

MAHARASHTRA POLLUTION CONTROL BOARD

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Mumbai – 400 022.

By R.P.A.D./Fax/Hand Delivery

No. BO/P&L Div/B-1950

Date 23.03.09

To,

The Asstt. System Officer,
Maharashtra Pollution Control Board
Mumbai.

Sub. :- Appeal No. 2/2008 between Jan Chetna vs. M.o.E.F., N. Delhi;
Chattisgarh Env't. Conservation Board, Chattisgarh and M/s Monnet
Ispat & Energy Ltd., Chhattisgarh – Judgment reg.

Please find enclosed herewith the Order dtd. 31.12.2008 issued by the Hon'ble
National Environmental Appellate Authority regarding Appeal No. 2/2008 between Jan
Chetna V/s M.o.E.F., New Delhi; Chattisgarh Env't. Conservation Board, Chhattisgarh
and M/s Monnet Ispat & Energy Ltd., Chhattisgarh., for placing the same on the website
of the Board in Judgment Folder.

This is for your information and further line of action. A copy of the order is
enclosed herewith.

Vaishali Sadhale

(Vaishali Sadhale)
Asstt. Law Officer

Encl. : As above

Copy submitted to : Sr. Law Officer, MPCb, Mumbai – for information

*Appeals
Appeals filled before
the National appellate authority*

पर्यावरण विभाग
३६-२२६
११३०

SECTION M.P.O.
०१०२२५६५५
२१/२/०९
Mumbai

F. No. J-11011/30/2005 IA II (I)
Government of India
Ministry Environment and Forests
(IA Division)

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

Dated 3rd February, 2009

To, The Chairman
Maharashtra State Pollution Control Board
Shri Chhatrapati Shivaji Maharaj Municipal Market-Building, 4th Floor, Mata Rambai Ambedkar Road
Mumbai - 400 001, Maharashtra

As per list
महाराष्ट्र प्रदूषण नियंत्रण बोर्ड
१६. Feb २००९
आवक क्र. २२०११८११/००२४

Subject : Appeal No. 2/2008 between Jan Chetna vs. Ministry of Environment and Forests, N. Delhi; Chhattisgarh Environment Conservation Board, Chhattisgarh and M/s Monnet Ispat & Energy Ltd., Chhattisgarh - Judgment reg.

Sir,
In reference to above, please find enclosed herewith a copy of the ORDER dated 31st December, 2008 issued by the Hon'ble National Environment Appellate Authority regarding Appeal No. 2/2008 between Jan Chetna vs. Ministry of Environment and Forests, N. Delhi; Chhattisgarh Environment Conservation Board, Chhattisgarh and M/s Monnet Ispat & Energy Ltd., Chhattisgarh.

The observations made in the above referred order are for perusal and suitable action as deemed necessary.

११/३/०९

Encls. : As above.

(Dr. P. B. Rastogi)
Director

Legal

↓

(Signature)

Mrs. Vaishali
Dkt. 513109
website
after entry
& reading
Date
513109



राष्ट्रीय पर्यावरण अपील प्राधिकरण
NATIONAL ENVIRONMENT APPELLATE AUTHORITY

Appeal No.2 /2008 – NEAA

Manoj
22/11/09

January 7, 2009

To

1. Shri Rahul Choudhary,
Advocate for Appellant
C-86, L.G.F, East of Kailash,
New Delhi – 110 065
2. The Secretary to Govt. of India
Ministry of Environment and Forests,
Paryavaran Bhawan,
CGO Complex, Lodhi Road, New Delhi
(Representative Dr. P.B Rastogi, Addl. Director, MoEF)
3. Mrs. Yogmaya Agnihotri,
Advocate for Respondent -2
301, Supreme Enclave,
Mayur Vihar, Phase – I,
New Delhi – 110 091
4. Shri Mahesh Agarwal,
Advocate for Respondent -3,
Agarwal Law Associates,
34, Babar Lane (FF), Bengali Market,
New Delhi – 110 001

Sub: Appeal No. 2/ 2008 (Jan Chetna Vs. Ministry of Environment and Forests & Others)

Sir,

As directed, the order dated 31st December, 2008 the National Environment Appellate Authority in the above appeal is enclosed. Please acknowledge the receipt of the same.

