Maharashtra Rehabilitation Act, 1999, was satisfactory. It was also noticed by the FAC that number of trees to be cut were reduced as well as, area of forest for diversion was reduced to 998 Ha. Therefore, the FAC decided to grant the FC by imposing stringent conditions like Compulsory Afforestation (CF), compensation for Net Present Value (NPV), Catchment Area Treatment (CAT) Plan, minimum number of felling of trees, implementation of R&R Plan etc. The Respondent No.7 further pointed out that by order dated April 27th,2007 in IA No.S-1413, 1414 etc. in W.P (C)No. 202 of 1995, fresh cases were allowed to be cleared by the Hon'ble Supreme Court project-wise. It is stated that after due

consideration of relevant facts, approval for diversion of the forests to the extent of 998.10 Ha of forest land, was accorded on January 7th, 2009 for Lower Painganga Major Irrigation Project. According to the Respondent No.7, State Govt. of Maharashtra informed vide communication dated February 15th, 2013, that almost all the conditions are complied with for Stage-I, approval, except two (2) conditions, namely:

a) Notification of non-forest land identified for compensatory afforestation as well as entire reservoir created due to submergence as Reserved Forests under Section 4 or Protected Forest under Section 29 of the Indian Forests Act, 1927, by the State Government and,

b) Approval of R and R plan by the Ministry of Tribal Affairs (MoTA), though proposal has been submitted to State of Maharashtra, therefore, the Respondent No.7, called upon the State Govt. to submit complete compliances, including above two (2) conditions.

21. The Respondent No.7, urges to dismiss the Application on the ground that it is barred by limitation, as well as same is without any merits. The Respondent No.7 further clarified that the communication regarding validity of the EC period, as shown in paragraph 8 of the EC letter dated May 17th,

2007, is from date of commission of the project. By that communication validity mentioned is five (5) years from commencement of construction work. The Respondent No.7 has issued corrigendum on September 27th, 2013, which shows that the sentence “Environment Clearance is valid for a period of ten(10) years from the date of issue of this letter”, for commissioning of the Project, “shall be read instead of the sentence “Environment Clearance is valid for a period of five (5) years from the date of issue of this letter for commencement of construction work”. This clarification is submitted for the reason that the Applicants came out with a case that validity of the EC period has elapsed, which allegation the Respondents have refuted.

22. The Respondents, therefore, claim that they have obtained necessary EC and the forest clearance (FC) by following due process of Law and after submission of all the necessary information and documents to the competent Authorities. Therefore, the Respondents further submit that instant Application neither involves substantial question relating to environment, nor it claims any relief or compensation or restitution and as such, the present Application is without substance and deserves to be dismissed. Further, the Application, is also barred by

limitation, as per provisions of the NGT Act, 2010. The Govt. of Maharashtra has already spent substantial amount on development of the project and therefore, it is also practically not proper to permit objections to such large project, which has been planned for socio economic development of the backward area of Vidharbha, and therefore, the Respondents prayed for dismissal of the Application.

23. We have gone through the voluminous record and large number of documents submitted by the Applicants as well as the Respondents and gave conscious thought to the issues and concerns raised in the present Application. For deciding the Application, we find it necessary to frame following Issues:

1. Whether the proposed Project is in keeping with principle of sustainable development and whether other alternatives have been duly considered?
2. Whether the diverse environmental impact of this Lower Painganga Project is properly studied and understood?
3. Whether the public hearing conducted as part of the EC process is bad in law?
4. Whether the Forest Advisory Committee (FAC) has taken a justifiable decision to grant forest clearance inspite of the fact that on earlier two (2) occasions the same was refused?

5. Whether the Project Proponent has proposed adequate environmental safety measures in the proposal and whether any additional safeguards are required to be satisfied if the project is allowed to continue?

24. Learned Counsel, Mr. Nargolkar for the Respondent Nos.1 to 5, and Mr. S. G. Jagtap for the Respondent No.6, have emphasized that this project has been planned since 1975 and lot of background work and studies have been carried out before arriving at the final concept of plan of this particular project. He also relied on various documents and particularly Award given by the Godawari Water Tribunal. He also argued that the Govt. of Maharashtra has itself tried to realign the canal arrangements, in view of newly notified Tipeswar Wildlife Sanctuary and alternate alignment through a nearly 13.6 Km tunnel has been proposed to avoid alignment through the Wildlife Sanctuary. He submits that this alignment offered will definitely add to the capital costs of the project, but the State Government has taken conscious decision to undertake this re-arrangement, which shows concern and importance, the State Government gives for environmental issues. He also submits that based on the series of discussions and presentations before the Forest Advisory Committee (FAC), the requirements of

the forest land has been reduced by nearly 99 Ha, by carrying out some modification in the project lay out. He also submits that options like small dams particularly barrages, have been explored by the department, however, the same are not found to be adequate to meet the demands in downstream areas. He, therefore, submits that the project has been conceptually planned strictly keeping in view the principles of Sustainable Development. He further undertakes that all the conditions and standards set by the various regulating and enforcing Agencies will be strictly enforced.

