

**BEFORE THE NATIONAL GREEN TRIBUNAL  
CENTRAL ZONAL BENCH, BHOPAL**

**Appeal No. 08/2013 (CZ)**

**CORAM:**

**Hon'ble Mr. Justice Dalip Singh  
(Judicial Member)**

**Hon'ble Mr. P.S.Rao  
(Expert Member)**

**BETWEEN:**

Ramesh Agarwal  
Satyam Kunj, Naya Ganj,  
Raigarh, Chhattisgarh – 496001 .....Applicant

Versus

1. Union of India  
Through the Secretary,  
Ministry of Environment and Forests  
Paryavaran Bhawan, CGO Complex  
Lodhi Road, New Delhi.
2. Chhattisgarh Environment Conservation Board  
Through the Member Secretary  
1-Tilak Nagar, Shiv Mandir Chowk,  
Main Road, Avanti Vihar, Raipur  
Chhattisgarh – 492001.
3. M/s NTPC Ltd.  
Through its Managing Director  
Engineering Office Complex  
Plot No. A-8A, Sector – 24  
Noida – 201301. ....Respondents

**Counsel for the Appellant : Shri Ritwick Dutta, Advocate**

**Counsel for Union of India : Shri Om Shankar Shrivastav, Advocate**

**Counsel for Chhattisgarh Environment Conservation Board :Ms. Yogmaya Agnihotri,  
Advocate**

**Counsel for M/s NTPC Ltd.: Shri Sachin K.Verma, Advocate**

**Judgement**

1. This is an appeal filed under Section 16(h) of the National Green Tribunal Act, 2010 challenging the Environmental Clearance (for short EC) granted to Respondent No. 3 National Thermal Power Corporation Ltd. (for short NTPC) under the Environment Impact Assessment (for short EIA) Notification, 2006 by the Respondent No. 1, Ministry of Environment & Forests (for short MoEF) vide order No. J 13012/79/2007-IA.II (T) dated 13.12.2012 for setting up of 2x800 MW coal based Lara Super Thermal Power Project (for short STPP) at Armuda, Chhapora, Bodajharia, Devalpura, Mahloi, Riyapillai, Lara, Jhilgitar and Kandagarh villages in Taluk Pussore, District Raigarh, Chhattisgarh contending that the approval granted is in clear violation of the 'Precautionary Principle' and principle of 'Sustainable Development' and also in violation of principles governing administrative decision making, viz. the duty to give reasons and application of mind to relevant consideration.
2. The Appellant claims that he is a resident of Raigarh, Chhattisgarh and has been involved in environmental activism since several years and he is an active member of organization known as *Jan Chetna* which works on the issues of environment across the State of Chhattisgarh and other parts of the country. The Appellant submits that initially the Respondent no. 3 submitted proposals to Respondent No. 1 for granting EC for construction of 5x800 MW capacity STPP (Unit I & Unit II) based on Super Critical Technology towards the south-east of Raigarh Town of Chhattisgarh state on 18.04.2007 with an estimated requirement of 3500 acres of land. Based on the application submitted by the Project Proponent, the Expert Appraisal Committee (for short EAC) on environmental impact assessment of Thermal Power and Coal Mine Projects of Respondent No. 1 issued Terms of Reference (in short ToR) dated 01.08.2007 for preparation of Draft Environment

Impact Assessment Report (in short DEIAR) for 5x800 MW Thermal Power Project. The Project Proponent prepared the DEIAR for 2x800 MW Thermal Power Project (Stage-I) in January, 2011 followed by a request made to Respondent No.1 on 09.03.2011 seeking amendment to the ToR. Thereafter, the Respondent No. 1 issued Corrigendum to the ToR on 27.04.2011 amending the ToR applicable to 2x800 MW in place of 5x800 MW.

