

Item No.3:-

**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI**

Appeal No. 06 of 2020 (SZ)

(Through Video Conference)

IN THE MATTER OF

R.L. Srinivasan

....Appellant(s)

Versus

The Union of India
Rep. by its Secretary to Government,
MoEF&CC, New Delhi and arr.

... Respondent(s)

For Appellant(s):

Mr. A. Yogeshwaran.

For Respondent(s):

Mr. M.R. Gokul Krishnan for R1.

Mr. Abdul Saleem and Mr. S. Saravanan for R2.

Judgment Pronounced on: 17th September, 2021.

CORAM:

HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER

HON'BLE DR. K. SATYAGOPAL, EXPERT MEMBER

ORDER

Judgment pronounced through Video Conference. The appeal is disposed of with directions vide separate Judgment. Pending interlocutory application, if any, shall stand disposed of.

Sd/-

.....J.M.
(Justice K. Ramakrishnan)

**Appeal No.06/2020(SZ)
17th September, 2021. Mn.**

Sd/-

.....E.M.
(Dr. K. Satyagopal)

Item No.3:-

**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI**

Appeal No. 06 of 2020 (SZ)

(Through Video Conference)

IN THE MATTER OF

R.L. Srinivasan
31/36 Porkali Amman Street,
Kattukuppam, Ennore,
Chennai – 600 057.

....Appellant(s)

Versus

1) The Union of India
Rep. by its Secretary to Government,
Ministry of Environment, Forests & Climate Change,
Indra Paryavaran Bhavan, Jor Bagh,
New Delhi – 110 003.

2) M/s. Tamil Nadu Generation and Distribution Cooperation
(TANGEDCO)
Ennore Thermal Power Station
Rep. by its Chairman cum Managing Director,
5th Floor, NPKRR Maaligai,
144, Anna Salai, Chennai – 600 002.

... Respondent(s)

For Appellant(s): Mr. A. Yogeshwaran.

For Respondent(s): Mr. M.R. Gokul Krishnan for R1.

Mr. Abdul Saleem and

Mr. S. Saravanan for R2.

Judgment Reserved on: 12th August, 2021.

Judgment Pronounced on: 17th September, 2021.

CORAM:

HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER

HON'BLE DR. K. SATYAGOPAL, EXPERT MEMBER

Whether the Judgement is allowed to be published on the Internet – Yes/No

Whether the Judgement is to be published in the All India NGT Reporter – Yes/No

JUDGMENT

Delivered by Justice K. Ramakrishnan, Judicial Member.

1. The above appeal has been filed by the appellant challenging the Environmental Clearance (EC) granted to the TANGEDCO/2nd respondent by the MoEF&CC/1st respondent vide their Proceedings No. F.No. J-13012/15/2018-IA-I(T) dated 11.12.2019 for its coal fired thermal power plant 1x600 MW (Expansion) at Eranavoor Village, Ambattur Taluk, Thiruvallur District.
2. It was alleged in the appeal memorandum that Ennore thermal power station originally had 450 MW power plant which was decommissioned after 40 years of operation in May - 2017 and now 2 units of 660 MW each are sought to be established (1,230 MW). The 2nd respondent originally termed these units as ETPS Annexe and ETPS Replacement. Currently, the ETPS Annexe is being referred to as ETPS Expansion, and ETPS Replacement continues to be referred to as ETPS Replacement. The Annexe Plant will herein be after referred to as ETPS Expansion. The present appeal is only connected with the clearance issued for the ETPS Expansion Thermal Power Plant. They have submitted separate application seeking Environmental Clearance (EC) for each unit. The ETPS Expansion plant had earlier received CRZ Clearance and Environmental Clearance (EC), and that both the clearance lapsed in December-2018 and December-2019 respectively. The 1st respondent had directed the 2nd

respondent to apply afresh for the Environmental Clearance (EC) and considered the application de novo. The 1st respondent after consideration had granted Environmental Clearance to the 2nd respondent as mentioned above in violation of EIA Notification, 2006. The 1st respondent had inter alia exempted the subject project to the 2nd respondent from mandatory public hearing, consideration of alternatives, allowed for substitution of base line data collected from earlier EIA exercise and has failed to insist on the conduct of cumulative impact assessment studies despite the fact that air quality in the region as demonstrated by air quality data used for the EIA is already at or above the standards. The exemptions granted are against the EIA Notification. The appellant had filed writ petitions as W.P.31726 of 2019 and W.P. No.33351 of 2019 before the Hon'ble High Court of Madras challenging the recommendations of the Expert Appraisal Committee (EAC) for grant of Environmental Clearance (EC) to the 2nd respondent project and challenging the order exempting the 2nd respondent's project from the mandate of public hearing respectively. Both the matters were tagged together and during the course of hearing on 17.12.2019, the counsel for the appellant before the Hon'ble High Court was served with the counter affidavits in both the writ petitions along with the supporting documents wherein, it was revealed that 2nd respondent project had obtained Environmental Clearance (EC) dated 11.12.2019 and the present appeal has been preferred within 30 days from the date on which he had notice of the same and as such, the appeal is within time. The 2nd respondent had obtained earlier an Environmental Clearance (EC) for this project on 03.06.2009 which was valid for five years as per EIA Notification, 2006. The clearance dated 03.06.2009 expired and an extension was granted till 02.06.2019 by the 1st respondent vide an Order

dated 18.09.2014. The 2nd respondent on 25.07.2018 applied for further extension of the Environmental Clearance (EC) for a period of 4 years i.e. till 02.06.2023. Since the outer limit for validity of Environmental Clearance (EC) is 10 years and the same has lapsed, the 1st respondent vide order dated 20.09.2018 directed the 2nd respondent to initiate process de novo for grant of clearance from the stage of Terms of Reference as applicable under the EIA Notification, 2006. The 2nd respondent applied afresh for the Environmental Clearance (EC) for expansion on 25.10.2018 for grant of Terms of Reference for conducting EIA studies. The Expert Appraisal Committee (EAC) considered the application for issuance of the fresh ToR in its meeting held on 30.11.2018 and had recommended for the new ToR along with general ToR. Expert Appraisal Committee (EAC) has specifically noted inter alia that a cumulative assessment for the Ennnore replacement TPP and subject TPP shall be carried out in addition to the industries located within 10 Kms radius and that public hearing for the proposed project should be conducted. Vide Letter dated 21.01.2019, the 1st respondent accepted all the recommendations of the Expert Appraisal Committee (EAC) and issued ToR. The 2nd respondent vide application dated 14.03.2019, sought for an amendment to the terms of ToR and once again sought exemption from public hearing stating that the said project had already undergone necessary public hearing on 22.10.2008 and that a public hearing had been conducted for a different project namely, Replacement Plant on 30.05.2017 and so, they sought for exemption for fresh public hearing. The Expert Appraisal Committee (EAC) in its 26th meeting held on 27.03.2019 recommended certain amendments to the ToR based on the representation of the 2nd respondent, but exemption sought from public hearing was not granted since the public hearing for the

subject TPP was conducted in 2008 and the public hearing was conducted in 2017 was with respect to an entirely different project namely, Replacement of TPP. The committee emphasized that no construction activity shall be carried out beyond the date of expiry now lapsed Environmental Clearance (EC). Vide proceedings dated 01.05.2019, 1st respondent endorsed the amendments to the ToR as recommended by the Expert Appraisal Committee (EAC) which did not include an exemption from conducting public hearing.

3. On 10.07.2019, with no provocation or prompting from the Expert Appraisal Committee (EAC) and without any legal basis, the first respondent granted exemption to the project from public hearing, on the basis of the representation made by the 2nd respondent for following reasons:

- a. Public hearing was already conducted at a nearby location within the same premises for another project i.e. proposed 1x600 MW Ennore Replacement Power Project on 30.05.2017.
- b. The present project is under construction and Rs.703 Crores had already been spent and conducting public hearing will substantially delay the construction as the Environmental Clearance (EC) was bound to expire on 02.06.2019.
- c. The project was following full procedure under EIA Notification to obtain the Environmental Clearance (EC) a second time.

4. According to the appellant, the above three reasons stated by the 1st respondent are unsustainable and contrary to the EIA Notification, 2006 for the following reasons:

- a. The public hearing conducted in 2017 is for another thermal plant - ETPS Replacement TPP - at a different location within ETPS

premises by the 2nd respondent and is for a distinct project and not for the subject thermal power plant. The subject plant is sought to be built on new, unbuilt land within the premises, while the Replacement TPP was to be built after dismantling the now retired old plant.

- b. The EIA reports for the plants are different and the earlier public hearing in 2017 cannot be passed off as public hearing for the present proposal for which application itself was made only on 25.10.2018.
 - c. The 2006 Notification specifies a detailed timeline for the completion of public hearing and compliance with statutory mandate cannot be complained of as an inconvenience. Appendix IV of the notification gives a procedure for public hearing and it shall be completed within a period of 45 days from the date of receipt of request to conduct public hearing from the project proponent along with draft EIA Report.
 - d. Without undergoing public hearing, the 2nd respondent cannot claim that they are undergoing the whole process de novo.
5. The Expert Appraisal Committee (EAC) on 27.03.2019 had specifically recommended that public hearing should be conducted and yet the 1st respondent has granted the exemption bypassing the recommendations. The exemption is against well established legal principles and it is void ab-initio. The exemption from public hearing granted is against Clause 7 (III) of EIA Notification, 2006. The validity of any decision taken by the authorities against the provision, statute and precedents provided therein was considered by the Hon'ble Apex Court in DLF Universal Limited & Anr. Vs. Director Town and Country Planning (2010) 14 SCC 1 wherein,

the Apex Court held at Para 54 that “It needs no restatement that any order which is ultra vires or outside jurisdiction is void in law i.e. deprived of its legal effect. An order which is not within the powers given by the empowering Act, it has no legal leg to stand on. The order which is ultra vires is a nullity, utterly without existence or effect in law.” The importance of public hearing in granting Environmental Clearance has been reiterated time and again by the Hon’ble Delhi High Court in Samarth Trust Vs. Union of India W.P. 9317 of 2009 dated 28.05.2010 and the Hon’ble High Court of Madras has also reiterated the same principle in S. Nandakumar Vs. The Secretary to Government of Tamil Nadu , Order dated 22.04.2010 and also in Hanuman Laxman Aroskar Vs. Union of India (2019) SCC Online SC 441. The Apex Court had recognized the importance of public hearing and the manner in which it ought to be conducted was also enumerated therein. The exemption issued thus had effectively taken away the voices of the project affected subjects and there was no opportunity to the Expert Appraisal Committee (EAC) to consider the objections raised by the public in this regard so as to provide necessary precautions applying the Precautionary Principle and exempting public hearing is against the international covenant and also against the statutory principles. Further, exempting for collecting primary data for the preparation of EIA Notification is also without any basis and that is also against the provisions under the EIA Notification. Further, cumulative impact also has to be done taking into consideration the existing and proposed activities in the vicinity of the project under consideration, especially when it is already polluted area. In vicinity of the project there exists 3300 MW of coal fired thermal power plants, two large ports handling coal and other cargo, a coal stocking yard, a foundry and

bus/truck manufacturing unit, fertilizer plants and a lube oil facility and Manalai Petrochemical Industrial area which is till recently considered to be a critically polluted area. Further, additionally, 14600 MW of coal fire power plants are already at an advanced stage of construction and Rs.10,000 Crore mega port with 30 berth is proposed to be set up by Adani's MIDPL in the vicinity.

6. So, according to the appellant, for the above reasons, the Environmental Clearance is bad in law and the same is liable to be set aside. So, the appellant filed this appeal seeking the following reliefs:-

"a. Quash the Environmental Clearance in F.No.

J-13012/15/2018-IA-I(T) dated 11.12.2019 granted by the

1st respondent to the 2nd respondent.

b. Issue such other orders as it deems fit in the interest of the case and render justice."

7. The 1st respondent filed a counter affidavit contending that the appeal is not maintainable. M/s. Tamil Nadu Electricity Board was accorded Environmental Clearance (EC) vide Ministry's letter dated 03.06.2009 for establishing the 1x600 MW coal based thermal power plant in Ernavur Village, Ennore District as an expansion to the existing 450 MW (3x110 MW and 2x60 MW). Subsequently, an amendment, to the above Environmental Clearance (EC) dated 03.06.2009 vide Ministry's letter dated 24.01.2013 for change in configuration from 1x660 MW and change in coal source from domestic to imported coal was issued in favour of the new name of the company i.e. M/s. Tamil Nadu Generation and Distribution Corporation Ltd. (herein after referred to as "TANGEDCO"). The Environmental Clearance (EC) issued vide Proceedings dated

03.06.2009 was valid for five years and subsequently, extended for further period of five years till 02.06.2019. The validity of the Environmental Clearance (EC) as defined in the EIA Notification is the period from which a prior Environmental Clearance (EC) is granted by the regulatory authority to the start of date of commercial operation by the project or activity. The period of validity of the Environmental Clearance (EC) has been given in the EIA Notification, 2006 and subsequent amendments i.e. for 10 years.