25. The project has been evaluated by the Expert Appraisal Committee (EAC) of the MoEF for environmental impacts and the FAC for forest clearance. These Expert Committees are expected to review in detail the project proposal for decision on grant of EC based on environmental appraisal of project activities. We are listing some of the environmental and ecological factors which are of concern for such a large scale project:

1. Excessive sedimentation of the Reservoirs.
2. Water logging due to excess use of water for irrigation.
3. Increase in salinity of groundwater, groundwater recharge.
4. Health hazard – water bound diseases, Industrial Pollution etc.

5. Submergence of important minerals and monuments and environmental flow in the river.
6. Fish cultural and aquatic life.
7. Seismicity due to filling of reservoirs.
8. Micro climate changes.
9. Plant life and migratory birds.

26. The water is an essential element, without which the life can't sustain and therefore, it is to be regarded as one of the primary duties of the Government to ensure adequate availability of water to the people for various uses. There are only three (3) sources of water namely; (1) Rainfall, (2) Groundwater and (3) flowing rivers. While Reservoir of a Dam stores water and is generally situated at the place where it can receive a lot of rainfall for necessary storage and then, the Canals or the river take the water from this Reservoir to distance places where water is required for various uses. There are various alternatives available for making the water available like local level rainwater harvesting, construction of smaller check dams, water recycling and also, the prudent use of available water. Historical river basin development for agriculture, power generation and related purposes in India has emphasized supply-side management approaches, often through large dams, with significant failures, deficiencies and conflicts that compromise contributions to sustainability. As India approaches development limits to its finite freshwater supply,

rising tensions related to competing demands for river basin resources are likely to occur. Identification of the most suitable and defensible responses will require more holistic assessments to ensure that decisions are comprehensive, far-sighted and focused on maximizing mutually reinforcing benefits, while avoiding irreparable consequences.

27. There has been a long and on-going debate on the choice between large Dams and small Dams and their environmental sustainability. This debate mainly focus the issues and concerns related to the environmental impacts of the large Dams due to submergence or destruction of forests, dams safety aspects, besides the social issues like large scale rehabilitation and resettlement, uneven distribution of water sources etc. This debate is well documented and while planning any Dam Project, the Government Authorities need to exercise utmost care and use the latest analytical and technical knowledge for assessing the environmental and social impacts and benefits on both short and long term, before freezing a particular alternative. There are several social, economical and regional issues, which are also involved while making such decision. There are generally four (4) stages with regard to a development of large scale irrigation projects and infrastructure projects, like instant case.

One is concept or planning including socio-economic and environmental feasibility; second is the decision to undertake the project, and third is execution of the project, and fourth is efficient and effective operation of the project. The conception and decision to undertake a project stages, is to be regarded as policy decision. In ‘Sardar Sarovar Project’ case, the Hon’ble Supreme Court has held that:

*“When two or more options are possible and the Government takes policy decision, it is then not function of the Court to reexamine the matter, by way of an Appeal. Necessary analogy could also be drawn from **Balco’s Employees Union Vs Union of India**.*

Once such a considered decision is taken the proper execution of the same should be undertaken expeditiously. It is for the Government to decide how to do its job. When it has put a system in place for the execution of a project and such a system cannot be said to be arbitrary, then the only role which a Court may have to play is to see that the system works in the manner it was envisaged.....

It is now well settled that the courts, in the exercise of their jurisdiction, will not transgress into the field of policy decision. Whether to have an infrastructure project or not and what is the type of project to be undertaken and how it has to be executed, are part of policy making process and the Courts

are ill equipped to adjudicate on a policy decision so undertaken. The Court, no doubt, has a duty to see that in the undertaking of a decision, no law is violated and people's fundamental rights are not transgressed upon except to the extent permissible under the Constitution. Even then any challenge to such a policy decision must be before the execution of the project is undertaken.....”