Yours faithfully,

Manoj
Court Master
NEAA



जहाँ है हरियाली ।
वहाँ है खुशहाली ॥

ट्रिकूट-1, दूसरी मंजिल, भोक्राजी कामा प्लेस, नई दिल्ली-110066 (भारत)
Trikoot-1, 2nd Floor, Bhikaji Cama Place, New Delhi-110066 (INDIA)
Tel. : 011-26174124 • Telefax : 011-26174504

BEFORE THE NATIONAL ENVIRONMENT APPELLATE AUTHORITY
NEW DELHI

DATED 31ST DECEMBER, 2008

PRESENT:

HON'BLE MEMBER SHRI K. PRASAD
HON'BLE MEMBER SHRI J.C. KALA

APPEAL NO. 2 / 2008

BETWEEN:

Jan Chetna,
Through its Member,
Ramesh Aggarwal, Satyam Kunj,
Naya Ganj, Raigarh,
Chhattisgarh - 496 001



APPELLANT

AND

1. Ministry of Environment & Forests
Through its Secretary,
Government of India
C.G.O Complex, Lodhi Road,
New Delhi - 110 003
2. Chhattisgarh Environment Conservation Board,
Through its Member Secretary,
1-Tilak Nagar,
Shiv Mandir Chowk, Main Road,
Avanti Vihar Raipur, Chhattisgarh.
3. M/s. Monnet Ispat & Energy Ltd.
4, Bhikaji Cama Place,
New Delhi.

RESPONDENTS


Counsel for Appellant

Shri Ritwick Dutta, Advocate
Shri Rahul Choudhary, Advocate
Shri Priyabrata Satapathy, Advocate

parties on the maintainability of the Appeal. The parties were heard on maintainability on 16.09.2008, 21.10.2008 and finally on 27.11.2008.

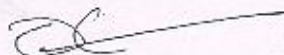
4. The counsel for the Appellant has submitted the following points in favour of his case:

- (i) This Appeal is filed before this Authority on 10.03.2008 along with Application for condonation of delay. The delay application was allowed and ordered to list the Appeal for hearing on merit. The Respondent -3 was agreed to file its response on merit. At the time of the argument, Respondent -3 has raised the issue of maintainability only to the delay the proceedings after lapse of 8 months from filing this Appeal. The whole purpose of the Respondent -3 is to ensure that the Appeal is rendered infructuous.
- (ii) The Appellant challenged the decision of Respondent -1, which has not raised any objection on the maintainability of the Appeal. The main concern of the Appellant in this Appeal as to whether the Expert Appraisal Committee (EAC) applied its mind while giving approval to this Project.
- (iii) The Respondent -3 in complete violation of Environment Impact Assessment (EIA) Notification has commenced the work and it was almost towards completion. It is clear from the Inspection Report of Chhattisgarh Environment Conservation Board at Annexure A5.
- (iv) The present Appeal has been filed by Jan Chetna through its Member, Shri Ramesh Agrwal. This Organization is working in the field of environment and involved in creating awareness among the Project Affected People. Most of the members of the organization are affected by the Project.
- (v) As per Section 11(2) of the NEAA Act, 1997 - "any association of persons (whether incorporated or not) likely to be affected by such order and functioning in the field of environment" could prefer an appeal before this Authority as "aggrieved person".



- (ix) The Counsel for the Appellant relied on the decisions of the Hon'ble Supreme Court of India and High Courts on locus standi of the Appellant in as many as 12 cases. Some of the decision on locus standi of the Appellant are reproduced hereunder:
- (a) Ghulam Quadir Vs. Special Tribunal (2002) 1 SCC 54 - the Hon'ble Supreme Court held that "the orthodox rule of interpretation regarding the locus standi of a person to reach the court has undergone a sea change with the development of constitution law in our country and the constitutional courts have been adopting a liberal approach in dealing with the case or dislodging the claim of the a litigant merely on hyper technical grounds. If a person approaching the court can satisfy that the impugned action is likely to adversely affect his right which is shown to be having source in some statutory provision, the petition filed by such a person cannot be rejected on the ground of his not having the locus standi."
- (b) Mukesh K. Tripathi Vs. Senior Divisional Manager (2004) 8 SCC 387 in which the Hon'ble Court held that the word of a statute, when there a doubt about their meaning area to be understood in the sense in which they best harmonise with the object which the legislature has in view. Their meaning is found not so much in a strict grammatical or etymological propriety of language, nor even in its popular use, as in the subject or in occasion on which they are used and the object to be attained.
- (c) Capt. J. Rama Rao Vs. Union of India & others [Writ Petition No.5742 of 2006] in which Hon'ble High Court of Andhra Pradesh held that ".... We are prima facie convinced that the expression 'any person aggrieved' appearing in Section 11 is of wide import. It takes within its fold persons like the petitioner who has shown keen interest in protecting environment and has throughout been opposing the grant of environmental clearance to the Corporation for uranium mining and has participated in public hearing in compliancc of the direction given by the High Court would fall within the ambit of the said expression".
- (d) Collector, Land acquisition Vs. Katiji (1987) 2 SCC 107 - In this case Hon'ble Supreme Court held that " it must be grasped that the judiciary is respected and not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so"
- (x) The Appellant in the present case satisfies criteria laid down by the Hon'ble Supreme Court on locus standi and High Court of Andhra Pradesh in Capt. J.

