

**BEFORE THE NATIONAL GREEN TRIBUNAL
(PRINCIPAL BENCH), NEW DELHI**

APPEAL No. 47/2012

22nd AUGUST, 2013

CORAM:

- 1. Hon'ble Shri Justice V.R. Kingaonkar
(Judicial Member)**
- 2. Hon'ble Dr. P.C. Mishra
(Expert Member)**
- 3. Hon'ble Shri P.S. Rao
(Expert Member)**
- 4. Hon'ble Shri Ranjan Chatterjee
(Expert Member)**

B E T W E E N:

1. Gau Raxa Hitraxak Manch and Gauchar
Paryavaran Bachav Trust, Rajula
Through its President, Chetan N. Vyas
Having its Office at Ramji Mandir,
At PO Bherai, Tal: Rajula,
District Amreli.

....Appellant

A N D

1. Union of India
through the Secretary,
Ministry of Environment and Forests,
CGO Complex, Lodhi Road

New Delhi - 110003

2. Gujarat Pollution Control Board

Through its Member Secretary,
Paryavaran Bhavan, Sector 10-A
Gandhi Nagar 382043 Gujarat

3. M/s Gujarat Pipavav Port Ltd.

Empire Industries Complex,
Senapati Bapat Road, Lower Parel (W),
Mumbai – 400 013

.....Respondents

(Advocates appeared: Mr. Ritwick Dutta along with Mr. Rahul Choudhary, Ms. Parul Gupta and Ms. Srilekha Sridhar, Advocates for Appellant, Ms. Neelam Rathore along with Mr. Vikramjeet Singh and Ms. Syed Amber, Advocates for Respondent No. 1, Ms. Hemantika Wahi along with Mr. S. Panda, Advocates for Respondent No. 2 and Mr. P.S. Narasimha, Senior Advocate along with Mr. Vishrov Mukerjee, Ms. Apoorva Misra and Ms. Radhika Gupta, Advocates for Respondent No. 3)

NGT

J U D G M E N T

This is an Appeal against order dated 05.06.2012 passed by Ministry of Environment & Forests (MoEF) (R-1) granting Environmental Clearance (EC) to expansion of a Port. M/s Gujarat Pipavav Port Ltd. (R-3) initially started its port in 1998. The port was gradually expanded on three occasions, in the years 2000, 2003, and 2006. The present Appeal is filed under section 14(1) of the National Green Tribunal Act, 2010 challenging the EC dated 05.06.2012, granted for further expansion of the Port, about three times of the current length for handling 26 million tonnes of bulk and about 8 times of TEU's Containers than the present capacity, to M/s Gujarat Pipavav Port Ltd. (R-3).

Facts not in dispute:

2. For establishment of the port, M/s Gujarat Pipavav Port Ltd. (R-3) acquired 624 hectare land. M/s Gujarat Pipavav Port Ltd. (R-3) is a Company incorporated under the Companies Act. The location of the Port is at Rajula, a Taluka place (Dist. Amreli) in the State of Gujarat. In the first phase, the Port started with one berth. The Company was previously a joint venture of the Government of Gujarat (Gujarat Maritime Board) and Seaking Engineers Limited. The latter is now known as "SKIL Infrastructure Limited. Subsequently, SKIL Infrastructure Limited divested its

stake in favour of APM Terminals Mauritius Ltd., which is the largest shareholder of the said Company at present. The expansion of the port was done in four phases between 1990 till 2006. The Port has four dry cargo berths, continuous quay length of around 725 meters with additional 350 meters of quay length as well as an LPG berth for handling LPG and liquid cargo. The port has its container storage yard on an area of 11 hectares. It has got coal storage area in 17 hectare land. It has a deep draft of 14.5 meters. Presently, the Port handles more than 3 million tonnes of bulk and 0.6 millions TEU containers per annum.

3. The Appellant is a registered trust. The Appellant proclaims itself as environmental and social activist.
4. By the impugned order, the MoEF (R-1) granted EC for expansion of the port and modernisation thereof. The expansion and modernisation encompasses proposed addition of berths, utilisation of more area and installation of equipment which will have enhanced capacity as stated above to handle the cargos. There is Mangrove forest alongside the coastal wall of the port in question.
5. The proposed expansion of the project stipulates extension of quay length of berth by 2450 meters, nearly three times of current length , with a view to handle more tonnes of bulk and approximately eight times of TEUs container of the current handling rate.