28. The environmental consequences of large dams are numerous and varied, and include direct impacts to the biological, chemical and physical properties of rivers and riparian (or "stream-side") environment. The dam wall itself blocks fish migrations, which in some cases and with some species completely separate spawning habitats from rearing habitats. The dam also traps sediments, which are critical for maintaining physical processes and habitats downstream of the dam (include the maintenance of productive deltas, barrier islands, fertile floodplains and coastal wetland). Another significant and obvious impact is the transformation upstream of the dam from a free-flowing river ecosystem to an artificial slack-water reservoir habitat. Changes in temperature, chemical composition, dissolved oxygen levels and the physical properties of a reservoir are often not suitable to the aquatic plants and animals that evolve with a given

river system. Indeed, reservoirs often host non-native and invasive species (e.g. snails, algae, and predatory fish) that further undermine the river's natural communities of plants and animals. The alteration of a river's flow and sediment transport downstream of a dam often causes the greatest sustained environmental impacts. Life in and around a river evolves and is conditioned on the timing and quantities of river flow. Disrupted and altered water flows can be as severe as completely de-watering river reaches and the life they contain. Yet even subtle changes in the quantity and timing of water flows impact aquatic and riparian life, which can unravel the ecological web of a river system. A dam also holds back sediments that would naturally replenish downstream ecosystems. When a river is deprived of its sediment load, it seeks to recapture it by eroding the downstream river bed and banks (which can undermine bridges and other riverbank structures, as well as riverside woodlands). Riverbeds downstream of dams are typically eroded by several meters within the decade of first closing a dam; the damage can extend for tens or even hundreds of kilometers below a dam.

29. Riverbed deepening (or "incising") will also lower groundwater tables along a river, lowering the

water table accessible to plant roots (and to human communities drawing water from wells). Altering the riverbed also reduces habitat for fish that spawn in river bottoms, and for invertebrates. In aggregate, dammed rivers have also impacted processes in the broader biosphere. Most reservoirs, especially those in the tropics, are significant contributors to greenhouse gas emissions (a recent study pegged global greenhouse gas emissions. Large dams have led to the extinction of many fish and other aquatic species, the disappearance of birds in floodplains, huge losses of forest, wetland and farmland, erosion of coastal deltas, and many other immitigable impacts.

30. The Applicants (Appellants) have contended that the report prepared by M/s Madhukant Project Ltd., Hyderabad, could not be a basis for assessment of correctness of the viability of the project, because it was not exercise done by any responsible Government Agency. It is contended that public hearing was defective and, therefore, the EC, is bad in law. The Applicants seek to rely on certain observations in **“Utkarsha Mandalvs Union of India” (W.P.No.9340 of 2009)** decided by the Hon’ble Delhi High Court on 16.11.2009. In “Utkarsha Mandal” the Hon’ble Delhi High Court observed that:

“ The purport of Clauses 3.2,3.3 and 3.4 of the MoEF Notification dated September 14, 2006, was to make public hearing a meaningful one, with full participation of all interested person, who may point a view of the State”. It has been held that:

“ The contention that to dispense with executive summary of the EIA Report to persons likely to be affected, at least 30 days in advance of the public hearing, was not tenable.”

Taking cue from such observations, it is argued that the Public hearing, in the present case was not properly held, because the members of the affected areas were not well informed about scheduled date of hearing by giving clear thirty (30) days Notice. It is argued further that the Project Proponent failed to fulfill the conditions of the Forest Clearance and as such, the FC could not be granted for third time. It is pleaded that the MoEF, changed the EC period of ten (10) years from the date of commissioning of the project, which was of five (5) years from the date of issuance of the EC letter and thereby made it “indefinitely validity period” depending on the whim of the Project Proponent to make the project operational.

31. From the rejoinder of the Applicants, we may gather, that the Applicants on their own showing, do not have any background or knowledge about Environmental Laws, various norms and the

parameters, which are required to be applied at the time of assessment of the project, particularly a project like the irrigation project of present magnitude. They have raised general objections, procedural objections and objections based upon contemplated problems on account of proposed rehabilitation plan. They have not made any independent environment impact study, nor a separate EIA Report is prepared through any expert Agency. In other words, the EIA Report of the Respondent No.6 (VIDC) is not countered by any other EIA Report filed by the Applicants. We cannot brush aside the ground reality that we have no complete and in-depth specialized knowledge of engineering aspects, pertaining to the branch of construction of big Dams. We also do not possess highly scientific knowledge in the field of Geology to assess seismicity impact of the proposed irrigation project. The Applicants have not given details of seismic potentials at project site. Mere absence of a particular report in this behalf by itself cannot be treated as serious fault in the process of evaluation of the project by the EAC Committee. It would be useful to refer certain observations "***Tehri Bandh Virodhi Sanghna Samiti and OrsVs Union of India & Ors***" 1992 SUPP (1) SCC 44. The Apex Court observed that