8. On 25.07.2018, the TANGEDCO had applied for extension of the Environmental Clearance (EC) issued vide Proceedings dated 03.06.2009 for a further period of four years as the project activities could not be completed and the operations could not be started within the period of validity of 10 years. As there is no provision in the EIA Notification, 2006 to extend the validity of Environmental Clearance (EC) beyond 10 years, TANGEDCO was informed vide letter dated 29.10.2018 to initiate the Environmental Clearance (EC) process de novo for obtaining Environmental Clearance (EC) for the project. Based on the application submitted by the TANGEDCO, the Ministry prescribed the ToR vide letter dated 21.01.2019 for conducting detailed EIA studies and carrying out public consultation.
9. On 15.03.2019, TANGEDCO had requested for amendment in ToR dated 21.01.2019 to exempt collection of fresh baseline data, exemption from examination of alternate sites and exemption from public hearing. Based on the recommendations of the Expert Appraisal Committee, the amendment to ToR was issued vide Ministry's letter dated 01.05.2019 for using the existing baseline data and exemption of examination of alternate sites. This was in conformity with the Ministry's Office Memorandum

dated 29.08.2017, which provides guidelines for collecting baseline environmental data at any stage so long as the said data is not older than three years as on the date when application for grant of Environmental Clearance (EC) is submitted to the Ministry. So, the averments that exemption granted for collection of baseline data is illegal cannot be accepted. The TANGEDCO also recommended the request for amendment in the ToR issued vide dated 21.01.2019 for exemption of public hearing and they submitted that the project is already under construction and had achieved 17% of physical progress with an investment of Rs.703 Crores for construction of the project. Further, it was submitted that the land required for the project had already been acquired and is in the possession of TANGEDCO. Accordingly, based on the request by the TANGEDCO, the Ministry had considered its request and found logical, therefore, exempted the public hearing vide Ministry's letter dated 10.07.2019. So, the allegation in respect of exemption of public is without any basis. The TANGEDCO has submitted the online application for grant of Environmental Clearance (EC) on 16.08.2019. The proposal has been appraised by the re-constituted Expert Appraisal Committee (EAC) for thermal power projects in its 32nd and 33rd meetings held on 23.08.2019 and 25.09.2019 respectively. In acceptance of the recommendation of Expert Appraisal Committee (EAC) for thermal power sector and in view of the information, clarification, documents submitted by the project proponent, the Ministry accorded the Environmental Clearance (EC) to the ETPP Expansion project as per the provisions of EIA Notification, 2006 and subsequent amendments therein subject to the compliance of additional condition as mentioned in Environmental Clearance (EC) letter. The TNCZMA vide letter dated 14.08.2019 has recommended for CRZ

Clearance for setting up of pipe coal conveyor from North Chennai Power Plant to TANGEDCO's Ennore Thermal Power Project, Intake and Outfall Water Pipelines from the sea to Ennore Power Project and vice versa. The project proponent vide online application dated 16.08.2019 had applied for grant of Environmental Clearance (EC) by uploading all the documents (EIA/EMP etc.) for appraisal. The proposal has been appraised by the Re-Constituted Expert Appraisal Committee (EAC) for Thermal Power Projects in its 32nd and 33rd meeting held on 23.08.2019 and 25.09.2019 respectively. The Expert Appraisal Committee (EAC) (Thermal Power) in its meeting held on 25.09.2019 deliberated the issues regarding CRZ recommendations, Baseline environment data, Environmental Impact of the project, ecological sensitivity such as marine biodiversity and environmental management plan. After taking all these aspects into consideration, the Expert Appraisal Committee (EAC) recommended for grant of Environmental Clearance (EC) and also stipulated additional conditions.

10. The Expert Appraisal Committee (EAC) (Thermal) while recommending for grant of Environmental Clearance (EC) has found that an area of 10.5 acres proposed to be used as ash pond was falling within CRZ area, which has been recommended to exclude it for any construction activities of the project. Adequate environmental mitigation measures have been stipulated by the Expert Appraisal Committee (EAC) such as installation of high efficiency Electrostatics Precipitator, Flue-gas Desulphurization (FGD) system and NO_x control systems to meet the new emission norms issued vide dated 07.12.2015 by MoEF&CC. The present project of TANGEDCO is a unique case wherein the project had not completed construction activities within the validity of Environmental Clearance

(EC). The procedure to deal with the projects under construction after outer limit of Environmental Clearance (EC) validity (10 years for Thermal Power Project) has not been provided in the EIA Notification, 2006 and its amendments. Considering the progress of the project and expenditure made in the project activities, and the fact that land acquisition had already been completed, the Ministry had exempted to conduct public hearing. Thus, due process of EIA has been followed by the Expert Appraisal Committee (EAC) before recommending for grant of Environmental Clearance (EC) of the Ennore Supercritical Thermal Power Project.

11. The project proponent had also conducted an additional study as a part of EIA Studies for Risk assessment, Disaster management plan, Hydro-geological studies, Need based assessment studies and preparation of CSR plan and public consultation. The additional study was taken into consideration by the Expert Appraisal Committee (EAC) for thermal power before grant of Environmental Clearance (EC). So, according to the 1st respondent, the Environmental Clearance (EC) granted is legal and the appeal has no merit and prayed for dismissal of the appeal.

12. The 2nd respondent filed a reply affidavit contending that the appeal is not maintainable and without any merit. They further contended that the Tamil Nadu Electricity Board (TNEB) was formed on 1st July, 1957 under Section 54 of the Electricity (Supply) Act, 1948 in the State of Tamil Nadu and they are responsible for power generation, transmission and distribution. The electricity network has since been extended to all villages and towns throughout the State. TNEB was reconstituted on 01.11.2010 into TNEB Limited; Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO), the 2nd Respondent herein and Tamil Nadu Transmission Corporation Limited (TANTRANSCO). Considering, the

growing power demand in the State of Tamil Nadu, they proposed to establish thermal power plants with new technologies replacing the old power plants in order to minimize the pollution level to cope up with the power demand on the basis of sustainable development. Due to such infrastructure development, there will be industrial development in the region. Moreover, they will ensure that all new environmental norms issued by the Ministry of Environment Forest and Climate Change (MoEF & CC) will be complied by providing all mitigating measures as directed by them. They proposed to establish 1x660 MW, ETPS Expansion TPP (previously termed as ETPS Annex) in the vacant land available within the existing ETPS Complex having 40 year old 5 units of 2x60 MW and 3x110 MW totalling to 450 MW at Ernavur Village of Thiruvottiyur Taluk, Thiruvallur District, during 2008 and necessary Environmental Clearance (EC) was obtained on 03.06.2009 after complying with all the procedures for the expansion of 1x600 MW and subsequently necessary amendment for super critical technology unit of 1x660 MW was obtained from the 1st Respondent during 2014. Initially, tender was called for the 1x600 MW lodged for upgrading the unit to supercritical unit and a fresh tender for 1x660 MW super critical unit was called for and the EPC contract awarded to M/S LANCO infrastructure (P) Ltd., during 2014. Due to insolvency of the EPC Contractor, the work was stopped abruptly by the contractor in 2017. The existing ETPS (450 MW) was under operation till 31.03.2017 and decommissioned within the same ETPC complex. Hence, the 2nd Respondent had approached the 1st Respondent to obtain Term of Reference (TOR) for the establishment of ETPS Replacement Thermal Power Plant (1x660 MW) and another supercritical unit of 1x660 MW after dismantling the exiting 450 MW. ETPS, during 2016. The TOR was issued

in the year 2016 and necessary comprehensive impact assessment study was conducted, covering four operating power plants viz., (i) NCTPS I (3x210 MW), (ii) NCTPS II (2x600 MW), (iii) Vallur TPP (3x500 MW), (iv) ETPS (450 MW) and 4 proposed Power projects viz., (i) Ennore SEZ TPP (2x800 MW), (ii) NCTPP III (1x800 MW), (iii) ETPS Expansion TPP (1x660 MW) and (iv) ETPS Replacement TPP (1x660 MW). Based on the submission in 2018, the 1st Respondent had directed to conduct the following additional studies: (i) Bio accumulation of plants in the area and (ii) One season AAQ to ascertain present level of pollutants.

13. The 2nd respondent further contended that pursuant to the same, a study of Bio accumulation was conducted through Centre for advanced study of Biology, Annamalai University and one season AAQ study was again conducted during 2018 and the same were finalized and to be submitted for obtaining Environmental clearance for ETPS Replacement TPP (1x660 MW). In the meantime, the Environmental Clearance (EC) issued for ETPS Expansion TPP expired, after the period of 10 years from the date of its issuance. So, they requested to extend the validity of Environmental Clearance (EC) for 4 more years to complete the balance works of ETPS Expansion TPP (1x660 MW) as M/s LANCO, the EPC contractor who was declared as insolvent, had completed only 17% of the works till 2017. However, the 1st Respondent had directed the 2nd Respondent to obtain fresh ToR to obtain fresh Environmental Clearance (EC) since there was no provision to issue extension of Environmental Clearance (EC) beyond 10 years for the ongoing ETPS Expansion TPP (1x660 MW). In compliance to the direction of the 1st Respondent, a fresh TOR was obtained and exemption of Public hearing was also issued by the 1st Respondent on 10.07.2019, since public hearing for the same project was already conducted

in the year 2008 itself and public are aware of the project under implementation and it is only an ongoing project and not a new one. Since there is no provision for extending the existing Environmental Clearance beyond 10 years, as per the Environment Impact Assessment (EIA) Notification 2006, the 1st Respondent had directed the 2nd Respondent to start the process de novo even though 17% of the works were already been completed after obtaining necessary prior Environmental Clearance in the year 2009 by following all statutory procedures including public hearing which was held in the year 2008 for the same project located in the same site. Due to initiation of insolvency by the EPC contractor, the works were stalled from February 2017 in respect of this project. Due to award to another EPC contractor for recommencement and completion of the pending works, delay occurred. So, considering all these aspects, the 1st respondent had granted exemption of public hearing on the basis of the submission made by the 2nd respondent after convincing themselves about the fact that public hearing was conducted for the same project in 2008 and another public hearing was conducted in 2017 for another project of the same project proponent in the same premises in 2017 and people in the locality were aware of both the projects located in the same complex. The cumulative impact assessment of all power plants including the proposed ETPS Replacement TPP within 10 KM radius from ETPS Expansion TPP has been carried out through an accredited agency of the 1st Respondent and same was submitted to them for obtaining necessary prior Environmental Clearance. The comprehensive Rapid EIA covering influence of all industries and existing power plants along with the proposed power plants in the Ennore area have been considered while carrying out the EIA study for the proposed ETPS Expansion TPP (1X 660

MW). The EIA study covers the Air quality base line data taken during 2018 for the proposed ETPS Replacement TPP as directed by the 1st Respondent and the baseline data for all other impacts have been collected during 2019 in order to complete the cumulative impact EIA study at the earliest, since the validity period is 3 years. The public hearing for the ETPS Expansion TPP was conducted on 22.10.2008 and another public hearing for ETPS Replacement TPP was also conducted during 2017, covering all comprehensive EIA report taking into account of cumulative impact of all existing and proposed power plant in the subject area. So, the 1st respondent was perfectly justified in exempting public hearing for the ongoing ETPS Expansion TPP on 10.07.2019. The allegations otherwise made are denied.

14. It is further contended by the 2nd respondent that the appellant had filed a Writ Petition as W.P. No. 33351 of 2019 before the Hon'ble Madras High Court, during November - 2019 and the same was dismissed on 27.01.2020. It was against the grant of exemption of public hearing by the 1st respondent on 10.07.20219. All necessary studies have been conducted and so the apprehension of the appellant that no proper impact assessment studies have been conducted for the proposed project is not correct. There was no change in the project area in respect of which public hearing was conducted during 2008. They have proposed to replace the existing 40 years old Thermal Power Station (450 MW) with a super critical technology power house (1X660 MW) since, Thermal Power Plants are required to maintain the base load of the Grid even though renewable energy sources such as wind mills and solar are supplementing the power requirement seasonally (wind mills during 3 to 4 months and solar in the day time alone). The EIA report was uploaded in the website of the 1st Respondent

on 16.08.2019 itself while applying for issuance of Environment Clearance and it is available till date and is accessible to public for viewing. As the public hearing was exempted by the 1st Respondent, the requirement of uploading the EIA report in the website of the Tamil Nadu Pollution Control Board did not arise as per Clause 7 (III) of the EIA Notification 2006. There was no illegality committed by the 1st respondent in granting exemption, which is under challenge, as the base line AIQ data collected in the year 2018 covers the impact of all existing industries in and around 10 Kms radius from both ETPS Expansion TPP and ETPS Replacement TPP which are located adjacent to each other within the ETPS complex and all other data were again collected in 2019 by the accredited consultant M/s Ramky Enviro Services (P) Ltd, Hyderabad and a cumulative rapid EIA / EMP report considering all existing and proposed power plants was prepared and submitted to the 1st Respondent for the issuance of Environmental Clearance (EC). So, the allegation that exemption granted for collecting baseline data and permitting to rely on the data collected in 2017 is against the rules is not correct. All necessary cumulative impact of the expansion and the proposed units which are likely to come up has been done. They obtained necessary CRZ Clearance afresh and there is no illegality committed and there is no necessity to set aside the Environmental Clearance, as no prejudice will be caused to the people in the locality on account of the exemption granted from public hearing which has been taken into consideration by the 1st respondent and properly appraised by the Expert Appraisal Committee and only thereafter, the Expert Appraisal Committee recommended the project, based on which, the Environmental Clearance was granted by the 1st respondent and there is no merit in the appeal. They prayed for dismissal of the appeal.