FACTS IN DISPUTE:

6. The Appellant alleges that several complaints were made against M/S Gujarat Pipavav Port Ltd. (R-3) regarding non-compliance of the conditions which were set-out while granting ECs in 1998, 2000, 2003 and 2006. The proposed expansion and modernization is much in excess and will adversely affect the Mangrove forest, migratory bird habitats, and various species of wild fauna. M/s Gujarat Pipavav Port Ltd. (R-3) has encroached on Gauchar Land (village grazing land). That will cause adverse impact on the live-stock and livelihood of the villagers. The ground water available to the villagers will also be adversely impacted due to the expansion of the port. The salinity of the land in the villages around the port will increase and as such the crops will be adversely affected. The coal dust generated due to movement of the carriage vehicles, which will be disproportionately increasing, will cause health hazard to the villagers residing in the surrounding areas.
7. The Expert Appraisal Committee (EAC) in its 82nd meeting held on dated 23/24.11.2009 considered the proposal of M/s Gujarat Pipavav Port Ltd. (R-3). The additional Terms of Reference (TORs) were finalized and issued on 18.12.2009. The Environment Impact Assessment (EIA) Report was prepared by M/s Gujarat Pipavav Port Ltd.(R-3) based on the TOR furnished by the project proponent and additional TOR provided by EAC.

M/s Aquatech Enviro Engineers, Bangalore was engaged by M/s Gujarat Pipavav Port Ltd. (R-3) to conduct study of the impact assessment. The EIA Report was submitted by M/s Gujarat Pipavav Port Ltd. (R-3) to the MoEF during February 2011. A public hearing was held in 12.05.2011.

8. The Appellant has come out with a case that in spite of the fact that several issues were raised during course of the public hearing, no appropriate responses were given by M/s Gujarat Pipavav Port Ltd. (R-3). The EAC held its meeting on 5th - 7th March, 2012 and recommended EC for the proposed Expansion-modernisation. The MoEF accepted the recommendation and granted the EC for the proposed expansion and modernization of the port vide the impugned order dated 05.06.2012. According to the Appellant, the EAC did not apply its mind to the nature of expansion and modernization of the port which would have serious adverse impact on the life of the villagers. The issues relating to the problems of ballast waste water management and concerns raised by the villagers during the Public Hearing were also not taken into account. The Appellant further alleges that the EAC did not consider the objections raised by the members of the public and the representations made before grant of the EC. The EAC failed to consider management of water resources available at the project site of M/s Gujarat Pipavav Port Ltd. (R-3). If the port is expanded through the EC in question, it will curtail the right of the villagers for grazing their cattle on

part of the Gauchar land. The EAC overlooked previous conduct of M/s Gujarat Pipavav Port Ltd. (R-3) and MoEF blindly granted the EC violating the provisions of the law. The beneficial activities like provision for medical facilities, health care facilities and employment to the villagers had not been considered. The EIA Report does not project a comprehensive picture of the adverse effects due to expansion of the project. The area should be free from such unsustainable activities because the surrounding area of the project site is the habitat of endangered species like Lions, Leopards, etc. The Project Proponent has also not provided information regarding waste management. The violations of the terms and conditions of EC granted earlier have also not been looked into by the EAC. The order passed by the MoEF (R-1) is without application of mind, based on mere report of the EAC and without giving any tangible reason for grant of the EC. Hence, the Appellant sought quashing of the impugned EC.

9. The reply affidavit of MoEF (R-1) says that the impugned order is issued after due consideration of the relevant material. The expansion project does not involve any more land to be acquired. The MoEF noticed that the study report of National Institute of Ocean Technology (NIOT) supported the request of M/s Gujarat Pipavav Port Ltd. (R-3). It is stated that public hearing was held on 12.05.2011 in accordance with procedure laid down in the MoEF Notification dated 14.09.2006. It is further asserted

that the EAC recommended the project after the public hearing and, therefore, considering all the relevant material the EC was granted with conditions which would take adequate care of environment management. For example, the Project Proponent was directed to (i) provide minimum 100 meter buffer from the mangroves, (ii) document with latest satellite map of the area of mangroves and submit the same to the MoEF for verification and compliance.(iii) grow and maintain green belt of not less than 33% along with boundary of the port, (iv)unload the dry cargo into hopper to transport the same through closed conveyor system to the storage yard, etc. These conditions will mitigate the apprehended adverse impact on the environment. In the public hearing, held within premises of the Port itself, about 231 members of the public were present and a good number of people participated. The Project Proponent duly responded to the queries raised by the public members during the public hearing. Thus, there was a fair play in the proceedings of the public hearing. The project was recommended for clearance by the EAC on the basis of available study reports and information. It is denied therefore that the EAC did not apply its mind to the material. The MoEF, therefore, sought dismissal of the Appeal.