"In our opinion the Court can only investigate and adjudicate the question as to

whether the Government was conscious to the inherent danger as pointed out by the officers and applied its mind to the safety of dam. We have already mentioned facts in detail, which shows that the Government has considered in the light of the opinions expressed by the Experts. The Government was satisfied with the report of the Experts and only thereafter clearance has been given to the project”.

32. Coming to the objection raised by the Applicants as regards the public hearing, we may refer to relevant clauses of the EIA Notification requiring the publication of the Notice concerning the public hearing as contained in **paras 2.4 and 3 of the Appendix-IV**. This require PCB or UTPCC concerned to make arrangements for giving publicity about the project within the State and make available the summary of the draft EIA report for inspection in selected offices or public places like Panchyats. **Clause 3.1** of the Notification requires the Member Secretary of the PCB to public notice of the hearing by giving minimum 30 days period to publish a public Members for furnishing their responses. The Project Proponent shall be required to publish advertisement of the public hearing in National Daily and one Regional Daily. The advertisement shall also inform the public Members about access to the draft EIA impact Assessment Report and the executive summary of environmental impact Assessment Report available before

the Public Hearing. Ordinarily the public hearing is not supposed to be postponed.

33. The Appellants point out that the public hearing was adjourned on two occasions due to the reasons of convenience. It is argued that the PH was held on May 6, 2006 at a place which was not convenient to the Members of the public. It is further argued that the notice of public hearing was published for the first time on January 13, 2006 and January 14, 2006 respectively and later on the hearing was postponed. It is pointed out that subsequently another notice of public hearing was published on March 21, 2006 for holding public hearing on April 20, 2006 but that was also postponed and subsequently, another notice was published on April 28, 2006 for public hearing dated May 6, 2006. The Applicants, therefore, contended that the Notice for PH held on May 6, 2006 gave less than 30 days time and therefore, was against the requirement of the EIA Notification dated January 27, 1994. On this ground, they alleged that the public consultation process is illegal and therefore, it would invalidate the EC. They seek to rely on certain observations in **“Utkarsha Mandal Vrs. Union of India, Writ Petition (Civil) No.9340 of 2009) (Delhi High Court)”**. (Supra))The Hon’ble Delhi High Court considered purpose of the EIA Notification dated September 14, 2006 in the context and observed that the participation of the public Member has to be meaningful, informed and as such, they must have full information of the *pros and cons*

of the project and the impact, it is likely to have on the environments of the area. In the said case, it may be gathered from the text of the judgment, argument was advanced by the Project Proponent that there was no requirement to make available the executive summary of the EIA report to the public Member. While rejecting such contention, the Hon'ble Delhi High Court made the observations in para 31 and 32 of the judgment, which indicate that the extract of the EIA report is required to be provided prior to the public hearing in order to ensure informed and meaningful participation by Members of the Public.

34. We may mention here that in the present case, copy of the Executive Summary was made available to the Members of the public. It is also matter of record that 30 days notice was given prior to the first scheduled date of hearing, second scheduled date of hearing and there was marginal less number of days available in the third scheduled period of hearing. In such circumstances, the question is whether the procedural lapses would invalidate the public hearing. In "**Krishi Vigyan Arogya Sansthan and Others Vs. MoEF and others**" (Appeal No.7 of 2001) this Tribunal has held that when there was no serious prejudice caused to the Appellants, mere procedural lapse in the public hearing will not entail invalidation thereof. For a moment, keeping aside the relevant requirement of the Notification dated September 14, 2006, it would be necessary to pinpoint that the public hearing was required

to be held in accordance with Notification issued by the MoEF on January 27th, 1994. The present case is not covered by the subsequent Notification dated September 14th, 2006 in as much as the public hearing was concluded in first week of May 2006. Scheduled-IV of the Notification dated January 27, 1994, to the extent, it is relevant may be reproduced as follows :-

Schedule- IV : Procedure for Public Hearing :

1. Process of Public Hearing: Whoever apply for environmental clearance of projects, shall submit to the concerned State Pollution Control Board twenty sets of the following documents namely:

- (i) An executive summary containing the salient features of the project both in English as well as local language.
- (iv) Any other information of documents, which is necessary in the opinion of the Board for their final disposal of the application.

