

BEFORE THE NATIONAL GREEN TRIBUNAL SOUTH ZONE AT CHENNAI

Appeal No. 6 of 2020

R.L.Srinivasan

....Appellant

Vs.

The Union of India & anr

.. Respondents

INDEX

SL No.	DESCRIPTION	P No.
1	Rejoinder statement filed by the appellant	1

// Certified to true copies//

Dated this the 31st Day of May, 2021 at Chennai

A. Yogeshwaran
Counsel for the Petitioner

BEFORE THE NATIONAL GREEN TRIBUNAL SOUTH ZONE AT CHENNAI**Appeal No. 6 of 2020**

R.L.Srinivasan

....Appellant

Vs.

The Union of India & anr

.. Respondents

REJOINDER FILED BY THE APPELLANT

It is submitted on behalf of the Appellant as follows:

1. It is submitted that the contents of the counter affidavit filed by the 1st and 2nd Respondent are false except to the extent as admitted hereunder. The affidavits under reply are not traversed para wise as the question involved in the appeal is one of law and the following reply is tendered.
2. It is submitted that the impugned clearance is liable to be set aside as the same has been issued by the 1st Respondent without conducting mandatory public hearing as required by Clause 7 of the EIA notification. The 1st Respondent has also illegally granted exemption from conducting public hearing for the subject project of the 2nd Respondent. The 1st Respondent has no powers under the EIA notification to exempt public hearing for thermal power plant projects. The powers of the 1st Respondent are clearly defined by the EIA Notification 2006 and the 1st Respondent has no powers except those expressly and specifically conferred by the EIA Notification, 2006.
3. The illegal exemption has been granted by the 1st Respondent based on the request of the 2nd Respondent without application of mind and without reference to the fact that the 1st Respondent has no such powers under law.
4. The illegal exemption from public hearing is sought to be justified by the Respondents on two grounds:
 - a. that public hearing for this ETPS "expansion" project was conducted on 22.10.2008.
 - b. that public hearing for ETPS "replacement" project was conducted on 03.05.2017
5. The 1st Respondent in its counter affidavit at para 9 has stated that it found the request for exemption from public hearing "logical" and therefore exempted public hearing.
6. Before dealing with the two reasons stated by the 2nd Respondent as justification for requesting exemption from public hearing it is necessary to deal with the 1st

Respondent's powers to grant such exemption under the EIA Notification in such matters.

7. Under clause 7 (III) of the EIA notification, public hearing is mandatory and states that all category A and B1 projects shall undertake public hearing except those specified thereunder. Establishment or expansion of thermal power plants is not a project exempted thereunder. Therefore, the 1st Respondent had no power to grant exemption to grant exemption from public hearing and the exemption granted is thus without powers, jurisdiction and is void ab initio. It is relevant to note that the EAC on 27.03.2019 correctly rejected the request for exemption from Public hearing and directed that Public hearing be conducted. However, the 1st respondent has illegally exempted public hearing for the present project.
8. In so far as the two reasons provided by the 2nd Respondent are concerned, it is submitted that
 - a. Environmental clearance dated 03.06.2009 was issued based on public hearing conducted on 22.10.2008. This clearance expired after a period of 10 years and the EIA Notification clearly mandates that the maximum validity of a clearance is 10 years and therefore the 1st respondent correctly rejected request for further extension and directed that the 2nd Respondent applied de novo for environmental clearance. This public hearing conducted on 22.10.2008 is not relevant and cannot be a substitute for the public hearing that ought to have been conducted for grant of the impugned EC.
 - b. The ETPS "replacement" project is another thermal power plant that was proposed to be set up by the 2nd Respondent in 2016. Public hearing towards this power plant was conducted on 03.05.2017. By no stretch of imagination can public hearing conducted for this project be considered as substitute for public hearing that ought to have been conducted for grant of the impugned EC.
9. It is submitted that the 2nd respondent has attempted to confuse this Hon'ble Tribunal. The below table contains extracts of relevant events from both these thermal plant clearance process.