10. The Gujarat Pollution Control Board (R-2) also supported the pleadings of the MoEF and adopted the same. It is not necessary, therefore, to separately

reproduce the pleadings of the GPCB, since it would cause repetition and statement of overlapping averments.

11. By filing reply affidavit, M/s Gujarat Pipavav Port Ltd. (R-3) denied all the material averments made by the Appellant. The main contention of M/s Gujarat Pipavav Port Ltd. (R-3) is that there was no requirement of additional acquisition of land for the expansion and modernization of the port. Nor there would be extraction of ground water. It is denied that the expansion and modernization of the project would adversely impact the environment. It is further denied that issues raised in the public hearing were not properly responded. It is also denied that the EAC failed to take into consideration various issues raised in the public hearing. The Project Proponent denied that conditions set-out in the earlier ECs were violated by it.

12. According to the Project Proponent (R-3), on 16.05.2011, the Regional Officer, GPCB, who conducted the public hearing, forwarded the proceedings of the public hearing to the Member Secretary, GPCB and, thereafter, the Project Proponent submitted a revised EIA Report taking into consideration all the issues which were raised in the public hearing. The case of the Project Proponent is that the project will not cause any danger to the wildlife. The Project Proponent also avers that hazardous waste materials will be properly disposed of by recycling and processing method. The Project Proponent submits that

the MoEF granted the EC after due consideration of the material. It is also the case of the Project Proponent that the MoEF is not required to give detailed reasons while granting the EC. Hence, the Project Proponent sought dismissal of the Appeal.

Contentions of Counsel of the Appellant:

13. Mr. Ritwick Dutta, Learned Counsel of the Appellant strenuously argued that the answers given by the Project Proponent during the course of the public hearing were evasive and dissatisfactory. He would submit that presence of Lions in Rajula Taluka near the project site was noticed and therefore victims of the attack by the Lions were granted compensation by the State Government. He contended that the impugned order reveals the “cut and paste” method was adopted by the MoEF (R-1). He argued that 18 points were sought to be clarified during the course of public hearing but appraisal of the responses of the project Proponent to the queries raised by the Public members have not been considered by the MoEF. For example, adequacy of road capacity, connectivity of Shiyalbet (a small island village), impact of excessive dredging had not been duly considered by the MoEF. Mr. Dutta contended that the impugned order is bereft of reasons. He further argued that the EIA Reports were not adequate and no study was conducted on important issues like traffic management, coal dust management, the

responses to additional ToRs as given by the Project Proponent.

14. Mr. Dutta submits that there is no provision for social welfare programme in the conditions imposed by the MoEF and therefore, the impugned order is defective. He would submit that the compliance of earlier conditions were also not verified by the GPCB and as such the expansion project should not have been granted EC.

15. The chief bone of contention of Mr. Dutta is that without giving reasons, the MoEF could not have granted the EC. According to him, the EC is bad in law because it is a non-speaking order. He submits that lack of reasons in the impugned order by itself is sufficient to set-aside the same.

16. Ms. Neelam Rathore and Shri Vikramjit Singh, Learned Counsel appearing for MoEF (R-1) argued that the EC was granted after due consideration of the materials on record. They also argued that the EIA Report sufficiently gave inputs for consideration of the MoEF. They further submitted that necessary mitigating measures were taken by imposing stringent conditions on the Project Proponent. Consequently, they supported the impugned order dated 05.06.2012.

17. Shri Narasimha, Learned Senior Counsel appearing for the Project Proponent submitted that though the expansion was sought and executed on previous occasions in 2005 and 2006 yet no grievance was made by any single

member of the public in the surrounding area. He would submit that when the EAC took decision, the discussion in its meeting itself indicated application of mind. His main argument is that the Regulation 7 of the MoEF Notification dated 14.09.2006 does not mandate recording of reasons if the project is to be cleared. He contended that reasons are required to be stated in the order of MoEF, only if the EC is to be rejected. He submitted that Oceanography Study report, details of the EIA Report and proceedings of public hearing were considered by the EAC and therefore, the expansion project was cleared. He would submit that fair public hearing was held.