2. Notice of Public Hearing:

- (i) The State Pollution Control Board shall cause a notice for environmental public hearing which shall be published in at least two newspapers widely circulated in the region around the project, one of which shall be in the vernacular language of the locality concerned. State Pollution Control Board shall mention the date, time, and place of public hearing. Suggestions, views, comments and objections of the public shall be invited within thirty days from the date of publication of the notification.
- (ii) All persons including bona fide residents, environmental groups and others located at the

project site/sites of displacement/sites likely to be affected can participate in the public hearing. They can also make oral/written suggestions to the State Pollution Control Board.

Explanation : For the purpose of the paragraph person means :

- (a) Any person who is likely to be affected by the grant of environmental clearance.
- (b) Any person who owns or has control over the project with respect to which an application has been submitted for environmental clearance.
- (c) Any association of persons whether incorporated or not like to be affected by the project and/or functioning in the field of environment.
- (d) Any local authority within any part of whose local limits is within the neighbourhood, wherein the project is proposed to be located.

35. On bare perusal of sub-clause-II mentioned above, it is explicit that the views, comments and objections of the public shall be invited within 30 days from the date of publication of the notice. It is imperative, therefore, that within period of 30 days views of the public Members are required to be called. In other words, the process of personal hearing may be segregated from the calling of the views, comments or suggestions and objections of the public Members. We may observe that sub-clause-II is somewhat unhappily worded. All said and done, neither of sub-

clause-II under the Notification of the MoEF in 1994 or 2006, mandates that the procedural non-compliance will invalidate the grant of EC. Where there are only procedural deficiencies which do not go to the root of the matter, in our opinion, the EC itself cannot be held as invalid and inoperative. The technical defect, here and there, cannot overturn the entire exercise done by the authority when the process of the decision making is after considering responses of the public Member who participated in the hearing and that the issues were considered by the authority. Hence, the objection raised by the Appellants (Applicants) in this context is without much substance and hence the argument in this behalf is rejected.

36. True, the public hearing was postponed on first two (2) scheduled dates; first on account of changes in the project concept plan and second, due to administrative convenience. It is also true that on third occasion, there was somewhat shortfall of few days in thirty (30) days period of Notice prior to the public hearing, which was held on May 6th, 2006. The record, however, shows that there was sufficient notice available much in advance for the purpose of furnishing responses by members of the public. In fact, a large number of public members, gave written representations. It is also evident that a large number

of public members had gathered at the place of public hearing. The record of public hearing shows that many public members resisted the proposal of project and their objections were recorded in fair manner. The purpose of public hearing is to understand the local level complexity, public perception, nature of objections, expectations of the public members in respect of R&R plan, the issues of public concern so on and so forth. The public hearing is necessary to facilitate Expert Appraisal Committee (EAC), to adopt more pragmatic approach while examining the EIA Report. Once, it is found that such intention and purpose of the public hearing is duly satisfied, the concerns raised by the local public members were available for the examination of EAC, through the proceedings of the public hearing, then there is hardly any substantial reason to say that the Applicants are prejudiced due to technical defects pointed out by them.

37. We cannot overlook that the public hearing was conducted for nearly seven (7) hours. The views in favour and against the Project were expressed during the public hearing. The proceedings were fairly recorded by the competent officers of the MPCB. The process was completed in justifiable manner. In our opinion, the Notification of 1994, has been duly

complied with, when thirty (30) day's period was given to call for responses of the public members. It is nobody's case that representation could not be submitted because of non availability of any prior Notice of thirty (30) days, from the first date of publication. Verbal hearing might have taken place at subsequent stage, but the written responses could be given within thirty (30) days, after the first Notice was published and for such stage, there was no shortfall of period after the first Notice or even the second Notice. We may further observe that the Applicants did not ventilate any serious technical objection, which could be addressed by the Respondent No.6, except and save the fact that large number of forest land was required to be diverted and huge tree cutting was contemplated. We cannot brush aside the fact that such a challenge at stage-I of the FC cannot be raised in the eye of Law. Moreover, when the FC was granted on the basis of the fact that less number of forest land was required, than the land area shown earlier and lesser number of trees were to be cut, which could be compensated due to afforestation in the land, which the Project Proponent had undertaken to make available, there was sufficient answer available to the relevant issue raised during the course of public hearing. Under these circumstances, it is rather

difficult to accept such contention of the learned Counsel for the Applicants and set aside the EC, as well as FC, due to deficiencies in the process of public hearing.