- (iii) The Appellant seeking to invoke Section 11(2) (c) of the NEAA Act, 1997 alleges to be an "association of persons" without even disclosing its actual identity. The so-called Jan Chetna is pseudo name adopted by Shri Ramesh Aggrawal to masquerade as an alleged high profile social activist in the filed of environment.
- (iv) During the hearing held on 16.09.2008 the Authority directed the Appellant to produce the evidence i.e. formation of the association and copies of the Annexure A1, A7, A8, A9 & A14, with a view to give an opportunity to the Appellant to make his case, which was partly complied-with without any supporting affidavit. The counsel for the Appellant on 21.10.2008 submitted that he has not received the order dated 16.09.2008 and sought two days time to file the evidence on maintainability. The request was allowed to meet the requirements of natural justice by the Authority. On 24.11.2008, the Appellant filed some documents to show that the Appellant is an association without any supporting affidavit which is required to be file under the NEAA (Appeal) Rules, 1997.
- (v) The Appellant is unable to put on record any facts, documents or resolutions that may demonstrate either formation or establishment of the Appellant as an association. The NEAA Act, 1997 does not permit any "organization" to file an Appeal under section 11(2) (c). Only 'an association of persons' (whether incorporated or not) may file an Appeal. The nomenclature of an 'organization' is not recognized under the scheme of NEAA Act, 1997. The Hon'ble Supreme Court in TDM Infrastructure Pvt. Ltd., Vs. UE Development India Pvt. Ltd. (2008) 8 Scale 576 held that - "whenever in an interpretation clause, the word "means" is used the same must be given a restrictive meaning".
- (vi) The material filed by the Appellant refers to a draft constitution in which it has not been able to prove that the Appellant is an "association of person", therefore the Appeal filed by the Appellant is not maintainable under section 11(2) (c) of the NEAA Act, 1997. When the Appellant was called upon to disclose its membership, structure, etc. the Appellant filed unverified and perhaps forged handwritten undocumented diary which are suspect. It is to note that the pages do not



(xi) The Appellant herein does not satisfy this Hon'ble Authority on maintainability of the Appeal under section 11(2) (c) of the NEAA Act, 1997. The Appeal filed by the Appellant is not maintainable and merits rejection with exemplary costs.

7. The counsel for the Respondent -2 also filed reply affidavit to the Appeal and was present during the argument. The role of the Respondent-2 is only to conduct of Public Hearing which was conducted as per the provisions of the Environment Impact Assessment Notification, 2006. As far as violation of laws by the Respondent -3 is concerned, action was already taken by the Respondent -2. In view of the above, it is prayed that the Appeal filed against Respondent -2 may be dismissed.

8. The point for decision at this stage is whether the Appeal filed by the Appellant is maintainable under Section 11 of NEAA, Act, 1997 or not. The Appellant has submitted that he has filed this Appeal under Section 11(2) (c) of the NEAA Act, 1997 as association of persons likely to be affected by the order and functioning in the field of environment. Section 11 (2) (c) of the NEAA Act, 1997, reads as under:

"Any association of persons (whether incorporated or not) likely to be affected by such order and functioning in the field of environment;"

Let us now examine how the Appellant qualifies to file this Appeal before NEAA under this provision.

9. The Appellant argued that the Appeal has been filed by Jan Chetna through its Member, Shri Ramesh Aggarwal. This Organization is working in the field of environment and involved in creating awareness among the Project Affected People. Most of the members of the organization are affected by the Project. The Appellant organization, through Shri Rajesh Tripathi, has authorized its member Shri Ramesh Aggarwal to file the Appeal and represent the case before the NEAA. The Authority perused the authorization letter submitted by the Appellant at Annexure -A1 in which his designation or status in the organization has not been disclosed. Further, it was found that the identical letter-heads have been used by Shri Ramesh Aggarwal while issuing


certainly maintain an action challenging the legality of such acts or omissions but if the person or specific class or group of persons who are primarily injured by such acts or omissions, do not wish to claim any relief and accept such act or omission willingly and without protest, the member of public who complaints of a secondary public injury can not maintain the action”

The Appellant has failed to prove that its association is acting on behalf and in the interest of people who are or may be affected by the grant of Environmental Clearance by Respondent -1.

11. Having perused all the submissions and the documents filed by the Appellant and the Respondents, the Authority conclude that the Appellant organization – Jan Chetna is not an association of persons likely to be affected by the order of the Environmental Clearance granted to Respondent -3 by Respondent -1. Therefore, the Appellant organization – Jan Chetna is not qualified to file an Appeal before this Authority under Section 11(2) (c) of the NEAA Act, 1997. Accordingly, the Appeal filed by the Appellant is not maintainable. The Appeal is dismissed.


(J.C Kala)
Member




(K. Prasad)
Member

“Cestui-que-est to be true copy”

Chd. M
Court Master
National Environment Appellate Authority
Trikoot-1, 2nd Floor, Bhikaji Cama Place
New Delhi-110064

File