18. He would submit that the application of mind is clear because the competent authority, upon consideration of EIA Report, again sought further information/clarification to take care of all the relevant issues. The very fact that the TOR had been modified speak, by itself, of application of the mind. He argued that mere movement of some stray animals at some other places in Rajula Taluka cannot be an impediment in the expansion and modernization of the port. He points out that the Gir Wildlife Sanctuary, being the habitat of Asiatic Lions, is approximately 100 km away from the port area. He further submitted that the Mangroves had been grown by the Project Proponent after the grant of first EC and there was no Mangrove forest in existence in the vicinity of the project site before the project was made operational in the first phase. He submitted,

therefore, that there will be no destruction of Mangrove forest and moreover the condition to maintain a buffer zone will take adequate care of the protection required for the Mangrove reserve. He also pointed out that sewerage plant has been installed. He submitted that coal handling will be done in transport vehicles covered with tarpaulin and as such there is no possibility of pollution on account of spreading of coal dust in the nearby area.

19. Considering the above submissions of the Learned Counsel, we deem it proper to formulate following questions for deciding the Appeal:

(i). Whether the impugned order suffers from serious infirmity due to absence of reasons?

(ii). Whether it is necessary to record the reasons only when rejection of EC sought by the Project Proponent is contemplated and not otherwise?

(iii). Whether the public hearing was conducted appropriately and that it was fairly recorded by the GPCB as per the norms of the MoEF Notification dated 14.09.2006?

20. Before we proceed to consider merits of the main question raised by Mr. P.S. Narasimha, Learned Senior Counsel, it would be appropriate to first deal with the third point. We have gone through the relevant proceedings of the public hearing. It appears that the public hearing was held within the premises of the port. The public hearing was attended by 231 members of the public. Not only that a

large number of public members were present during the public hearing and quite a good number participated but many written representations were also submitted during course of the public hearing by members of the public. Questions were raised in the public hearing, in the context of provision to allow access to the residents of “Shiyalbet village (Island) because they were being denied use of the road connected to the main highway. Objection was also raised for the expansion of the port on the ground that dredging activity is likely to cause pollution. It was also stated by some Agriculturists that the coal dusting due to handling of the cargos in the port, without taking proper care, has caused damage to the crops and the trees in the nearby area and unless proper solution is given to such problem, the project may not be cleared.

21. We have noticed from the record of the statement showing issues raised by the participants and responses of the representative of the project proponent, that some of the written responses were given to the queries. Still, however, some questions raised have not been answered. For example, Shri Mayabhai Vallabhai raised question regarding coal dust generated due to handling/transportation from the port. No response appears to have been given by the project proponent to the said query. So also, Shri Gondalia Vipul Bansidas raised question regarding proper amenities for Shiyalbet. The response to such question is also vague. Moreover, queries

raised by Babubhai Vallabhai about road access remained unanswered.

22. It appears from the record that after the public hearing, additional TOR were issued and the Project proponent was called upon to satisfy the authority about measures adopted for protection of the environment. In our opinion, there was adequate participation of the public members and the public hearing was properly held by the GPCB.

23. At this juncture, let it be noted that the MoEF Notification dated 14.09.2006 comprises certain stages to be followed before grant or refusal of the Environment Clearance (EC). The stages may be summarized as follows:

- (1). Preparation of Environment Impact Assessment (EIA) Report and Environment Management Plan (EMP) by the Project Proponent.
- (2) Issuance of TOR.
- (3) Communication of the Executive Summary and EIA Report, placing it in the public domain at a designated place/s.
- (4) Notice by the State Pollution Control Board for a mandatory public hearing which shall be published in atleast two local newspapers, at least 30 days prior to the public hearing.
- (5) Evaluation of the EIA and EMP by the Expert Appraisal Committee (EAC).

(6) Appraisal of the proposal, EAC Report, etc. for approval or rejection of the EC, by the MoEF.