15. The appellant filed rejoinder contending that the justification given by respondents 1 & 2 for exemption from public hearing for this project and permitting to rely on the baseline data collected for another project in 2017 etc. are not correct and they are against the provisions of the EIA Notification. The public hearing for ETPS "expansion" project was conducted on 22.10.2008 and public hearing for ETPS "replacement" project was conducted on 03.05.2017 and for the present project the Environmental Clearance application was filed de novo in 2019 and as such, the public hearing conducted during 2008 and 2017 are not sufficient to meet the requirement of conducting public hearing as required under the EIA Notification, 2007. Further, as per 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 for those were specified thereunder. Establishment or expansion of thermal power plants is not a project exempted thereunder. So, the 1st Respondent has no power to grant exemption from public hearing. Further, the Expert Appraisal Committee (EAC) on 27.03.2019 had considered the proposal for exempting the public hearing and rightly rejected the same and directed that Public hearing has to be conducted. Further, relying on that recommendation, 1st respondent had issued the ToR originally in which they have not granted exemption from public hearing. Subsequently, the MoEF&CC on the basis of the representations made by the 2nd respondent exempted the public hearing and permitted them to use the baseline data collected during 2017 for conducting the cumulative assessment. The sequence of events in respect of this unit was explained in the rejoinder as follows:-

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

16. Further, the Expert Appraisal Committee in its meeting held on 23.08.2019 observed that the Tamil Nadu Pollution Control Board has not furnished any letter as to whether any comments were received from the public after uploading the EIA report and the Pollution Control Board had later

submitted a letter stating that no such complaints have been received. The possibility of filing any objection from the public will not arise, as Tamil Nadu Pollution Control Board had not uploaded the EIA Report in their website as required under the EIA Notification. The appellant had relied on the observations made by this Tribunal in **Sreeranganathan K.P. Vs Union of India** (Appeal No. 172 of 2012) in respect of collection of preliminary baseline data for another project cannot be relied on for this purpose and collection of data even prior to the Terms of Reference is also not permissible. So, no equitable consideration can be granted for the violation committed by the 2nd respondent for not completing the project within the period and also against the provisions of the EIA Notification, 2006. So, they prayed for rejecting the contentions of the respondents and prayed for allowing the appeal by the setting aside the Environmental Clearance (EC) granted.

17. Heard the counsel for the appellant Mr. A. Yogeshwaran and Mr. M.R. Gokul Krishnan for 1st respondent and Mr. Abdul Saleem and Mr. S. Saravanan for 2nd respondent.

18. The learned counsel appearing for the appellant argued that the public hearing is a mandatory procedure provided under the EIA Notification, 2006 and that was intended for the purpose of collection of views of the public on the proposed project, on the basis of the draft EIA Report submitted by the project proponent and after considering the views expressed by the public in respect of the project, they will have to prepare the final EIA Report and submit the same along with the application for Environmental Clearance (EC) and that will have to be appraised by the Expert Appraisal Committee (EAC) along with other technical aspect for the purpose of mitigating the apprehension raised by the public at the time

of public hearing by providing necessary precautions applying the principle of *Precautionary Principle*. Even, the Expert Appraisal Committee (EAC) has not accepted the request of the project proponent for exemption from public hearing and also for conducting cumulative impact assessment afresh and this was earlier accepted by the MoEF&CC while issuing the Terms of Reference and subsequently, without asking for a further opinion from the Expert Appraisal Committee (EAC) on the basis of the subsequent recommendation made, which is mandatory under EIA Notification granted exemption against the provision of the EIA Notification which is illegal.

19. He also argued that the baseline data collected for another project in 2017 cannot be treated as a basis for preparing the EIA Report for the present project of the 2nd respondent, which is also against the legal principles laid down in this regard.

20. So, according to the counsel for the appellant, the Environmental Clearance (EC) granted is vitiated and the same is liable to be set aside in toto and fresh studies will have to be conducted in this regard. He had relied on the decisions reported in *DLF Universal Limited & Anr. Vs. Director Town and Country Planning (2010) 14 SCC 1*, *Samarth Trust Vs. Union of India, W.P. No.9317 of 2019, Order dated 28.05.2020 of Hon'ble Delhi High Court*, *Hanuman Laxman Aroskar Vs. Union of India 2019 SCC Online SC 441*, *Electrotherm (India) Limited Vs. Patel Vipulkumar Ramjibhai & Ors. (2016) 9 SCC 300* and *S. Nandakumar Vs. The Secretary to Government of Tamil Nadu, Judgment of Hon'ble High Court of Madras dated 22.04.2010 in W.P. No.10641 of 2009* in support of his case.

21. On the other hand, the learned counsel appearing for the MoEF&CC/1st respondent submitted that it cannot be treated as a new project and it can

only be treated as an ongoing project, as Environmental Clearance was granted for this project as early as in 2009 and they have started their work and 17% of the work has been completed. Further, that Environmental Clearance (EC) was not challenged and as such, it cannot be said that public were not aware of the establishment of the proposed project in that area. Further, the necessity for applying for fresh Environmental Clearance arose only because there was no provision in the EIA Notification, 2006 for extending the time beyond 10 years of the validity of the Environmental Clearance (EC) granted. Since the 2nd respondent had applied for extension of the same beyond that period, the 1st respondent expressed their inability to grant further extension from 2019 and directed them to undergo the process de novo for obtaining Environmental Clearance from the stage of issuance of ToR. Though the Expert Appraisal Committee (EAC) did not agree with the proposal for exemption from public hearing after considering the aspects in its totality, the MoEF&CC has granted exemption and the ultimate authority under the EIA Notification to regulate the issuance of Environmental Clearance (EC) is the Ministry and as such, the power of the Ministry to exempt the public hearing in appropriate cases cannot be said to be without jurisdiction. Further, no prejudice has been caused to the public on account of this aspect, because another public hearing was conducted in the year 2017 by the same project proponent for another project namely, Replacement project in the same complex and that process was also under consideration. Further, permitting the project proponent to rely on the baseline data collected during 2017 for their another project for the preparation of cumulative impact assessment for this project cannot be said to be illegal because both the proposed units are within the same

complex and the nature of study to be conducted for both the project are same, as both are dealing with thermal plants and the project proponent had collected the further data for one season after relying on the baseline data collected during 2017 and prepared the cumulative impact assessment and that was appraised by the Expert Appraisal Committee (EAC) and then satisfied with the same and only thereafter, the recommendation was made. So, according to the learned counsel appearing for the 1st respondent, there was no illegality committed by the 1st respondent in granting exemption and issuing Environmental Clearance (EC) and it cannot be said to be a void ab initio as claimed by the counsel for the appellant.

22. On the other hand, the learned counsel appearing for the 2nd respondent argued and justified the power of the 1st respondent in granting exemption after considering the entire facts. The learned counsel also argued that it cannot be treated as a new project as it is only an ongoing project in respect of which Environmental Clearance (EC) was granted earlier in year 2009 and public hearing was conducted in the year 2008 and all the aspects have been considered including the apprehension raised by the public and only after consideration of all those things, earlier Expert Appraisal Committee (EAC) had recommended the project and Environmental Clearance (EC) was granted by the MoEF&CC/1st respondent and that was not challenged by anyone. Further, the work of the project has been started in the area and 17% of the work has been completed by the person to whom contract was granted. Due to initiation of insolvency by the then EPC Contractor, the work was abruptly stopped and they will have to call for fresh tender for completing the remaining portion, for which, the time available under the extended Environmental Clearance (EC) is not

sufficient. So, they applied for extension for further period of four years from 02.06.2019, but since there is no provision in the EIA Notification to extend the validity period beyond 10 years, the same was rejected by the 1st respondent and directed the 2nd respondent to apply de novo for clearance from the stage of issuance of Terms of Reference and that was how, the second application has been submitted. Further, they also proposed to have an ETPS Replacement project of the very old existing project after dismantling the same, for which also they have applied for Environmental Clearance (EC), obtained Terms of Reference and conducted public hearing in the year 2017. At that time also, the impact of that project along with the impact of this project were considered in the public hearing and views of the public was gathered and final EIA Report was prepared for that project and the same was submitted along with the application for Environmental Clearance (EC) for that project. Further, as directed by the Expert Appraisal Committee (EAC), the 2nd respondent had conducted further study of AAQ during 2018 for the replacement project and that was a reason why they sought for exemption from collecting primary data afresh and permitting to rely on the data collected in 2017 which is permissible under the OM issued by the MoEF&CC. This is only in order to avoid delay in completion of preparation of EIA and at that time, the entire projects within the area of 10 Kms were considered and necessary details were provided as well. Further, no prejudice will be caused to the public on account of non-conduct of public hearing as contended by the appellant and even in the EIA Notification, exemption was provided from conducting public hearing under peculiar circumstances and this aspect has been considered by the Principal Bench of National Green Tribunal, New Delhi in *Appeal No.78 and 79 of 2018 in*

Laxmi Chouhan Vs. Union of India & Ors. dated 25.08.2020, relying on the Official Memorandum issued by the MoEF&CC dated 15.09.2017 and the circumstances mentioned therein are also similar circumstances mentioned herein. So, according to the 2nd respondent, there is no necessity to set aside the Environmental Clearance (EC) granted on the grounds mentioned and it is perfectly valid and legal.

23. In turn, the learned counsel appearing for the appellant argued that the observation made by the Principal Bench in Appeal No.78 & 79 of 2018 is not applicable to the facts of this case, as even the Official Memorandum in respect of coal mining for expansion of particular extent, the public hearing was exempted. Further, the order passed by the Principal Bench was challenged before the Hon'ble Apex Court by filing Civil Appeal No.834 of 2021 and the same is pending. So, it cannot be said that it attained finality on the point that has been raised. He had also relied on certain guidelines provided for Thermal Power Plant issued by the MoEF&CC in respect of preparation of EIA Reports and exemptions granted are against those rules, according to the appellant.

24. Considered the submissions made by both the counsel and also considered the documents and precedents produced by them.

25. The points that arise for consideration are:-

- i. Whether the Environmental Clearance (EC) granted to the 2nd respondent for the reasons stated in the appeal memorandum and the submissions made by the counsel for the appellant is liable to set aside in toto and fresh appraisal will have to be made from the point of public hearing by preparing fresh EIA Report as alleged by the counsel for the appellant?

- ii. If the Environmental Clearance is liable to be interfered with for non conduct of public hearing, then to what extent that has to be considered and nature of directions to be issued for consideration of Environmental Clearance (EC) and from what stage and what are all the things to be revisited by the project proponent as well as the MoEF&CC for consideration of these aspects and what is the nature of directions to be given in this regard by this Tribunal?
- iii. What are all the further directions (if any) to be given applying the principles of "Sustainable Development" and "Precautionary Principle"?
- iv. Relief and Cost.

Points:-

26. It is an admitted fact that the 2nd respondent is dealing with generation and distribution of power in the State of Tamil Nadu and for that purpose, they have established Thermal Power Plants and operating the same since 1989 in the disputed area. It is also an admitted fact that large extent of area was acquired for the purpose of establishing the coal fired thermal power plants by the 2nd respondent and more than one unit was established in that thermal power plant complex by the 2nd respondent. It is also an admitted fact that for the purpose of augmenting the power generation, in order to meet the demand for power supply, the 2nd respondent had proposed to have two proposals, one for expansion of the old 450 MW Thermal Power Plant to one of 1x660 MW Coal fired Thermal Power Plant and another for replacement of an old Thermal Power Plant

by dismantling the same. It is also an admitted fact that for the expansion of the Thermal Power Plant of 1x660 MW under the project ETPS expansion, the 2nd respondent had applied for Environmental Clearance in the year 2008 and the public hearing was conducted in the year 2008 and on the basis of the public hearing conducted, appraisals were made and the EIA Reports were prepared and the same was considered by the Expert Appraisal Committee (EAC) and recommended the project and on that basis, the MoEF&CC had issued Environmental Clearance (EC) for a period of five years as per their Proceedings dated 03.06.2009. Thereafter, they have applied for amendment of changing the configuration and the same was granted by Proceedings dated 24.01.2013. Since the work could not be completed, they applied for extension of the validity period of Environmental Clearance (EC) dated 03.06.2009 upto 02.06.2019 and the same was granted vide Proceedings dated 18.09.2014. Since the contractor to whom the work was awarded by the 2nd respondent had initiated insolvency proceedings and he had stopped the work abruptly after completing 17% of the project work anticipating that the work could not be completed within the period of 02.06.2019, they applied for further extension of validity period of another four years from 02.06.2019, but the same was rejected by the 1st respondent by their Proceedings dated 20.09.2018 for the following reasons:-

“4. The Ministry has examined the proposal. The Ministry’s EIA Amendment Notification vide S.O. No.2944 (E) dated 14.09.2016 stipulates that the validity of Environmental Clearance (EC) is seven years which can be extendable for a maximum period of three years. Accordingly, the outer limit of the validity of the EC is 10 years. In the present case, the outer limit of 10 years validity will be expired on 02.06.2019. The EC validity cannot be extended beyond 10 years.

5. In view of the above, it is requested to initiate the process de novo for grant of ToR as applicable under EIA Notification, 2006 and amendments notified time to time."

27. So, it is clear from this that since the validity period cannot be extended beyond 10 years as per the amended notification of S.O. No.2944 (E) dated 14.09.2016, the MoEF&CC had rejected the request for extending the validity period for further four years from 02.06.2019 made by the 2nd respondent and directed them to apply for de novo Environmental Clearance (EC) from the stage of issuance of ToR as required under the EIA Notification, 2006. So, it is clear from this that the 2nd respondent is expected to obtain Environmental Clearance (EC) for this project de novo from the stage of application for fresh terms of reference and proceed with the same as required under the EIA Notification, 2006.