38. The dams as large infrastructure have a high potential for development, they can balance hydrological variability by storing water for all sectors of the society and serve for controlling the floods. No other infrastructure attracted much criticism than dams, because of all their detrimental negative social and ecological effects. As referred in above paragraphs, there are various issues and concerns related to ecology, environment and social aspects related to the development of dam. The inadequate baseline information and non-availability of validated scientific and analytical tools for predicting impacts over long time duration, have been limiting constraints in preparation and evaluation of EIA reports for such large scale projects. Further, in most cases of execution of such large scale projects, the duration of the construction and development of a project is exceeding assumption values thereby making all predictions unrealistic. This can be seen even in this project, as the project was evolved in 1975 and even today, the project is not at “take-off” stage due to one or other reasons. But environmental and

social impacts continue in this duration and therefore, it is utmost necessary that environmental impacts of such large scale project need to be understood and studied at regular intervals rather than only during the Environmental Clearance (EC) process. The environment and ecological science is an evolving science and with the improvement, understanding of the subject and also, availability of more accurate scientific and analytical tools, there is a need to have a regular assessment of the environmental impacts and planning mitigatory measures. Though we find that EAC of the MoEF, has given approval to this project based on EIA report in 2007, which now has been revalidated, we would like to note here that there is need to continuously evaluate to environmental impacts and safety measures in case of such large scale project till the project is commissioned.

39. One of the main objections raised by the Applicants is that FAC, has given its approval for the forest clearance, though the same Committee had refused permission on two (2) occasions. The Respondents have submitted that the initial proposal for forest clearance was rejected on 19.5.2003 by citing various reasons. Thereafter, the Govt. of Maharashtra again resubmitted the project based on the reasons given in earlier rejection; however, the

MoEF again rejected the same on 16.8.2004. The Counsel for the Respondents submits that considering various objections and suggestions pointed out erstwhile decision for rejection, an effort was made to reduce involvement of the forest land and accordingly fresh proposal was moved which was also approved by FAC. Subsequently, the Central Empowered Committee (CEC), has also approved the same and the Hon'ble Apex Court, vide its order dated 2.5.2008, allowed the MoEF to consider the proposal. Therefore, he submits that necessary due diligence has been exercised by all the Authorities before recommending the forest clearance and the claim of the Applicants that the FAC has faulted in recommending the forest clearance, is not correct and devoid of merit. Another contention raised by the MoEF, is that no formal forest clearance order has been passed by the State Government under Section 2 of the Forest (Conservation) Act, 1980, and in view of the Judgment dated 7.11.2012, of the NGT (PB) in Appeal No.7 of 2012, in the matter of **Vimal Bhai Vs Union of India** **&Ors** the present Application is liable to be dismissed. The Counsel for Respondents 1 to 6 points out that the order under Section 2, has not been issued by the State Government so far. Considering this aspect and also averments made by the MoEF, regarding

procedure followed by the FAC, we are not inclined to take a view that the FAC, has not taken a justifiable decision to recommend the forest clearance, though on earlier two (2) occasions the same was rejected.

40. The Applicants have raised serious concerns over the environmental safeguards which need to be adopted by the Project Proponent and which are being stipulated and monitored by the Environmental Regulatory Authority. No doubt, right to have a clean environment is fundamental right. On the other hand, the right to develop is also equally important one and therefore, concept of Sustainable Development has emerged in last few decades and which is one of the principle on which this Tribunal needs to work. The other principles which are also relevant, are the Precautionary Principle and the Inter-generational Equity. The two are important while dealing with such large scale project. In view of the above, we have gone into the details of the environmental safeguards proposed by the Project Proponent and also stipulated by the Regulatory Authorities. One of the important observation is though the project has been conceptualized since 1975, it has undergone several designs, modifications to meet the requirements relating to water availability, water distribution and also avoiding sanctuary alignment. It is also observed

that the present Environmental Clearance (EC), has been granted earlier in 2007, nearly more than six (6) years back. As stated, the understanding of environmental and ecological science is improving very rapidly and much improved knowledge and analytical tools are now available which can aid in more accurate predictions of the environmental impacts. We, therefore, were little surprised that while granting extension to validity of EC, vide letter 27.9.2013, the Ministry has not reviewed or updated the conditions of the EC, granted earlier, though the Ministry reserves such rights to add one or more conditions, when it deems necessary. The environmental impact assessment is rapidly evolving subject and learning's from experience available through various ongoing projects, such conditions need to be updated with time, of course, by giving prior notice to the Project Proponent and also, considering feasibility of the same case to case. As a test case, we enquired about Muck Management Programme (MMP) for the proposed 13.6m long tunnel, which is likely to generate high quantity of solid wastes. In spite of our specific direction, the Project Proponent could not submit specific details of muck management programme, though statement was made that necessary plans are available.