24. In the present case, the main question to be determined is as to whether the MoEF is required to record reason along with the grant of prior EC. The main edifice of the argument advanced by Learned Senior Counsel, Mr. P.S. Narasimha is that on consideration of the words used in the MoEF Notification and the intention for the purpose of the Stage (4) i.e. Appraisal should be duly appreciated. He pointed out that the Regulatory Authority is free to reject the proposal at the initial stage itself if recommendation of the EAC or SLEAC is sufficient to do so. He invited our attention to sub-clause (iii) of Stage (2) – Scoping. It reads as follows:

“Stage (2) – Scoping – (i) xxxxxxxxxxxx

(ii) xxxxxxxxxxxx

(iii) Applications for prior environmental clearance may be rejected by the regulatory authority concerned on the recommendation of the EAC or SLEAC 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.”

25. Taking cue from the above provision, Learned Senior Counsel argued that the EAC or SLEAC concerned is required to make categorical recommendations to the Regulatory Authority concerned either for grant of prior EC

on stipulated terms and conditions, or rejection of the application for prior EC, together with reasons for the same. According to the Learned Senior Counsel, it is only when the application of the project proponent deserves rejection, that the reasons ought to be given by the EAC or SLEAC concerned. Otherwise it is not necessary to record reasons where the Regulatory Authority recommend grant of EC after appraisal, to the Project Proponent.

26. There cannot be duality of opinion that rejection of the proposal could also be at the stage of Scoping. It is also contemplated as a result of Appraisal which is captioned as “Stage (4) – Appraisal”. The wording as used in EIA Notification pertaining to stage(4) i.e. Appraisal, is reproduced to the extent it is necessary:-

“Stage (4) – Appraisal:

- (i) Appraisal means the detail 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) xxxxxxxxxx

(iii) xxxxxxxxxxxx

(Emphasis supplied)

27. Perusal of the above provision would make it clear that at Stage (4) - Appraisal is not a mere formality. It does require the detailed scrutiny by the EAC or SLEAC of the application as well as documents filed such as the final EIA Report, outcome of the public consultation, including public hearing proceedings, etc.

28. The EAC or SLEAC concerned has to 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 EC, together with reasons for the same. The use of “coma” at the end of first part of the sentence, prefixing the words “terms and conditions” and also suffixing the words “together with reasons for the same” will have to be read in conjunction.

29. Moreover, sub-clause (iii) of Regulation 7 pertaining to Stage(4) indicates that the process of appraisal is required to be completed by the EAC or SLEAC within sixty (60) days of the receipt of the final EIA Report and other documents.

30. Reliance is placed on the Judgment of the Hon'ble Supreme Court in "K.L. Tripathi Vs. State Bank of India & Ors."**(1984) 1 SCC 43 at 58 (Para 31)**. It has been observed:

"31. Wade in his Administrative Law, Fifth Edition at pages 472-475 has observed that it is not possible to lay down rigid rules as to when the principles of natural justice are to apply: nor as to their scope and extent. Everything depends on the subject-matter, the application of principles of natural justice, resting as it does upon statutory implication, must always be in conformity with the scheme of the Act play there must be real flexibility. There must also have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the facts and the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with, and so forth."

31. Ordinarily, in the context of all administrative decisions, it is part of the principle of Natural Justice that objectivity of such decision should be reflected in the order

itself. In case of absence of objectivity, the application of mind by the concerned authority cannot be gathered on basis of available circumstances. In other words, what was passing through the mind of members of EAC when the recommendation of the project was made is necessarily required to be stated in the minutes of the meeting and/or in the order of EC dated 05.06.2012.

32. What appears from the impugned order dated 05.06.2012 is that the MoEF reproduced a part of the letter of recommendation of the EAC, as it is. The impugned order does not show independent evaluation undertaken by the MoEF. So also, the EAC did not evaluate the correctness of responses given by the Project Proponent to the written representations made by the members of the public during course of the public hearing. The EAC also did not take into account the problem of the inhabitants of Shiyalbet (Island). The EAC also did not consider the earlier inspection reports which indicate certain violations of the conditions by the Project Proponent. For example, inspection report about the visit of the authorities of GPCB on 26.06.2008 shows that while unloading of the goods was going on, on berth no. 1, DG set was not in operation, stock of used oil and used batteries was nil. It shows that the DG set was not being used for a long time but was being kept at the place unused. So also, the visit of GPCB officials on dt.11.06.05 indicates that the sand was being removed from the government waste land without payment

of royalty. It was also noticed that the Project Proponent had not taken care of existing Mangroves nor there was new plantation of Mangroves. There was also problem of the conveyor belt used for unloading of coal. Obviously, mere subsequent compliance reported by the GPCB could not be the relevant material. The Appraisal required EAC to specify about the relevant compliance.