28. It is also an admitted fact that the 2nd respondent had applied for fresh Environmental Clearance (EC) and also sought for issuance of ToR detailing the process which has already been done by them vide their Letter No.SE/C/P&E/EE/EMC/F.ETPS Expansion TPP/D.282/18 dated 25.10.2018 with following prayer:-

"Considering the locations of both Power projects within a same complex of ETPS, it is requested to consider the AAQ locations taken in the above EIA study report for ongoing ETPS Expansion (Annex) TPP 1x600 MW also to issue fresh ToR. Necessary public hearing for the captioned ETPS Expansion (Annex) TPP was held on 22.10.2008 and public hearing for ETPS replacement TPP (1x660 MW) was held on 30.05.2017. Since both the proposed projects are located within ETPS complex, the new ToR may be issued to ETPS Expansion (Annex) TPP exempting any fresh public hearing. Further, considering the previous CRZ Clearances for ETPS Expansion is being considered for ETPS Replacement TPP also, MoEF&CC may permit TANGEDCO to approach MoEF&CC directly for Environmental and CRZ Clearance for ETPS Expansion TPP, without the process of again approaching District Level and State Level CRZ Committee."

29. They also asked for the following exemptions:

“(1) Exemption from conducting fresh Terrestrial and Marine EIA Studies since the recent studies conducted for the proposed ETPS Replacement TPP have covered cumulative effects of both the proposed ETPS replacement TPP (1x660 MW) and the ongoing ETPS Expansion (Annex) TPP (1x660 MW) (1x660 MW)

(2) Exemption from conducting fresh public hearing.

(3) Exemption from obtaining fresh recommendation of District Level and State Level CRZ Committees for the infrastructure under constructions viz., five coal conveyor intake and outfall water lines to offshore from the proposed ETPS complex consisting of both the proposed ETPS replacement TPP 1x660 MW and the ongoing ETPS Expansion (Annex) TPP 1x660 MW.”

30. This was considered by the MoEF&CC and vide their proceedings No.

F.No.J-13012/15/2018-IA-I(T) dated 21.01.2019 issued the Terms of Reference wherein, they have not accepted the request made for exemption from obtaining fresh appraisal study under the CRZ Notification at the level of District and State and also for exemption from public hearing was not accepted. This aspect was considered by the Reconstituted Expert Appraisal Committee in its 23rd meeting on Environmental Impact Assessment of Thermal Power Plants in the meeting held on 30th November, 2018 and considered this project as Item No. 23.1 and recommended for granting of following ToR in addition to the standard ToR subject to the submission of feasibility report and detailed project report under Item No.23.1.3 as follows:-

“23.1.3 Committee after detailed deliberations recommended for grant of following ToR in addition to the Standard TOR subject to submission of Project Feasibility Report/Detailed Project Report:

i. Recommendations of the TNCZMA for seawater intake and outfall pipelines and coal conveyor proposed in the CRZ area shall be obtained as per the CRZ Notification, 2011 and its amendments.

ii. The power project and its boundary shall not be located in the CRZ area. A fresh CRZ demarcation inline with the Coastal Zone Management Plans of Tamil Nadu State as per the CRZ Notification, 2011 or any amendments thereof, shall be carried out by the authorized agency. The mapping shall clearly show Project Facilities, LTL, HTL, 100 m, 200m and 500 setback lines, classification of CRZ areas (CRZ - I, II, III & IV), mangroves, eco-sensitive areas, etc. The mapping shall also include Ennore replacement project, the present project and the existing 450 MW power plant along with proposed marine facilities.

iii. Recommendations of the sub - committee in its site visit held during 13th - 14th October, 2017 shall be complied with.

iv. The cumulative impact assessment for the Ennore replacement project (1x660 MW) and the present proposal shall be carried out in addition to the industries located within 10 km radius.

v. Public Hearing for the proposed project shall be conducted in close proximity to the project site.

vi. Baseline data collected for Ennore replacement Project (1x660 MW) may utilized for the proposed project, provided the data should not be older than 3 years at the time of submission of application for grant of EC to the Ministry.

vii. Marine EIA and EMP shall also be prepared for the facilities proposed in the CRZ area."

31. It is on that basis, the MoEF&CC by their letter dated 21.01.2019 issued the Terms of Reference wherein, they have insisted for public hearing and also for conducting cumulative impact assessment study and other aspects. It is further observed in the above letter in Para 16 as follows:-

"16. After preparing the Draft EIA (as per the generic structure prescribed in Appendix - III of the EIA Notification, 2006) covering the above mentioned issues, the same shall be submitted to the SPCB for conducting the public hearing as per procedure of EIA notification 2006. The issues emerged during public hearing shall be further incorporated in the Draft EIA / EMP report. The final EIA / EMP report along with public hearing report and the requisite documents (including written objections, if any) shall be submitted to the Ministry for appraisal by the Expert Appraisal Committee for consideration of awarding environmental clearance under the

provisions of Environmental Impact Assessment notification dated September 14, 2006."

32. It is clear from this that on the basis of the recommendations given by the Expert Appraisal Committee (EAC) that public hearing cannot be exempted and cumulative impact assessment study will have to be done, the MoEF&CC has granted Terms of Reference reiterating the same aspects in tune with the notification. It is thereafter, that the project proponent had again submitted further request seeking for certain exemptions as per their letter No.SE/C/P&E/EE/EMC-2/AEE/C/F.ETPS Expn. TPP/D.95/19, dated 14.03.2019 as follows:-

"Hence, it is requested that TANGEDCO may be exempted from conducting fresh public hearing and necessary amendment in ToR may be issued for the following as a special case, to enable TANGEDCO to obtain fresh EC at the earliest from MoEF&CC to carry out the construction activities and to cater to the power demands of the State of Tamil Nadu.

i) Exemption from conducting fresh public hearing since it is an ongoing project.

ii) Exemption from providing three alternate sites since it is an expansion TPP within ETPS Complex.

iii) Exempting to provide Air quality monitoring data of 104 observations a year for relevant parameters at air quality monitoring stations as identified / stipulated shall be submitted to assess for compliance of AAQ standards (annual average as well as 24 hrs) since the existing ETPS (450 MW) has been decommissioned on 31.3.2017 itself to establish ETPS Replacement TPP (1x660 MW), a new supercritical unit and a comprehensive Terrestrial EIA study has been conducted in 2016 for the ETPS complex covering both ongoing ETPS Expansion TPP (1x 660 MW) and proposed ETPS Replacement TPP (1x660 MW) to obtain Environmental clearance for the proposed ETPS Replacement TPP (1x660 MW) and

iv) To issue orders to continue the project activities of ETPS Expansion TPP (1x660 MW) after 2.6.2019 as an interim arrangement till obtaining the fresh EC after conducting required

studies as per ToR as a special case considering the Interest During Construction (IDC) involved on the cost of the Project which is from Public exchequer and Power position of the State of Tamil Nadu."

33. This was again considered by the reconstituted Expert Appraisal Committee (EAC) in its 26th meeting held on 27.03.2019 as Item No.26.10 observed as follows:

"(26.10.4) Committee noted that the construction is in progress (17% achieved till date) and Rs.703 crores have been spent so far. Project Proponent can use the baseline data collected during July - September, 2018 for preparation of EIA. Further, the 104 observations a year of baseline data may not be applicable as the existing power plant has been shut down since 31.3.2017. Further, examination of alternate sites may also be exempted as it is an expansion project for which physical progress had already been made. However, the committee noted that exemption of public hearing cannot be done as the public hearing was conducted in 2017 is for other project in the same complex whereas the public hearing for the proposed project has been conducted in 2008. Further, permitting the construction after expiry of existing EC cannot be recommended as construction without valid EC amounts to violation under Environment (Protection) Act, 1986.

(26.10.5) Committee after detailed deliberations, recommended for the following amendments in TOR:

i. Baseline data collected during July - September, 2018 can be used in preparation of EIA / EMP report and collecting 104 readings a year may also be exempted.

ii. Further, examination of alternate sites may also be exempted as it is ongoing project and the environmental clearance had already been issued for the project.

The committee again emphasises that no construction activities shall be carried out beyond the date of expiry of the existing EC till a fresh EC is obtained based on the amended TOR."

34. It is clearly mentioned in the Expert Appraisal Committee (EAC) Minutes that granting exemption from public hearing cannot be done as the public hearing was conducted in 2017 is for other project in the same complex whereas, the public hearing for the proposed project has been conducted

in 2008. Further, permitting construction after expiry of the existing Environmental Clearance (EC) cannot be recommended, as construction without Environmental Clearance (EC) will amount to violation of EP Act, 1986. So, those two prayers mentioned in the previous letter dated 14.03.2019 were not accepted by the Expert Appraisal Committee (EAC), but they have recommended the following amendments in the TOR:

- (i) Baseline data collected during July – September, 2018 can be used in preparation of EIA/EMP report and collecting 104 readings a year may also be exempted.
- (ii) Further, examination of alternate sites may also be exempted as it is an ongoing project and the environmental clearance had already been issued for the project.

35. But they have emphasized that no construction activity shall be carried out beyond the date of expiry of the existing Environmental Clearance (EC) till a fresh Environmental Clearance (EC) is obtained based on the amended ToR. On the basis of this, the MoEF&CC had sent a further communication vide F.No. J-13012/15/2018-IA-I(T) dated 01.05.2019 and observed as follows:-

“5. The proposal has been considered in the 26th EAC Thermal dated 27.03.2019. In acceptance of the EAC recommendations in its meeting held on 27.03.2019, the Ministry hereby accords amendment the following ToR

6. The proposal for amendments in ToR has been considered in the EAC (Thermal) in its meeting held on 27.03.2019. In acceptance of the EAC recommendations and in view of the clarifications furnished by you, the Ministry hereby accords the following amendments in the ToR dated 21.01.2019

i. Baseline data collected during July – September, 2018 can be used in preparation of EIA/EMP report and collecting 104 readings a year may also be exempted.

ii. Examination of alternate sites may also be exempted as it is an ongoing project and the environmental clearance had already been issued for the project.

7. Further, it is to inform that as emphasized by the EAC in its meeting held on 27.03.2019, no construction activities are permitted beyond the date of expiry of existing Environmental Clearance (i.e. after 02.06.2019) till a fresh EC is obtained based on the amended ToR.

This issues with the approval of the Competent Authority."

36. In this letter, the MoEF&CC had reiterated the reason for rejecting public hearing and that was accepted and the ToR was allowed to be amended purely on the basis of the recommendations made by the reconstituted Expert Appraisal Committee (EAC) in its 26th meeting dated 27.03.2019. Even, in this letter, they have not permitted exemption from public hearing and wanted the project proponent to go with the public hearing as recommended by the Expert Appraisal Committee (EAC).

37. As per the 106th meeting of Tamil Nadu Coastal Zone Management Authority dated 25.07.2019, the question for revalidation of CRZ Clearance for this project as claimed by the project proponent was considered as Item No.6 and they have further mentioned that this is a permissible activity under the Para 4 (ii-d) and (ii-f) of CRZ Notification, 2011 and it requires clearance from the MoEF&CC and with that, recommendation was made. Thereafter, on the basis of the subsequent request made by the project proponent seeking exemption from the public hearing, the MoEF&CC vide their proceedings No. F.No.J-13012/15/2018-IA/I(T) dated 10.07.2019 granted exemption and communicated the same to the project proponent which reads as follows:-

“F. No. J-13012/15/2018-IA-I(T)
Government of India
Ministry of Environment, Forests and Climate Change

3rd Floor, Vayu Block,
Indira Paryavaran Bhawan, Jor Bagh Road,
Aliganj, New Delhi – 110 003.

Dated 10.07.2019.

To
The Chief Engineer (Projects)
M/s. Tamil Nadu Generation and Distribution Corporation Ltd.
(TANGEDCO) 5th Floor, Western Wing,
NPKRR Maaligai, 144,
Anna Salai, Chennai – 600 002.

Sub: 1x660 MW Ennore Supercritical Thermal Power Project (Expansion), Village Ernavur, District Ennore, Tamil Nadu by M/ s Tamil Nadu Generation and Distribution Corporation Ltd (TANGEDCO) - reg. exemption of Public Hearing.

Sir,

The undersigned is directed to refer to your letter dated 9.5 2019 regarding exemption of Public Hearing for obtaining a fresh Environmental Clearance for the 1x660 MW Ennore Thermal Power Project Expansion under construction which had been issued an Environmental Clearance on 3.6.2009.

2. The Environmental Clearance (EC) for 1x660 MW Ennore Expansion Power Project accorded on 3.6.2009 was valid for 10 years, i.e. till 2.6.2019. As informed, 17% of physical progress has been made at site by the EPC contractor and 18% (Rs.703 crores) of payment has been made to them so far. Meanwhile, you had have requested for extending the EC beyond 10 years. The Ministry vide letter dated 29.10.2018 advised the Project Proponent to initiate the process of obtaining EC denovo as there is no provision to extend the EC beyond 10 years in the EIA Notification, 2006 and its amendments. Based on your new application, the Ministry vide letter dated 21.1.2019 has issued Terms of Reference (TOR) for conducting Environmental Impact Assessment studies including Public Hearing.

3. Subsequently, you had requested for certain amendments in the ToR including the exemption of Public Hearing.

4. It is noted that you have requested to exempt the public hearing as the public hearing at the same location had been conducted for another project i.e. Proposed 1x660 MW Ennore Replace Power Project on 30.5.2017. The proposal for which Public Hearing was held on 30.5.2017 has been deferred by the EAC in its meeting held on 26.10.2017 for want of details of compliance with reference to the observations made in the site visit report. It has been requested that since the present project is under construction and Rs.703 Crores had already been spent, conducting public hearing will substantially delay the construction as the validity of Environmental Clearance expired on 2.6.2019. Further, it was stated that the project is also following the full procedure under EIA Notification to obtain Environmental Clearance a second time.