41. At this juncture, it may be noted that the irrigation project envisages benefits to the tribals, farmers of socially and economically backward area of Vidarbha and aims to generate employment in that area. Nobody will deny that a major irrigation project is likely to give booster dose to the economy of the region. Availability of irrigation facilities in the area will help cultivators to minimize or curtail dependency on annual rainfall, which is many a times unpredictable. From the written submissions of the Respondent Nos.1 to 5, it can be gathered that irrigation project will have storage capacity of 1045Mm³ and will envisage construction of only 1980 M level dam. The irrigation potential is of 2.27 Lac Ha area. Besides, it would cater to drinking water of 76.29 Mm³ for the villages and townships in the vicinity. These are major advantages of the irrigation project in question.

42. As regards diversion of forest land, the Respondent Nos.1 to 5, have explained change in the circumstances, which facilitate grant of FC on third occasion. What appears from the record is that the Respondent Nos.1 to 5 have decided to curtail forest land diversion, Re-alignment of canal passing through upper side of Tipeswar Wildlife Sanctuary, was made in order to avoid diversion of certain lands from

Tipeshwar Wildlife Sanctuary. The Canal was planned to be passed through underground tunnel, so as to avoid diversion of 42 Ha forest land. Thereby conversion of forest land was curtailed. Originally, the proposal was to cut 2 Lac trees as per communication dated May 19, 2003. The proposal was reviewed and attempt was made to save a large number of trees standing on Left Bank Canal, as well as, Right Bank Canal. So, the number of trees to be cut have been now reduced to 1.32 Lac instead of original proposal of 2 Lac. Moreover, equal area of land is made available for the purpose of afforestation. The benefit cost ratio, is also said to be satisfactory. In absence of any independent contrary report of the Expert Agency, we are inclined to accept the version of the Respondent Nos.1 to 5, in this context.

43. So far as rehabilitation package is concerned, the Respondent No.6, has submitted R&R plan to MoEF and the Ministry of Tribal Affairs (MoTA). The R&R plan is submitted, in accordance with the National Rehabilitation Settlement Policy, 2007 and in keeping with the Maharashtra Project Affected Persons Rehabilitation Act, 1999. The Applicants have failed to pin-point which of the provisions of the said Act have been violated under the R&R plan, submitted by the Respondent Nos.1 to 6. It appears that 46 villages are

required to be shifted and relocated due to implementation of the irrigation project in question. It further appears that MoTA granted clearance to R&R plan vide letter dated March 22, 2013. According to the Respondent Nos. 1 to 5, 87-Gramsabhas have passed resolution in favour of implementation of the project. It is stated that joint measurement of nine (9) villages in submergence, has been completed under the Land Acquisition process by organizing Meetings and process of mutual dialogues. The remaining work is being carried out by amicable settlement. The Respondents, therefore, submit that there will not be any violation of PESA Act, 1996. It is also stated that the Mining Authority has granted clearance to the project. We have duly considered relevant aspects of the matter and are of the opinion that there appears no serious legal impediment in allowing irrigation project to go ahead.

44. We cannot take lop-sided view of the principle captioned as: “Sustainable Development”, that in fact, is a development strategy which caters to the need of the present without negotiating the ability of future generation to satisfy their needs. The right to life as claimed by the Applicant, is no doubt, guaranteed by Article 21 of the Constitution. One of the facet of Article 21, however, is also the right to ensure

development of the society and welfare of the society. (See Samatha Vs State of Andhra Pradesh) (1997 8 SCC 191). The right to development includes, of course, protection of fundamental human rights. Thus, if the irrigation project is required for larger benefit of the society, then it must be ensured that the Project Affected Families are given justifiable rehabilitation package. Rehabilitation is not only about providing basic amenities, food and shelter. It encompasses support to restore means of livelihood. Rehabilitation of Project Affected Persons (PAP), is logical fallout of Article 21. They could not be left at the mercy of others. The Project Proponent has to take care of the future needs of Project Affected People. Prior rehabilitation will create a sense of confidence among the project affected family members and they will be in a better position to support their life on their own, at the same time, when the project would become functional.