33. The definition of the word “Appraisal” as given in Black’s Law Dictionary is as follows:

“*Appraisal* –

- i. *The determination of what constitutes a fair price; valuation; estimation of worth.*
- ii. *The report of such a determination. – also termed appraisement.”*

Thus, appraisal of the project does require evaluation as well as estimation of worth for the purpose of assessment/determination thereof. Needless to say, the process of “Appraisal” requires application of mind, independently, and evaluation of the material in order to find out whether it is a project worth grant of EC or for the purpose of refusal of the EC, as the case may be.

34. In “*Uttkarsh Mandal Vs. Union of India & Ors.*” **2009 (10) AD (Delhi) 365 WO(C) No. 93401/2009**, etc. a division bench of the Hon’ble Delhi High Court elaborately considered the meaning of expression “Appraisal”. The relevant observations may be reproduced below:

“..... Consequently, the exercise expected to be performed by the EAC (Mines) is a serious one and has to include a consideration on merits of the objections raised at the public hearing. Its decision must reflect this. We do not accept the contention of the learned ASG that as long as the MoEF while taking the ultimate decision has applied its mind to the objections raised at the public hearing, the requirement in law would be satisfied. The whole purpose of “outsourcing” the task to an EAC comprised of experts was to have a proper evaluation of such objectives on the basis of some objective criteria. It is that body that has to apply its collective mind to the objections and not merely the MoEF which has to consider such objections at the second stage.
.....

..... The failure to give such reasons would render the decision vulnerable to attack on the ground of being vitiated due to non application of mind to relevant materials and therefore arbitrary.”

35. Thus, it is difficult to appreciate the argument of Learned Senior Counsel – Mr. P.S. Narasimha about the validity of the order irrespective of the fact that no reasons have been recorded in the minutes of EAC nor in the impugned order. Perusal of the impugned order shows that there was no independent application of mind by the MoEF (IA Division) to the material placed before it and report of the EAC. The impugned order shows that the EAC had sought additional clarifications from the Project Proponent.

Obviously, it was clear that the EAC was not satisfied at the initial stage after the public hearing was held and as such decided to call for further information by issuance of modified ToR. It was necessary, therefore, to examine as to whether the additional ToR was duly responded to by the Project Proponent and such responses were of satisfactory nature. From the impugned order, it is difficult to say that such exercise was undertaken by the MoEF.

36. The Learned Senior Counsel, Mr. P.S. Narasimha alternatively, submitted that this Tribunal may independently examine the material in order to consider the compliance of the additional ToR. He argued that the impugned decision of the MoEF may not be quashed when the controversy remains within short compass in the context of application of mind by the MoEF and requirement of reasons in the context of the impugned order. We do not agree. It is not within the domain of this Tribunal to verify technical compliance and express any opinion. It would amount to usurpation of power which is not available to this Tribunal under the NGT Act. It is the duty of the EAC and the MoEF to consider the relevant material and take appropriate decision. The appraisal may be accepted, on certain conditions, if it is found that the environment is unlikely to be adversely affected to such an extent that the project would lead to unsustainable development. Nobody will deny that development, modernization and expansion of a port are in fact essential

for the purpose of export and import of goods. The relevant observations in the EAC meeting reveals that the presentation made by the Project Proponent was accepted as “gospel truth” and thereafter the points which emerged were stated as points no. (i) to (viii). Thereafter, the EAC simply stated:

“The Committee recommend the appraisal for environmental and CRZ clearance after submission of information at (viii) above, with above conditions in the clearance letter for strict compliance by the Project Proponent”.

The impugned order practically echoed the minutes of the EAC meeting. In our opinion, therefore, the impugned order is bereft of tangible reasons and as such the process of “Appraisal” is faulty.