5. In view of the justification submitted by you and as outlined in Para 4 above, the Ministry hereby exempts the public hearing for the above mentioned project.

This issues with the approval of the Competent Authority.”

38. On that basis, without conducting public hearing, the project proponent had prepared the EIA Report and then applied for Environmental Clearance (EC) to the MoEF&CC and the same was forwarded to the reconstituted Expert Appraisal Committee (EAC) for Thermal Power Plants and the committee in their 32nd Meeting held on 23.08.2019, considered this project as Item No.10. It was noted by the Expert Appraisal Committee (EAC) as follows:-

“Further, Public Hearing has been exempted. However, TNPCB has not furnished any letter that whether any comments have been received from public after uploading the EIA reports. Committee further noted that the proposal has been submitted on 16.08.2019 as TNCZMA recommendations were given on 14.08.2019. The length of pipelines from the project site to intake/ discharge point should also be provided. The CRZ division in the Ministry has been sought for recommendations on CRZ angle which are yet to come. As per the Ministry Circular dated 19.01.2015, the proposals involving CRZ component is to be discussed in the EAC after obtaining comments from CRZ Division.

The Committee after deliberation, suggested that a reply to the observations made above should be submitted. Meanwhile, the recommendations of CRZ Division in the Ministry also be placed for appraisal on CRZ angle. Accordingly, the proposal is deferred.”

39. It is also clear from this that Expert Appraisal Committee (EAC) wanted to ascertain as to whether any objections have been received by the Pollution Control Board on uploading the EIA Report in the public domain and in order to ascertain the same, the decision was deferred. It is thereafter, it was considered by the Reconstituted Expert Appraisal Committee (EAC) in its 33rd Meeting of Environment Impact Assessment of Thermal Power Plants held on 25.09.20219 as Item No.33.6 and on the basis of the letter given by the Tamil Nadu Pollution Control Board that no objection was raised and also on the basis of the assurance given by the project

proponent that ash pond falling in the CRZ area will not be used and kept under Green Belt area and there is already a RRC bridge constructed and pipelines will be laid on the bridge without entering into coastal water and without disturbing mangroves or marine life and further, the existing ash pond could be sufficient to accommodate the ash generated from the proposed plant and it has been informed that Rs.500 Crores have been allotted towards FGD and SCR for meeting new emission norms, the committee had recommended the project with the following conditions:-

“(33.6.4) Committee after detailed deliberations, recommended for grant of Environmental Clearance subject to the following conditions:

i. Any recommendations made by the CRZ division of the Ministry shall be binding and complied by the Project Proponent.

ii. An undertaking shall be submitted that Coastal Water, marine life and mangroves shall not be disturbed while laying pipelines over RCC bridge which had already been constructed in the CRZ area. The undertaking should also state that ash pond area falling in CRZ will not be constructed.

iii. Minimum of 100 m from the CRZ boundary shall be maintained for the ash pond on all sides. The land as part of CRZ area should be developed as greenbelt.

iv. The TNCZMA shall examine the ash pond area and pipelines crossing the CRZ area and communicate its findings and recommendations within 6 months for stipulating additional mitigation measures, if any.

v. The Electrostatic Precipitator, Flue-gas Desulphurisation (FGD) System and NO_x control systems shall be established to meet the new emission norms of PM: 100 mg / Nm³, SO₂: 100 mg / Nm³ and NO_x: 100 mg / Nm³ and Mercury: 0.03 mg / Nm³ The progress of implementation of FGD and De - NO_x systems shall be submitted to the Ministry.

vi. The capital cost towards CER of an amount of Rs.13.6 Crores (0.25% of total project cost Rs.5,421.38 Crores) shall be earmarked separately and implement various developmental activities in the surrounding villages. The six monthly progress report on various welfare activities (such as infrastructure, health, education, skill training, livelihood generating activities, fishermen needs) in the Collector and as well as Regional Office of this

Ministry. The District Collector may decide the extent villages beyond the 10 km radius, if needed. The District Collector should oversee the developmental activities in the villages based on the need and utilisation certificate annually shall be obtained by the District Collector.

vii. The monthly ash generation (both bottom and flyash), utilisation and disposal to ash pond along with the breakup of ash utilized for various purposes shall be submitted as part of compliance report.

viii. Date of commissioning (COD) of the plant shall be informed to the Ministry.

ix. As committed, the greenbelt shall be developed in an area of 65 acres. The land area between Buckingham canal and project shall be developed with mangrove afforestation.

x. The monthly quantities of sea water drawl, water consumption, discharge of cooling water, brine and other wastewater into the sea shall be submitted to the Ministry."

It is on that basis, that the MoEF&CC had issued the impugned Environmental Clearance which is under challenge.

40. It is true that the appellant had filed W.P. No. 31726 of 2019 and 33351 of 2019 before the Hon'ble High Court of Madras challenging the order exempting the public hearing dated 10.07.2019 and recommendations made by the Expert Appraisal Committee (EAC) by their 33rd meeting held on 25.09.2019, but since it was informed by the project proponent in the counter affidavit filed by them in those writ petitions that the Environmental Clearance (EC) had already been granted, the counsel for the petitioner therein sought permission to withdraw the writ petition and to approach the National Green Tribunal, Southern Zone Bench to challenge the Environmental Clearance and that fact was recorded and the writ petitions were dismissed as withdrawn. It is thereafter, that the appellant had filed the present appeal against the issuance of the Environmental Clearance (EC). So, the Hon'ble High Court had no

occasion to go into the question of validity of the exemption granted and on that basis, recommendations made by the Expert Appraisal Committee (EAC) for the project, the appellant is entitled to challenge the same before this Tribunal while challenging the validity of the Environmental Clearance (EC) granted on the basis of the regulation or the procedure adopted in violation of the EIA Notification, 2006 before this Tribunal. So, the submission made by the counsel appearing for the project proponent that in view of the writ petitions filed by the appellant which was later dismissed, the appellant cannot challenge those aspects before this Tribunal cannot be accepted.

41. Before going into the legality of the aspects, it is better to consider the provisions and the precedents regarding the public hearing and the role of Expert Appraisal Committee (EAC) and MoEF&CC in granting Environmental Clearance (EC) as required under the EIA Notification and also the importance of the public hearing as reiterated by the Courts through its precedents and how far it has impact on the decision making process before considering the factual points raised in the matter.

42. Para 6, 7, 8 & 9 of the EIA Notification, 2006 deals with the application for prior Environmental Clearance (EC), Stages in the prior Environmental Clearance (EC) process for new projects, grant or rejection of prior Environmental Clearance (EC) and Validity of Environmental Clearance (EC) respectively which read as follows:-

"6. Application for Prior Environmental Clearance (EC):-

An application seeking prior environmental clearance in all cases shall be made in the prescribed Form 1 annexed herewith and Supplementary Form 1A, if applicable, as given in Appendix II, after the identification of prospective site(s) for the project and/or activities to which the application relates, before commencing any construction activity, or preparation of land, at the site by the applicant. The applicant

shall furnish, along with the application, a copy of the pre-feasibility project report except that, in case of construction projects or activities (item 8 of the Schedule) in addition to Form 1 and the Supplementary Form 1A, a copy of the conceptual plan shall be provided, instead of the pre-feasibility report.

7. Stages in the Prior Environmental Clearance (EC) Process for New Projects:-

7(i) The environmental clearance process for new projects will comprise of a maximum of four stages, all of which may not apply to particular cases as set forth below in this notification. These four stages in sequential order are:-

- Stage (1) Screening (Only for Category 'B' projects and activities)
- Stage (2) Scoping
- Stage (3) Public Consultation
- Stage (4) Appraisal

I. Stage (1) - Screening:

In case of Category 'B' projects or activities, this stage will entail the scrutiny of an application seeking prior environmental clearance made in Form 1 by the concerned State level Expert Appraisal Committee (SEAC) for determining whether or not the project or activity requires further environmental studies for preparation of an Environmental Impact Assessment (EIA) for its appraisal prior to the grant of environmental clearance depending up on the nature and location specificity of the project. The projects requiring an Environmental Impact Assessment report shall be termed Category 'B1' and remaining projects shall be termed Category 'B2' and will not require an Environment Impact Assessment report. For categorization of projects into B1 or B2 except item 8 (b), the Ministry of Environment and Forests shall issue appropriate guidelines from time to time.

II. Stage (2) - Scoping:

(i) "Scoping": refers to the process by which the Expert Appraisal Committee in the case of Category 'A' projects or activities, and State level Expert Appraisal Committee in the case of Category 'B1' projects or activities, including applications for expansion and/or modernization and/or change in product mix of existing projects or activities, determine detailed and comprehensive Terms Of Reference (TOR) addressing all relevant environmental concerns for the preparation of an Environment Impact Assessment (EIA) Report in respect of the project or activity for

which prior environmental clearance is sought. The Expert Appraisal Committee or State level Expert Appraisal Committee concerned shall determine the Terms of Reference on the basis of the information furnished in the prescribed application Form 1/Form 1A including Terms of Reference proposed by the applicant, a site visit by a sub- group of Expert Appraisal Committee or State level Expert Appraisal Committee concerned only if considered necessary by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, Terms of Reference suggested by the applicant if furnished and other information that may be available with the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned. All projects and activities listed as Category 'B' in Item 8 of the Schedule (Construction/Township/Commercial Complexes /Housing) shall not require Scoping and will be appraised on the basis of Form 1/ Form 1A and the conceptual plan.

(ii) The Terms of Reference (TOR) shall be conveyed to the applicant by the Expert Appraisal Committee or State Level Expert Appraisal Committee as concerned within sixty days of the receipt of Form 1. In the case of Category A Hydroelectric projects Item 1(c) (i) of the Schedule the Terms of Reference shall be conveyed along with the clearance for pre-construction activities .If the Terms of Reference are not finalized and conveyed to the applicant within sixty days of the receipt of Form 1, the Terms of Reference suggested by the applicant shall be deemed as the final Terms of Reference approved for the EIA studies. The approved Terms of Reference shall be displayed on the website of the Ministry of Environment and Forests and the concerned State Level Environment Impact Assessment Authority.

(iii) Applications for prior environmental clearance may be rejected by the regulatory authority concerned on the recommendation of the EAC or SEAC concerned at this stage itself. In case of such rejection, the decision together with reasons for the same shall be communicated to the applicant in writing within sixty days of the receipt of the application.

III. Stage (3) - Public Consultation:

(i) "Public Consultation" refers to the process by which the concerns of local affected persons and others who have plausible stake in the environmental impacts of the project or activity are ascertained with a view to taking into account all the material concerns in the project or activity design as appropriate. All Category 'A' and Category B1 projects or activities shall undertake Public Consultation, except the following:-

(a) modernization of irrigation projects (item 1(c) (ii) of the Schedule).

(b) all projects or activities located within industrial estates or parks (item 7(c) of the Schedule) approved by the concerned authorities, and which are not disallowed in such approvals.

(c) expansion of Roads and Highways (item 7 (f) of the Schedule) which do not involve any further acquisition of land.

(d) all Building /Construction projects/Area Development projects and Townships (item 8).

(e) all Category 'B2' projects and activities.

(f) all projects or activities concerning national defence and security or involving other strategic considerations as determined by the Central Government.

(ii) The Public Consultation shall ordinarily have two components comprising of:-

(a) a public hearing at the site or in its close proximity- district wise, to be carried out in the manner prescribed in Appendix IV, for ascertaining concerns of local affected persons;

(b) obtain responses in writing from other concerned persons having a plausible stake in the environmental aspects of the project or activity.

(iii) the public hearing at, or in close proximity to, the site(s) in all cases shall be conducted by the State Pollution Control Board (SPCB) or the Union territory Pollution Control Committee (UTPCC) concerned in the specified manner and forward the proceedings to the regulatory authority concerned within 45(forty five) of a request to the effect from the applicant.

(iv) in case the State Pollution Control Board or the Union territory Pollution Control Committee concerned does not undertake and complete the public hearing within the specified period, and/or does not convey the proceedings of the public hearing within the prescribed period directly to the regulatory authority concerned as above, the regulatory authority shall engage another public agency or authority which is not subordinate to the regulatory authority, to complete the process within a further period of forty five days,.

(v) If the public agency or authority nominated under the sub paragraph (iii) above reports to the regulatory authority concerned that owing to the local situation, it is not possible to conduct the public hearing in a manner which will enable the views of the concerned local persons to be freely expressed, it shall report the facts in detail to the concerned regulatory authority, which may, after due consideration of the report and other reliable information that it may have, decide that the public consultation in the case need not include the public hearing.

(vi) For obtaining responses in writing from other concerned persons having a plausible stake in the environmental aspects of the

project or activity, the concerned regulatory authority and the State Pollution Control Board (SPCB) or the Union territory Pollution Control Committee (UTPCC) shall invite responses from such concerned persons by placing on their website the Summary EIA report prepared in the format given in Appendix IIIA by the applicant along with a copy of the application in the prescribed form, within seven days of the receipt of a written request for arranging the public hearing. Confidential information including non-disclosable or legally privileged information involving Intellectual Property Right, source specified in the application shall not be placed on the web site. The regulatory authority concerned may also use other appropriate media for ensuring wide publicity about the project or activity. The regulatory authority shall, however, make available on a written request from any concerned person the Draft EIA report for inspection at a notified place during normal office hours till the date of the public hearing. All the responses received as part of this public consultation process shall be forwarded to the applicant through the quickest available means.