45. The learned counsel for Respondent Nos.1 to 5, would submit that State Government is giving utmost importance to the compliance of environmental norms and has therefore constituted a local level Committee, consisting of Senior level officers from various departments vide GR dated 13.11.2013. However, no information could be extracted on the

State Environmental Monitoring Committee, which is reported in the said decision. The learned Counsel for Respondent No.6, also raised concern over the submissions made by the MoEF in their affidavit that as per the EIA Notification of 2006, in case of river valley project validity of the EC is ten (10) years for facilitating the Project Proponent for commissioning i.e. beginning of operation of the project. Thus, correct validity has now been communicated through the amendment dated 27.9.2013, to the Project Proponent and therefore the EC is revalidated upto 16.5.2017 for commissioning of the project i.e. beginning of operation of the project. It is, therefore necessary that the project Authorities shall look into the time frame for earlier completion of the project.

46. Similarly, another query regarding time bound implementation of the project was also posed to the Respondents. Here also, we were not able to receive positive commitment to implement the project in a time bound manner. We think that any delay is likely to aggravate the environmental impacts and also raise socio-economic issues. The Hon'ble Supreme Court in the case of **Narmda Project** has also considered two principles while issuing directions and thereafter disposed of the case i.e.

1. The completion of the project at the earliest,

2. *Ensuring compliances with conditions on which clearance of the project was given, including completion of relief and rehabilitation and taking ameliorative and compensatory measures for environmental protection in compliance with the scheme framed by the Government, thereby protecting the rights under Article-21 of the Constitution.*

47. For the reasons discussed hereinabove, we are of the opinion that the irrigation project satisfy the principle of “Sustainable Development”, as required under the Environmental norms and Section 20 of the National Green Tribunal Act, 2010. In our opinion, the Application is without much substance. Still, however, the Application cannot be dismissed without giving directions in conformity with the guidelines set out by the Apex Court in the case of ***Narmada Bachao Andolan***, referred to above, and ensuring due compliances of certain conditions like implementation of rehabilitation package, *Pari-passu* with commencement of the project. In other words, the project and some of the conditions must be *pari-pasu* in nature. Having regard to these aspects, we dismiss the Application and vacate interim orders, with following directions:

1. The Applicant is at liberty to challenge the forest clearance as and when necessary order

under Section 2 of the Forest (Conservation) Act, 1980, is issued by the State Government.

2. The MoEF shall review the conditions stipulated in EC/FC, considering above aspects in next three months after giving an opportunity to the project proponent.
3. Respondent 1 to 6 shall ensure that environmental safeguard measures are planned and implemented *pari-passu* with progress of work on project.
4. There shall be no impoundment unless necessary resettlement and rehabilitation is fully completed in all respects, as per the approved standards.
5. Respondent 1 to 6 are directed that the catchment area treatment programme and the rehabilitation plans as approved shall be completed ahead of reservoir filling,
6. The Respondent Nos. 2 and 6, are hereby directed to complete 3D non-linear analysis and Dam break analysis for the entire project in 3 months and submit the same to MoEF, if not done earlier.
7. A Committee chaired by Principal Secretary of Environment Department, Govt. of Maharashtra and including Secretaries of departments of Irrigation, Forest, Rehabilitation and other concerned departments of the Govt. of Maharashtra two eminent Environmentalists, and the representatives of the MoEF, is hereby formed till the commissioning of the project, which will review the environmental compliances at each stage of the

construction of the project and shall meet at least once in every three (3) months without fail.

8. Approval for all identified major milestone activities of the project, shall be taken from this Committee, which will ensure compliances of various conditions and proposals, made in the EC and also forest clearance before giving go ahead.
9. A local level Environmental Management Committee, as proposed by the Irrigation department, can continue to work basically as Grievance Redressal Authority and ensure that necessary rehabilitation and resettlement issues as well as environmental issues are sorted out at the local level. However, the Committee should also include representatives of the State Environment department and also the Regional office of the MoEF, as part of this Committee.
10. The proceedings of both State level and local level Committees and also, complete information of the project including various study reports, EIA report, clearances, action plans, the progress of various project activities and compliance of statutory approvals shall be put in public domain on regular basis, preferably through website.

48. The Application stands disposed of. No costs.

.....,JM
(Justice V. R. Kingaonkar)

.....,EM
(Dr. Ajay.A. Deshpande)



NGT