37. Now, it remains to be seen whether the impugned order dated 05.06.2012 deserves to be quashed in *toto*. We have noticed that there was proper compliance of the first three stages i.e. screening, scoping and public hearing. The fault lies only at the Stage No. (4) i.e. the stage of Appraisal. The Appraisal could not have been done by the EAC only on basis of the compliance reportedly done by the Project Proponent. It should also examine viability of the project on account of the expansion proposed. We do not find it necessary to make any comment which may prejudice either of the parties. However, EAC and the MoEF may compare the expansion of the existing project with the ports

at Chennai, Vishakapatnam, Bombay Dockyard, Jawaharlal Nehru Port, etc and examine whether the expansion can be granted after laying down certain stringent conditions to take care of the environmental impact due to the expansion and modernization of the port. For example, the Chennai Port is being run with modern techniques. As a part of pollution control measures, the port has installed wind curtains made of ultraviolet resistant fabric along the harbour's beach front for over 1.5 km to the east of the coal terminal to prevent wind carrying coal dust into the city. The Chennai Port has also installed a semi-mechanized closed coal conveyor system comprising two streams with a capacity of 15 million metric tons/annum and a handling rate capacity of 1,500 metric tons/hour/stream and running a length of 5 km at two berths, namely, Jawahar Dock IV and VI. The conveyor belt runs at an elevation of 10-13 m and has provision for longitudinal movement along the road to the plots and transverse movement for stacking coal at individual plots. The coal discharged into the hoppers located at the two docks is conveyed to coal plots through conveyors or tripper cars and is equipped with belt weigher.

38. We deem it proper to clarify that though we have not expressed any opinion on merits yet it would be appropriate if the EAC and MoEF will duly consider the question pertaining to accessibility of the residents of Shiyalbet (Island) inasmuch as easy access to the dockyard roads is

not possible without permission of the competent port authority. The identity of such residents and granting of permission to each of the resident may be a cumbersome process. The Project Proponent may consider relocation of the residents of Shiyalbet if it is possible with the help of local authorities.

39. At this juncture, we deem it proper to refer certain observations in “*State of Punjab & Ors. Versus Dr. Harbhajan Singh Greasy*” **(1996) 9 SCC 322**. In that case, departmental enquiry was held against Dr. Harbhajan Singh Greasy (Respondent therein). He admitted the charge for being absent from duty in the emergency of attending the flood victims. On the basis of the alleged admission, which was subsequently reverted by the delinquent, the Enquiry Officer passed order of penalty. The Apex Court observed:-

“It is now a well settled law that when the enquiry was found to be faulty, it could not be proper to direct reinstatement of the delinquent with consequential benefits. Matter requires to be remitted to the disciplinary authority to follow the procedure from the stage at which the fault was pointed out and to take action according to law.”

40. True, the above observations are made in the context of subject of departmental enquiry. Still, however, the observations of the Apex Court are applicable to the present case by analogy. The stage for correction, reconsideration and reappraisal may be restored without calling upon the

Project Proponent to undergo the entire exercise of the screening, scoping and public hearing. For example, if there is no electricity in a house one will have to first go to see whether the fuse connection is in order. Perhaps nobody will immediately rush to the Distribution Centre or the Power Grid. It is pertinent, therefore, to go to the stage of fault and permit re-examination of the entire material from that point onwards, instead of going back to square-A.

41. In our considered view, therefore, it is necessary to keep the impugned order in abeyance for the present with direction to the MoEF and EAC to appraise the project afresh and pass the necessary reasoned order either for approval thereof or for the rejection, whatsoever it may be found necessary, on merits thereof. The authorities shall not be influenced by any discussion made hereinabove. We clarify that we have not given any opinion on merits of the matter concerning Stage (4) – Appraisal. It will be open to the authorities to consider the relevant aspects and if so required by making comparison with the measures adopted by the other such ports located elsewhere in the country for avoiding the adverse impact on environment and the surrounding area.

42. The sum total of the discussion and reasons recorded as above is that point no. (i) is answered as “ Yes“ , point no. (ii) is answered as “No” and point no. (iii) is answered as “ Yes” . We are inclined, therefore, to partly allow the Appeal.

43. In the result, the Appeal is partly allowed. The impugned order dated 05.06.2012 passed by the Respondent No. 1 (MoEF) shall be kept in abeyance for a period of six (6) months hereafter. The matter is remitted to the EAC and MoEF for the purpose of reconsideration of Stage-(4) – Appraisal in the light of the discussion made hereinabove. The authorities may relook into the matter, have objective appraisal of the project on the basis of the available material, on basis of comparison with expansion of other ports in the country, if so required and thereafter to take decision on merits. The Appraisal of the project be made and final order may be passed by the concerned authorities within statutory period as provided by MoEF Notification dt.14.9.2006 after receipt of copy of this order. The Appeal is accordingly disposed of in the above terms. No costs.

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

....., EM
(Dr. P. C. Mishra)

....., EM
(P. S. Rao)

....., EM
(Ranjan Chatterjee)