(vii) After completion of the public consultation, the applicant shall address all the material environmental concerns expressed during this process, and make appropriate changes in the draft EIA and EMP. The final EIA report, so prepared, shall be submitted by the applicant to the concerned regulatory authority for appraisal. The applicant may alternatively submit a supplementary report to draft EIA and EMP addressing all the concerns expressed during the public consultation.

IV. Stage (4) - Appraisal:

(i) Appraisal means the detailed scrutiny by the Expert Appraisal Committee or State Level Expert Appraisal Committee of the application and other documents like the Final EIA report, outcome of the public consultations including public hearing proceedings, submitted by the applicant to the regulatory authority concerned for grant of environmental clearance. This appraisal shall be made by Expert Appraisal Committee or State Level Expert Appraisal Committee concerned in a transparent manner in a proceeding to which the applicant shall be invited for furnishing necessary clarifications in person or through an authorized representative. On conclusion of this proceeding, the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned shall make categorical recommendations to the regulatory authority concerned either for grant of prior environmental clearance on stipulated terms and conditions, or rejection of the application for prior environmental clearance, together with reasons for the same.

(ii) The appraisal of all projects or activities which are not required to undergo public consultation, or submit an Environment Impact Assessment report, shall be carried out on the basis of the prescribed application Form 1 and Form 1A as applicable, any other relevant validated information available and the site visit wherever the same is considered as necessary by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned.

(iii) The appraisal of an application shall be completed by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned within sixty days of the receipt of the final Environment Impact Assessment report and other documents or the receipt of Form 1 and Form 1 A, where public consultation is not necessary and the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee shall be placed before the competent authority for a final decision within the next fifteen days. The prescribed procedure for appraisal is given in Appendix V ;

7(ii). Prior Environmental Clearance (EC) process for Expansion or Modernization or Change of product mix in existing projects:

All applications seeking prior environmental clearance for expansion with increase in the production capacity beyond the capacity for which prior environmental clearance has been granted under this notification or with increase in either lease area or production capacity in the case of mining projects or for the modernization of an existing unit with increase in the total production capacity beyond the threshold limit prescribed in the Schedule to this notification through change in process and or technology or involving a change in the product -mix shall be made in Form I and they shall be considered by the concerned Expert Appraisal Committee or State Level Expert Appraisal Committee within sixty days, who will decide on the due diligence necessary including preparation of EIA and public consultations and the application shall be appraised accordingly for grant of environmental clearance.

8. Grant or Rejection of Prior Environmental Clearance (EC):

(i) The regulatory authority shall consider the recommendations of the EAC or SEAC concerned and convey its decision to the applicant within forty five days of the receipt of the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned or in other words within one hundred and five days of the receipt of the final Environment Impact Assessment Report, and where Environment Impact Assessment is not required, within one hundred and five days of the receipt of the complete application with requisite documents, except as provided below.

(ii) The regulatory authority shall normally accept the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned. In cases where it disagrees with the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, the regulatory authority shall request reconsideration by the Expert Appraisal Committee or State 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 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 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 concerned shall be final and conveyed to the applicant by the regulatory authority concerned within the next thirty days.

(iii) In the event that the decision of the regulatory authority is not communicated to the applicant within the period specified in subparagraphs (i) or (ii) above, as applicable, the applicant may proceed as if the environment clearance sought for has been granted or denied by the regulatory authority in terms of the final recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned.

(iv) On expiry of the period specified for decision by the regulatory authority under paragraph (i) and (ii) above, as applicable, the decision of the regulatory authority, and the final recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned shall be public documents.

(v) Clearances from other regulatory bodies or authorities shall not be required prior to receipt of applications for prior environmental clearance of projects or activities, or screening, or scoping, or appraisal, or decision by the regulatory authority concerned, unless any of these is sequentially dependent on such clearance either due to a requirement of law, or for necessary technical reasons.

(vi) Deliberate concealment and/or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection, and cancellation of prior environmental clearance granted on that basis. Rejection of an application or cancellation of a prior environmental clearance already granted, on such ground, shall be

decided by the regulatory authority, after giving a personal hearing to the applicant, and following the principles of natural justice.

9. Validity of Environmental Clearance (EC):

The "Validity of Environmental Clearance" is meant the period from which a prior environmental clearance is granted by the regulatory authority, or may be presumed by the applicant to have been granted under sub paragraph (iv) of paragraph 7 above, to the start of production operations by the project or activity, or completion of all construction operations in case of construction projects (item 8 of the Schedule), to which the application for prior environmental clearance refers. The prior environmental clearance granted for a project or activity shall be valid for a period of ten years in the case of River Valley projects (item 1(c) of the Schedule), project life as estimated by Expert Appraisal Committee or State Level Expert Appraisal Committee subject to a maximum of thirty years for mining projects and five years in the case of all other projects and activities. However, in the case of Area Development projects and Townships [item 8(b)], the validity period shall be limited only to such activities as may be the responsibility of the applicant as a developer. This period of validity may be extended by the regulatory authority concerned by a maximum period of five years provided an application is made to the regulatory authority by the applicant within the validity period, together with an updated Form 1, and Supplementary Form 1A, for Construction projects or activities (item 8 of the Schedule). In this regard the regulatory authority may also consult the Expert Appraisal Committee or State Level Expert Appraisal Committee as the case may be."

43. Para 7 (III) of the EIA Notification deals with Stage-3 namely, Public Consultation and it mandates public hearing for all Category 'A' and Category 'B1' projects and granting and exemptions, but the same did not include Thermal Power plants. Sub Clause 2 of Clause 3 of the Para 7 deals the procedure to be followed for conducting public hearing which will go to show the purpose for which the public hearing was conducted and how the views of the public will have to be ascertained and collected by the Pollution Control Board which is the nodal agency for conducting public hearing and after getting information, how the minutes of meeting will have to be prepared and forwarded to the project proponent and on

the basis of the public consultation of the matters raised, environment concerns expressed during this process, they will have to make proper changes in the Draft EIA Report submitted at the time of public hearing and Environment Management Plan has to be modified and final EIA Report has to be prepared and thereafter, the same has to be forwarded to the MoEF&CC seeking for grant of Environmental Clearance (EC). Sub Clause 4 of Para 7 deals with the Expert Appraisal Committee (EAC) in which also it has been specifically mentioned that the Expert Appraisal Committee (EAC) has to consider the concerns raised by the public regarding the project and analyse the same on the basis of the final EIA Report or EMP produced by the project proponent and thereafter, applying the precautionary principle and also to mitigate the apprehensions of the local public regarding the impact of the project on their socio economic condition as to provide certain conditions in order to meet those concerns of the public while recommending the project and will have to be incorporated in the Environmental Clearance (EC) while granting the Environmental Clearance (EC) by the MoEF&CC. The same is the case in respect of expansion of project as well which is clear from the Stage-IV of Para 7 of the EIA Notification.

44. Further, as regards the grant or rejection of prior Environmental Clearance (EC) after obtaining the Expert Appraisal Committee (EAC) report, they may either accept the recommendations or in the case of disagreement with the recommendations, then regulatory authorities to request reconsideration by the Expert Appraisal Committee (EAC) or State Level Expert Appraisal Committee (SEAC) or District Level Expert Appraisal Committee (DEAC) concerned with intimation to the project proponent and thereafter, the Expert Appraisal Committee (EAC) has to consider the

observations made by the regulatory authorities and furnish its view on the same and recommendations made by the Expert Appraisal Committee (EAC) on this aspect shall be final and it shall will be intimated to the project proponent. So, it is clear from this, at every stage of any appraisal on the basis of the application made by the project proponent, the regulatory authorities have a duty to forward the same to the Expert Appraisal Committee (EAC) and get their view and thereafter, take its decisions. Normally, it is accepted by the regulatory authority. If any modification is made without getting further information on the basis of their observations from the Expert Appraisal Committee it appears from the intention of the notification that the MoEF&CC ought not have taken a different decision on the basis of the subsequent request made by the project proponent without forwarding the same to the Expert Appraisal Committee and getting their views of the same.

45. In the decisions reported in *S. Nandakumar Vs. Secretary to Government of Tamil Nadu in W.P. No.10641 of 2009* dated 22.04.2010, after reiterating the procedure for conducting public hearing as envisaged in Para 7 of the EIA Notification and Appendix IV attached to the said notification regarding the manner in which the public hearing will have to be conducted has observed as follows:

“33. The public consultative process is therefore an essential component in the process of environmental impact assessment. It is essentially an embodiment of the principles of natural justice. The importance of conducting public hearing in a peaceful atmosphere with opportunity to all the local affected persons and others, who have plausible stake in the environmental impacts of the project is evident by the fact that the notification wanted the District Magistrate or any other officer not below the rank of an additional District Magistrate to supervise the conduct of public hearing. Similarly, while conducting appraisal of the

application and the documents submitted by the applicant for environmental clearance, the Expert Appraisal Committee has to consider the out come of the public consultations, including report of public hearing proceedings. Therefore, public hearing occupies a pivotal position in the matter of environmental impact assessment.

34. When the notification itself indicates the manner and method of conducting public hearings, the statutory authorities are expected to conduct the hearing by giving reasonable opportunity to all the local affected persons and others who have interest in the particular project or activity. Such public hearings should not be a make belief affair, just to comply with the requirements of the notification. It is the responsibility of the District Magistrate or officers of equal status to see that all the affected persons are given audience. The panel of officers conducting the public hearing must remember that such hearings are conducted only to record the views of the affected parties. The statutory panel should hear the views of the affected persons and not those who have assembled in the meeting hall at the behest of the developer with a hidden agenda to block or prevent the opposition to the project. The regulation therefore provides for recording the attendance of those who are present at the venue and such attendance registers should be forwarded with the minutes of proceedings. Therefore, the attempt should be to conduct the hearing in an open and transparent manner with opportunity to express even the dissenting views without fear. The authorities owe a duty to the society to conduct such meetings in the manner prescribed by the Statute and if necessary, by taking police assistance. The minutes of the hearing should contain a true note of what has transpired in the meeting. Such positive steps on the part of the statutory authorities would inspire confidence in the affected people.

35. The consultative process is an essential facet of the environmental impact assessment study and therefore, any violation of the mandatory procedure in the matter of conducting public hearing and recording the views or objections of the affected persons would give the aggrieved a cause of action to challenge the legality and correctness of the public hearing proceedings, without waiting for the final outcome of the impact assessment proceedings."

46. Further, in the decision reported in *Samrath Trust Vs. Union of India*, Hon'ble High Court of Delhi in Civil Appeal No. 9317 of 2009 dated

28.05.2010 considered the importance of public hearing and observed as follows:-

“13. The second aspect of the public consultation, as already mentioned above, is obtaining responses in writing from other concerned persons having a plausible stake in the environmental aspects of the project or activity. If this is contrasted with a public hearing (which is confined to locally affected persons in the close proximity of the project site) then it appears, prima facie, that the responses are required to be invited from persons not necessarily in the close vicinity of the project site (and therefore at a distance). A condition attached to this is that those persons should have a plausible stake in the environmental aspects of the project or activity. It is not clear who determines (and how) whether or not a person has a "plausible stake" in the environmental aspects of the project or activity. However, since we are not concerned with this aspect of the public consultation, we need not delve into this issue.

14. It must be clearly understood that while the above provisions for public consultation postulate the physical presence of locally affected persons at a public hearing, they are not barred from giving their responses in writing to the concerned authorities involved in the public consultation process, even though they may not have attended the public hearing. Nor, for that matter, do the provisions of the Notification preclude persons at a distance from attending a public hearing.

Public hearing requirements:

15. As mentioned above, Appendix IV to the Notification dated 14th September, 2006 provides the procedure for conducting a public hearing. The process includes several important features. They are:

a. Documentation:

- 1. Preparation by the project proponent of a draft EIA Report including a Summary EIA Report in English as well as in the local language strictly in accordance with the TORs communicated in the scoping stage.*
- 2. Copies of these documents are required to be furnished to the District Magistrate, the Zila Parishad or the Municipal Corporation, District Industries Office and the concerned Regional Office of the MOEF.*

b. Publicity:

- 1. The draft EIA Report shall be widely publicized so that interested persons may send their comments to the concerned Regulatory Authority.*
- 2. The summary of the draft EIA Report shall be displayed by the MOEF on its website so that those who have a plausible stake in the*

environmental aspects of the project or activity may offer their comments.

c. Notice:

A notice of the public hearing is required to be given in a major national daily and one regional vernacular daily at least 30 days in advance of the date of the public hearing. This would give adequate time to all concerned persons to offer their comments and suggestions on the proposed project.

d. Supervision:

1. The public hearing shall be supervised and presided over by the District Magistrate or his representative not below the rank of an Additional District Magistrate. The Presiding Officer is required to be assisted by a representative of the State Pollution Control Board.

2. The entire proceedings of the public hearing are required to be video- graphed for which arrangements shall be made by the State Pollution Control Board.

3. The video recording of the public hearing should be submitted to the concerned Regulatory Authority along with the Minutes of the proceedings.

4. The proceedings at the public hearing do not require a quorum for attendance but the presence of all those at the venue is required to be noted.

e. Actual hearing:

1. A representative of the project proponent shall initiate the proceedings by a presentation on the project and the summary EIA Report.

2. The persons present at the venue must be granted an opportunity to seek information or clarifications on the project from the project proponent.