Date	ETPS Expansion project (1*660 MW)
22.10.2008	Public hearing said to have been conducted
03.06.2009	Issuance of Environmental Clearance
18.09.2014	Validity of EC extended for 5 years upto 02.06.2019
20.09.2018	Order of 1 st Respondent rejecting further extension of validity of EC
25.10.2018	2 nd Respondent files application seeking fresh clearance

27.03.2019	EAC refuses exemption from Public hearing and directed that Public hearing be conducted
10.07.2019	1 st Respondent exempts conduct of public hearing
11.12.2019	Environmental clearance granted

Date	ETPS "Replacement" project (1*660 MW)
2016	2 nd Respondent states that they filed application for EC FOR 1*660 MW and ToR was issued in 2016
31.03.2017	Existing 450 MW plant de commissioned
03.05.2017	Public hearing conducted for "replacement" project

10. It is submitted that the EIA report was never in public domain and communicated to the public as public hearing was exempted. Even now, despite the order of this Hon'ble Tribunal directing that the entire records be produced the 2nd respondent has not filed the EIA report before this Hon'ble Tribunal. The claim of the project proponent that the EIA report was uploaded on the website of the MoEF on 16.08.2019 is not correct and even assuming this was uploaded on 16.08.2019 on the website of the MoEF, it does not satisfy the requirement of a public hearing or communication of the EIA report or fact of uploading on the website to the public . It has also been admitted that the EIA report was not uploaded on the website of the TNPCB. This fact however, has not been informed to the EAC, which has observed in its meeting held on 23.08.2019 that TNPCB has not furnished any letter as to whether any comments were received from the public after uploading the EIA report. It is submitted that the EIA reports were never communicated to the public and hence there was no question of the public submitting comments. It is reiterated that such uploading is no substitute for public hearing and this procedure itself is in violation of the EIA Notification.

11. It is submitted that in so far as the exemption from collection of primary data and segmentation is concerned, it is submitted that the averments in the appeal are reiterated and the respondents have not provided any justifications for the same. The OM dated 29.08.2017 does not provide that baseline data collected for one project can be used for another project. Primary baseline data has to be collected for each project. Further, the prescription in the OM dated 29.08.2017 that baseline data can be collected even prior to TOR is void as it is contrary to the judgment of this Hon'ble Tribunal in **Sreeranganathan K.P. Vs Union of India** (Appeal No. 172 of 2012)

"168. The practice of collecting data even before the finalization of ToR by the EAC and the communication of the same to the project proponent is untenable in the eyes of law and it also sends wrong procedural signals. Accepting such a procedure is bound to set very unhealthy precedent. Instead of deprecating the practice, the EAC, in the instant case, has given its seal of approval. We direct the concerned officials of MoEF to take note of this and initiate procedural reform(s) to discourage this practice."

12. It is submitted that the impugned EC is liable to be set aside as the procedure followed is contrary to the EIA Notification, 2006 and EC has been granted in violation of the EIA Notification, 2006. It is submitted that the project proponent had admittedly completed only 17% of the project work when obtaining fresh environmental clearance and there are no equitable considerations in this matter. In a contest between law and equity, it is trite that law prevails. Strict compliance with the EIA Notification 2006 is mandatory. It is therefore necessary that the impugned clearance is set aside and the respondents are directed to follow the procure in the EIA Notification, conduct public hearing after due publication of the EIA reports, consider the views of the public, appraise the project and then decide on the grant of clearance.

It is therefore prayed that the appeal may be allowed as prayed for in the interest of justice.



Signature of the appellant

VERIFICATION

I, R.L.Srinivasan, S/o R.Lakshmipathi, aged 40 years, residing at 31/36, Porkaliamman Street, Kaatukuppam, Ennore, Chennai 600 057 do hereby verify that the contents in the above paragraphs are true to the best of my knowledge and based on legal advice and that I have not suppressed any material fact.

Date : 31.05.2021

Place : Chennai



Signature of the appellant