3. A summary of the views and concerns expressed in the public hearing are required to be read over to the audience and explained in the vernacular language.

f. Post public hearing:

1. The agreed Minutes of the public hearing shall be prepared and signed by the District Magistrate or his representative on the same day and forwarded to the State Pollution Control Board. A statement of issues raised by the public (both written and oral) and the comments of the project proponent are required to be annexed to the proceedings.

2. The statement of issues raised by the public and the comments of the applicant are required to be conspicuously displayed in the office of the Panchayat within whose jurisdiction the project is located, the office of the concerned Zila Parishad, the District Magistrate and

the State Pollution Control Board as well as on the website of the State Pollution Control Board.

g. Miscellaneous:

1. The public hearing is required to be completed within a period of 45 days from the date of receipt of a request from the project proponent.

2. The papers relating to the public hearing shall be sent to the concerned Regulatory Authority within 8 days of completion of the public hearing.

16. In our opinion, on going through the above requirements of a public hearing, it is quite clear that it is intended to solicit views, comments and suggestions from the locally affected persons or persons in the vicinity of the project, that is, the local populace.

17. What is the purpose of a public hearing? Can largely rural people effectively articulate their concerns on (sometimes) complex environmental issues? Is a public hearing a procedural formality - motions that have to be gone through because of legal requirements? A public hearing is a form of participatory justice giving a voice to the voiceless (particularly to those who have no immediate access to courts) and a place and occasion to them to express their views with regard to a project. Participatory justice is in the nature of a Jan Sunwai where the community is the jury. Such a public hearing gives an opportunity to the people to raise issues pertaining to the social impact and the health impact of a proposed project. Since a public hearing affects the rights of the parties, it must be conducted in a formal or at least in a semi-formal manner and the video-recording as well as the Minutes of the proceedings must be faithful to what has actually transpired so that the views of the participants are known. The advantage of a public hearing is that it brings about transparency in a proposed project and thereby gives information to the community about the project; there is consultation with the affected parties and they are not only taken into confidence about the nature of the project but are given an opportunity to express their informed opinion for or against the project. This form of a social audit, as it were, provides wherever necessary, social acceptability to a project and also gives an opportunity to the EAC to get information about a project that may not be disclosed to it or may be concealed by the project proponent.

Public hearing guidelines:

18. Therefore, taking the nature and scope of a public hearing into consideration, as mentioned above, the following requirements are necessary by way of laying down ground rules or providing a methodology for conducting a meaningful and purposive public hearing:

(a) Adequate notice must be given to all the concerned parties: In our opinion, adequate notice has three vital components. They are adequate time for preparation, adequate publicity for the benefit of all concerned and availability of all

relevant information. The reason for this is that if adequate time is not given for the preparation of views, comments and suggestions to those participating in the public hearing, that public hearing may not be meaningful enough. In *Canara Bank v. Debasis Das*, (2003) 4 SCC 557 the Supreme Court noted (though in a different context) that time for making a representation should be adequate and that this is a facet of natural justice.

Similarly, it is absolutely necessary that due publicity must be given to the public hearing so that the locally affected persons can participate in large numbers and voice their views. In the absence of adequate publicity, interested persons may remain unaware of the project and of the importance of either supporting or opposing it. Finally, unless all necessary information is available, no effective public hearing can be conceived by the locally affected persons. Looked at from another point of view, if the draft EIA or its summary is not available to the local populace, their participation in the public hearing will be nothing but a farce.

(b) A panel must be available to conduct the public hearing in a disciplined manner: A District Magistrate or if he is not available, then his representative not below the rank of an Additional District Magistrate must preside over and supervise the public hearing. He should be assisted by a representative of the State Pollution Control Board, who can provide impartial technical inputs, if necessary. The necessity of their presence is to ensure that the public hearing does not go out of control for if it does, then it may be scrapped if a report is given to the concerned Regulatory Authority that it is not practicable to hold a public hearing. Therefore, it is absolutely necessary for the participants to maintain discipline during the course of the public hearing otherwise they will lose an opportunity to express their views with regard to the project and it is the duty of the Presiding Officer of the public hearing to ensure this.

(c) A faithful record of the views expressed must be maintained: A public hearing naturally postulates that both immediately preceding the date of hearing and during the hearing itself, the concerned authorities may receive written representations. They need to be compiled and tabulated in the form of a chart so that all the concerns expressed may be addressed by the project proponent. It is more than likely that at the public hearing oral representations will be made and it is for this reason that there must be a faithful video- recording of the proceedings and a faithful recording of the Minutes so that the views that are orally expressed can also be compiled and dealt with by the project proponent and the EAC. The representations, whether written or oral, serve as a social audit of the project and must be given the due importance and seriousness that they deserve.

(d) The public hearing must be fair to all participants: There can be no doubt that a public hearing must be fair. This necessarily postulates that those who support the project should not be shouted down by those who oppose the project and vice versa. The whole purpose of a public hearing would be lost if a free and frank expression of views is stymied by a handful holding a particular viewpoint. The Supreme Court has said in *Biecco Lawrie Ltd. v.*

State of West Bengal, (2009) 10 SCC 32 that a proper hearing takes within its ambit a fair opportunity to express views. In a sense, this is an important aspect of natural justice.

(e) Structured public hearing: Since the public hearing may be quite prolonged depending on the number of speakers, in our opinion, it is absolutely necessary to structure the public hearing. It would be advisable if the District Magistrate collects information a day before of the number of speakers and makes a list of speakers at the public hearing and how long they propose to speak. This is necessary for otherwise, the proceedings may be hijacked by local leaders who may have political or other considerations on their mind rather than environmental considerations.

We are of the view that these broad procedures (which are certainly not exhaustive) must be followed for conducting a meaningful and effective public hearing postulated by the Notification dated 14th September, 2006."

47. But in that case, on the basis of the materials available, the Hon'ble High Court of Delhi came to the conclusion that the allegations of the writ petitioners that the public hearing is vitiated for the violation of the provision of EIA Notification, 2006 is not correct and dismissed the writ petitions, but however necessity and importance of public consultation and how that will have to be appraised while considering the question of environment impact on a particular areas has been reiterated by the High Court in that decision.

48. The same view has been reiterated by the Delhi High Court again in *Utkarsh Mandal Vs. Union of India in W.P. No.9340 of 2019 reported in MANU/DE/3070/2009* in Para 31 to 33 which reads as follows:-

"31. The purport of the above clauses is to make the public hearing a meaningful one with full participation of all interested persons who may have a point of view to state. The above clauses operationalise the de-centralised decision making in a democratic set up where the views of those who are likely to be affected by a decision are given a say and an opportunity to voice their concerns. This procedure is intended to render the decision fair and participative and not thrust from above on a people who may be unaware of the implications of the decision. In the above

background, it is not possible to agree with the stand of the Respondents 1 and 3 that there is no requirement in terms of the above clauses to make available the Executive Summary of the EIA Report Project available to the persons likely to be affected at least 30 days in advance of the public hearing. If their participation has to be meaningful, informed and meaningful, then they must have full information of the pros and cons of the proposed project and the impact it is likely to have on the environment in the area.

32. What is important to understand in this context is that the information about the project and in particular about the EIA report is not available to anyone in the public domain till the time of the public hearing. Till such time it is available only to the project proponent and the MoEF. Unless it is required to be made available mandatorily, it is unlikely that any member of the affected public can have access to such information. It is imperative for the affected person to be fully informed of the proposal (the EMP) submitted by the project proponent for dealing with the likely environmental damage that can be caused if the project is granted clearance. If this is the intent behind the introduction of the above clause in the EIA notification, then the contention of the Union of India that there is no need for the Executive Summary to be made available 30 days prior to the date of the public hearing is not legally tenable.

33. In this context a reference may be made to the decision of the Supreme Court in *People's Union for Civil Liberties v. Union of India* (2003) 4 SCC 399 where in the context of declaring the right to vote as being part of the fundamental right of expression of the voter under Article 19 (1) (a) of the Constitution of India, it was held that "a well informed voter is the foundation of democratic structure." In his leading opinion M.B.Shah., J. observed (SCC, p. 432):

"(the) right to participate by casting vote at the time of election would be meaningless unless the voters are well informed about all sides of the issues, in respect of which they are called upon to express their views by casting their votes. Disinformation, misinformation, non-information, all equally create an uninformed citizenry which would finally make democracy a mobocracy and farce."

In his concurring opinion P.V.Reddi. J., explained that (SCC, p.454) "the right of the citizens to obtain information on matters relating to public acts flows from the fundamental right enshrined in Article 19(1) (a)."

49. Further, in the decision reported in *Hanuman Laxman Aroskar Vs. Union of India (2019) SCC Online SC 441*, the Hon'ble Apex Court considered the scope of public hearing and its importance in Para 49 to 54 & 56 which reads as follows:-

"49. PUBLIC CONSULTATION – Prior to this stage, a Summary EIA is prepared in the format given in Appendix IIIA on the basis of the ToR furnished to the applicant. This stage involves the process "by which the concerns of local affected persons and others who have plausible stake in the environmental impacts of the project or activity are ascertained with a view of taking into account all the material concerns in the project or activity design as appropriate." The detailed procedure is stipulated in Appendix IV. Subject to the exceptions provided in the 2006 notification, all Category 'A' and Category 'B1' projects shall undertake the public consultation process.

50. This stage comprises two components:

- (i) A public hearing at the site or in its close proximity – district-wise to be carried out in the manner prescribed in Appendix IV; and*
- (ii) Procurement of written responses from concerned persons having a plausible stake in the environmental aspects surrounding the project.*

51. The State Pollution Control Board or the Union Territory Pollution Control Committee is charged with conducting the public hearing in the manner stipulated in Appendix IV and forwarding the proceedings to the regulatory authority within days of a request from the applicant. The regulatory authority is empowered to engage another public agency or authority to carry out the process within a further period of forty-five days in case the SPCB or the UTPCC does not adhere to the prescribed time period stipulated in the notification. The public hearing should be arranged in a "systematic, time bound and transparent manner" to ensure the "widest possible public participation at the project site(s) or in its close proximity District- wise". The public hearing proceeding is filmed and a copy of the video is submitted to the concerned regulatory authority.

52. Within seven days of receiving a written request to initiate the public consultation process, the SPCB or the UTPCC shall place the Summary EIA and the application on their website and invite responses. The concerned authority may also make use of

other appropriate media in addition to publication on their website to ensure wide publicity of the project. On a written request from any concerned person, the authority will make available a hard copy of the Draft EIA for inspection at a notified place during office hours till the date of the public hearing. A duty is placed on the authority to forward all responses and comments received at this stage to the applicant through the quickest available means.

53. After the public consultation process, the applicant is duty bound to address all the material environmental concerns expressed during the process and make appropriate changes to the Draft EIA and EMP. The applicant shall then forward the final EIA report to the regulatory authority to initiate the next stage. Alternatively, the applicant may submit a supplementary report to the Summary EIA and EMP.

54. APPRAISAL - This stage involves detailed scrutiny by the EAC or the SEAC of all the documents submitted by the applicant for the grant of EC. The appraisal is carried out in a transparent manner in a process to which the applicant shall be invited for furnishing clarification in person or through an authorized representative. Appendix V stipulates that the following documents are also submitted to the regulatory authority:

- (i) Final EIA Report*
- (ii) A copy of the video tape or CD of the public hearing proceedings*
- (iii) A copy of the final layout plan*
- (iv) A copy of the project feasibility report.*

56. The MoEFCC or the SEIAA shall thereafter consider the recommendations of the EAC or the SEAC and convey its decision to the applicant within 45 days of receipt of the recommendations. The regulatory authorities shall normally accept the recommendations of the EAC or the SEAC, as the case may be. Where there is a disagreement, the regulatory authority shall ask for a reconsideration of the recommendation within 45 days of the receipt of the recommendations. This decision shall be conveyed to the applicant. The EAC or the SEAC shall then reconsider its recommendation within a further period of 60 days and make its recommendations to the regulatory authority. The regulatory authorities shall then take a decision after considering the views communicated to it and convey the decision to the applicant within the next 30 days."

50. In that case, the Hon'ble Apex Court found that the Expert Appraisal Committee (EAC) had not considered the views expressed in the public hearing and certain material facts were suppressed, which the Expert Appraisal Committee (EAC) could not have been considered and then directed the MoEF&CC to revisit the issuance of Environmental Clearance (EC) after referring the matter to the Expert Appraisal Committee (EAC) again and take appropriate decision, as public hearing is an integral matter part of considering the question of granting Environmental Clearance (EC) and the concerns raised by the persons who had attended the meeting have to be properly appraised by the Expert Appraisal Committee (EAC) while making their recommendations and must be found a place in the process of application of mind while considering the project.

51. It is also clear from the above decision that the necessity of public hearing is to collect the apprehensions and view of the public who are likely to be affected by the project includes environment and their livelihood and socio economic condition and opportunity must be given to the public to present their case through public consultation whenever some highly polluted industries are likely to come up in that place and their concerns will have to be considered by the authorities before taking decisions on either granting or rejecting the Environmental Clearance (EC). So, the exemption granted for such process will have some impact on the appraisal of the project by the authorities, but at the same time, it is not necessary to set aside the Environmental Clearance (EC) so granted in toto, as it is only a curable procedural irregularity and not an inherent illegality violating the entire process and this can be cured by giving directions to the authorities to conduct public hearing and collect the view and appraise the same as

well for considering the question as to whether any further conditions will have to be incorporated on Precautionary Principle. Therefore, it is sufficient, if we direct the MoEF&CC to conduct public hearing with the final EIA Report submitted by the project proponent as contemplated under Para 7 Sub clause III read with Appendix IV of the EIA Notification and after getting public opinion, if any, further modification will have to be made in the EIA Report prepared by the project proponent directing them to carry out the same and resubmit the same to the MoEF&CC for reconsideration and the MoEF&CC after getting the opinion of the Expert Appraisal Committee (EAC) on these aspects and then pass appropriate fresh orders to that extent incorporating additional conditions (if any) required in this regard in the Environmental Clearance (EC) already granted will be sufficient and that will meet the ends of justice.

52. As regards the decisions relied on by the counsel appearing for the project proponent of the Principal Bench of National Green Tribunal in *Appeal No.78 and 79 of 2018 (Laxmi Chouhan Vs. Union of India & Ors.)* wherein, exemption granted for public hearing for expansion of coal mines was justified by the Principal Bench relying on the Official Memorandum issued by the MoEF&CC in respect of projects for coal mines namely F.No.J/110/15/224/2015-IA.II dated 15.09.2017 is not applicable to the facts of this case. The Official Memorandum referred to in that decision reads as follows:-

"F. NOJ-11015/224/2015-AJ

Government of India Ministry of Environment Forest and Climate

Change

(IA-1 Section)

Indira Paryavaran Bhawan,

Jorbagh Road, New Delhi - 3

Dated: 15th September, 2017

Office Memorandum

*Sub: Environmental Clearance for expansion of Coal Mining Projects
- Exemption from Public hearing – reg.*

In order to facilitate grant of Environmental Clearance (EC) to the expansion projects of coal mines, Office Memorandums have been issued by this Ministry from time to time providing exemption from public hearing.

2. Ministry of Coal in order to allow rapid expansion in coal production has made request for further dispensation in public hearing to expedite Environmental Clearances.

3. The request of Ministry of Coal was considered by the Expert Appraisal Committee (EAC) in the Ministry constituted for appraisal of projects relating to Thermal and Coal sectors. The Committee has recommended for exemption from public hearing while considering grant of environmental clearances to the expansion projects of coal mines, involving increase in production capacity up to 40% in 2-3 phase after the due diligence and subject to fulfillment of certain requirements as under:-

- i. Predicted air quality parameters are within the prescribed norms.*
- ii. Coal Transportation is through conveyor system up to the soil and then loading to railway wagons, involving no transportation through roads.*
- iii. Coal mining is done through deployment of surface miners, replacing three dust generating operations of the conventional mining system namely drilling, blasting and crushing in one go.*
- iv. Public hearing already conducted for the total mine lease area involved and no more area is required for the proposed expansion.*
- v. Compliance status of EC conditions monitored by the concerned Regional Office of this Ministry is found to be satisfactory.*
- vi. Other statutory requirements like Consent to Establish operate, Clearance from CGWA, approval of Mining Plan and the Mine Closure Plan, Mine Closure Status Report as applicable Forest Clearance, etc are satisfactorily fulfilled.*

4. In view of the aforesaid recommendations by EAC, the Ministry has decided to consider the proposals for grant of EC to the expansion of coal mining projects providing exemption from public hearing, in the manner and/or subject to the conditions as under

- a) The proposed expansion can go up to a maximum of 40% of capacity, wherein the last public hearing was conducted.*
- b) There is no increase in area for the proposed expansion vis-a-vis the area in EC, wherein last public hearing was conducted.*

c) Coal transport is through conveyor system up to the silo and loading to railway wagons, and not by road.

d) The EAC shall carry out the due diligence on all the parameters mentioned in para 3 above, and make its recommendations accordingly.

e) EAC may consider the need for a third party study through an expert agency in a time bound manner, after grant of EC.

5. This OM shall be in supersession of the earlier OMs issued by the Ministry as under:

i) OM No. J-11015/30/2004-IA.II (M) dated 19th December, 2012

ii) OM No. J-1-11015/30/2004-IA.II(M) dated 7th January, 2014

iii) OM NO. J-11015/30/2004-IA (M).dated 30th May, 2014

iv)OM No. J-11015/30/2004-IA.II(M) dated 28th July, 2014

v) OM No. J-11015/30/2004-IA.II (M) dated 2nd September, 2014.

6. This issues with approval of the competent authority."

53. In that case, it was held that the Official Memorandum was not challenged and lot of expansions were granted earlier and Environmental Clearance (EC) was granted for the expanded capacity which were not challenged and further expansion sought for is within the limit provided in the Office Memorandum referred to above and as such, the non conduct of public hearing is not fatal. Further, the Principal Bench also relied on the portion of the EIA Notification, 2006 dealing with the public consultation wherein, it was mentioned that owing to local situation if it is not possible to conduct public hearing, such facts can be reported to the regulatory authority, on which public consultation may not include public hearing. That was an inevitable situation, which prevents a public hearing being conducted as per the notification and if those aspects were brought to the notice of the regulatory authorities by the authority who has to conduct the public consultation, then the regulating authority can dispense with public hearing or public consultation as required under the EIA Notification, 2006, but that was not the case in our hands for consideration.

54. Further, that decision is now challenged before the Hon'ble Supreme Court by the appellant in those case by filing Civil Appeal as Civil Appeal No.826 of 2021 and that matter was admitted and notice was issued and as such, the decision of the Principal Bench has not become final and that will be subject to the outcome of the appeal pending before the Hon'ble Supreme Court and as such, that cannot be treated as a law declared or final decisions taken on the issue.

55. Further, it is also seen from the last meeting of the Expert Appraisal Committee, in which this project was approved that they considered the letter given by the Tamil Nadu Pollution Control Board informing that after uploading the EIA Report, no objection was received from the public and then, the Expert Appraisal Committee had considered and recommended the project.

56. It may be mentioned here that there was no possibility for the Pollution Control Board to upload the EIA Report in their website, as only if public hearing was conducted by them as required under the EIA Notification and only at that time, they will publish the EIA Report in their website along with the date of public hearing to be conducted on this project. It is clear from the counter statement filed by the project proponent that they have uploaded the EIA Report in their website, but it was not uploaded in the website of the Tamil Nadu Pollution Control Board, as it was not forwarded to them since public hearing was exempted. So, there is no possibility for the public to know about the contents of the EIA Report to raise their objection before the authorities and there was no possibility for the Expert Appraisal Committee to get the views from the public on this aspect.

57. So under such circumstances, the appraisal to that extent, i.e. due to exemption of public hearing for the project, is vitiated though it does not warrant declaration of the entire process illegal as already observed it is only a curable irregularity and not an incurable illegality making the entire process vitiated.

58. As regards permitting the project proponent to rely on the baseline data collected for the replacement project and conduct further study for one season thereafter appears to be justifiable, because on going through the counter statement and also the discussions made by the Expert Appraisal Committee, it is clear that for the purpose of conducting cumulative impact assessment of the projects, they have not only taken into consideration of replacement project, but also the proposed expansion which is the disputed project herein and it is thereafter, that the cumulative impact assessment study was done. It was done by the same project proponent and that also will have to be established in the same property complex where this expansion also will have to take place.

59. So under such circumstances, this Tribunal is of the opinion that there is nothing wrong for the MoEF&CC as well as Expert Appraisal Committee directing them to take the baseline data collected for the replacement project and conduct further study for one season and prepare the cumulative impact assessment cannot be said to be a wrong direction and we do not find any reason to interfere with the same and that will not affect the validity of the Environment Impact Assessment done by the project proponent for this project. So, the consideration of baseline data collected for the replacement project by the same project proponent to be established in the same property for the purpose of preparation of cumulative impact assessment by permitting to take further one season

baseline data as primary data is perfectly justifiable and that will not vitiate the proceedings as alleged by the counsel for the appellant. This methodology of using secondary data for the purpose of conducting modelling Ambient Air Quality study and cumulative impact assessment study was adopted by this Tribunal in *Uma Maheswar Dahagama Vs. M/s. National Thermal Power Corporation Limited (NTPC) & Ors.* in respect of NTPC Project for Thermal Power Plant in Telangana in *Appeal No.46 of 2016* dated 27.05.2021 and the same has not been interfered with by the Apex Court in the appeal filed by the project proponent in *Civil Appeal No.1846 of 2021 in M/s. National Thermal Power Corporation Limited (NTPC) Vs. Uma Maheswar Dahagama & Ors.* dated 20.07.2021.

60. The appellant has not raised any other question regarding the validity of the EIA Report prepared by the project proponent and as such, we are not going into those aspects in this case and we are only considered about the validity of the Environmental Clearance granted without conducting public hearing and allowing the project proponent to take the baseline data collected during 2017 for their replacement project as part of the study alone and we have answered those aspects in the earlier paragraphs.

61. In view of the above discussions, we are partly setting aside the permission granted by the MoEF&CC to the 2nd respondent/project proponent as per proceedings dated 10.07.2019 to the extent of exempting public hearing for this project and on all other aspects, we are not disturbing the same. Further, we feel that there is no necessity to set aside the Environmental Clearance, but keeping the Environmental Clearance in abeyance for a short period and directing the MoEF&CC to conduct public hearing with the present EIA Report and after getting the public opinion, directing the project proponent to prepare further EIA Report (if any)

required on the basis of the views collected in the public hearing and submit the same and thereafter, get the opinion of the Expert Appraisal Committee and then pass appropriate orders incorporating the additional conditions (if any) required will be sufficient and this will meet the ends of justice.

62. So, we feel that the appeal can be disposed of by giving following directions:-

- a. The proceedings of the MoEF&CC dated 10.07.2019 to the extent exempting public hearing for this project alone is set aside and on all other aspects, we are confirming the same. Since Environmental Clearance was granted earlier to this project on 03.06.2009, there is no necessity to consider the question of alternate site or suitability of site for establishing the unit as attempted to be projected by the counsel for the appellant as grant of Environmental Clearance (EC) earlier and its subsequent extension of period were not challenged and the work has been started on that basis by the project proponent.
- b. There is no necessity to set aside the Environmental Clearance as void abinitio on the ground of non-conduct of public hearing as claimed by the appellant, but suspend the Environmental Clearance for a period of 6 (Six) months and direct the MoEF&CC to do the following things will be sufficient.
- c. The MoEF&CC is directed to conduct the public hearing as required under Para 7 Sub Clause (III) of the EIA Notification within a period of 2 (Two) months from the date of receipt of this Judgment and after getting public opinion on this project, direct the project proponent to conduct further study (if any) and then submit an

additional EIA Report on that basis and refer the matter to the Expert Appraisal Committee and after getting their views and recommendations and then, pass appropriate orders incorporating further conditions (if any) required on "Precautionary Principle" on the basis of the opinion of the public collected in this regard and incorporate such additional conditions in the Environmental Clearance granted which the project proponent has to comply with.

- d. The entire exercise will have to be completed by the MoEF&CC within a period of 6 (Six) Months.
- e. The project proponent is at liberty to proceed with the construction activity, but they should not commence the operations without completion of this process of incorporating additional conditions (if any) required as directed above and the construction (if any) made by them will be subject to result of the further directions to be issued by the MoEF&CC in this regard as has been observed by the Hon'ble Apex Court in Civil Appeal No. 1846 of 2021 *in M/s. National Thermal Power Corporation Limited (NTPC) Vs. Uma Maheswar Dahagama & Ors.* dated 20.07.2021.

63. The points are answered accordingly.

64. In the result, the appeal is partly allowed and disposed of as follows:-

- i. The proceedings of the MoEF&CC dated 10.07.2019 to the extent exempting public hearing for this project alone is set aside and on all other aspects, we are confirming the same. Since Environmental Clearance was granted earlier to this project on 03.06.2009, there is no necessity to consider the question of alternate site

or suitability of site for establishing the unit as attempted to be projected by the counsel for the appellant as grant of Environmental Clearance (EC) earlier and its subsequent extension of period were not challenged and the work has been started on that basis by the project proponent.

ii. There is no necessity to set aside the Environmental Clearance as void abinitio on the ground of non-conduct of public hearing as claimed by the appellant, but suspend the Environmental Clearance for a period of 6 (Six) months and direct the MoEF&CC to do the following things will be sufficient.

iii. The MoEF&CC is directed to conduct the public hearing as required under Para 7 Sub Clause (III) of the EIA Notification within a period of 2 (Two) months from the date of receipt of this Judgment and after getting public opinion on this project, direct the project proponent to conduct further study (if any) and then submit an additional EIA Report on that basis and refer the matter to the Expert Appraisal Committee and after getting their views and recommendations and then, pass appropriate orders incorporating further conditions (if any) required on "*Precautionary Principle*" on the basis of the opinion of the public collected in this regard and incorporate such additional conditions in the Environmental Clearance granted which the project proponent has to comply with.

- iv. The entire exercise will have to be completed by the MoEF&CC within a period of 6 (Six) Months.
- v. The project proponent is at liberty to proceed with the construction activity, but they should not commence the operations without completion of this process of incorporating additional conditions (if any) required as directed above and the construction (if any) made by them will be subject to result of the further directions to be issued by the MoEF&CC in this regard as has been observed by the Hon'ble Apex Court in Civil Appeal No. 1846 of 2021 *in M/s. National Thermal Power Corporation Limited (NTPC) Vs. Uma Maheswar Dahagama & Ors.* dated 20.07.2021.
- vi. Considering the circumstances, the parties are directed to bear their respective costs in the appeal.
- vii. The Registry is directed to communicate this order to the MoEF&CC for their information and compliance of the direction.

65. With the above observations and directions, this appeal is disposed of.

Sd/-

.....J.M.
(Justice K. Ramakrishnan)

Sd/-

.....E.M.
(Dr. K. Satyagopal)

Appeal No.06/2020 (SZ)
17th September, 2021. Mn.