3. The Appellant contended that the DEIAR prepared by the Project Proponent is not in accordance with the ToR dated 01.08.2007, though Para 2.2 of Appendix – IV of the EIA Notification, 2006 mandates preparation of DEIAR strictly in accordance with ToR communicated to the Project Proponent after scoping. As per the Appellant, the issues on which EIA has been carried out by the Project Proponent in contravention of ToR, are as follows:

- i. ToR dated 01.08.2007 were issued for preparation of EIA Report with regard to 5x800 MW whereas both the draft and final EIA Reports have been prepared for 2x800 MW (Stage-I). The Appellant states that though the corrigendum issued to the ToR provides for change in the unit configuration from 5x800 MW to 2x800 MW it does stipulate that the EIA study shall be carried out for 5x800 MW but the EIA report is confined to only 2x800 MW and not the ultimate capacity 5x800 MW.
- ii. As per condition No. (ii) of the ToR, the EIA Report was required to provide information about coordinates (all the four corners) of the project site as well as the ash pond with Toposheet. But in the DEIAR only single coordinate (21°44'48" N and 83°26'00" E) has been mentioned. Furnishing of information on all the four coordinates in the DEIAR is required to ensure that the exact boundaries are disclosed to the public and they are aware of the exact location of the project during the public hearing as the location of STPP and its associated facilities such as ash pond, has serious social and environmental impact and

same is of critical importance for deciding the environmental viability of the project.

- iii. With regard to land requirement, the Project Proponent is supposed to optimize the land utilization as per the ToR condition No. (vi) with full details of item-wise land availability along with plant layout but the Project Proponent informed that for Stage-I approximately 2375 acres of land will be required and 525 acres of additional land will be required for ash dyke of Stage-II making it unclear as to why the provision of requirement of land for ash dyke for Stage-II was included as a part of Stage-I. Though, as per the guidelines of the Central Electricity Authority (for short CEA) issued in September, 2010 an area of 0.77 acre of land per MW of power produced is supposed to be taken into account making requirement of about 1232 acres of land for the purpose of establishing  $2 \times 800 \text{ MW} = 1600 \text{ MW}$  power plant whereas, the Project Proponent almost doubled the requirement i.e. 2375 acres of land and no effort has been made by the Project Proponent to optimize the land requirement.
- iv. With regard to quantity of fuel required for the project, the Appellant states that the Project Proponent included in the EIA Report that 7.0 million tons of coal is required per annum which is to be sourced from Talaipalli Coal Block. But keeping in view of the fact that coal in the area is of Grade 'F' quality with Useful Heat Value (for short UHV) ranging between 1310 to 5892 Kcal/Kg making an average of 3601 Kcal/Kg, the mentioning of 4200 Kcal/Kg in the EIA report is nothing but improper assessment of requirement of fuel and not arriving at the exact quantity of coal required. Though, the EIA Report states that the transportation of coal will be through Merry Go Round (for short MGR) of about 60 km. but the effect of transportation for such long

distance and its overall impact and carrying capacity of the environment on the land, water bodies, forest, and habitat is not clear.

- v. As per the condition No. (xxii) of the ToR, data on water quality of Kelo and Mahanadi rivers and other water bodies located in the said area is supposed to be collected and provided. But the data provided by the Project Proponent is out dated and unrealistic. The water in the river Kelo has been badly polluted because of industrial activity and the data of the water quality of this river provided in Section 3.7.2 of the draft EIA Report is of December 2006 to December 2007. Though, the Project Proponent stated that one season data for pre-monsoon season of 2011 has been included in the final EIA Report it does not reflect the time duration as to when the same has been collected.
- vi. The Appellant in his appeal is very critical about the missing of detailed Rehabilitation and Resettlement (for short R&R) plan in the draft EIA Report. He states that as per the condition No. (xxviii) of ToR detailed R&R plan shall be prepared taking into account of the socio-economic status of the area, land oustees and homestead oustees, landless labourers but the same has not been furnished by the Project Proponent. In the DEIAR, the Project Proponent has stated “details will be included in the socio-economic survey”. It is blatantly clear that the EIA Report has been filed without addressing the very vital issue of R&R. The averment of Respondent No. 3 that final R&R plan was submitted to the MoEF on 24.08.2012 clearly shows that the same was not part of the EIA Report studies neither at the draft nor at the final EIA stage. The issue of R&R is a critical component of the ToR issued for the project and the R&R plan was not discussed in the EAC. Both, the MoEF and the EAC viewed the non-compliance of the ToR with regard to R&R in a very casual manner and proceeded to

recommend the project for approval despite being aware that the R&R plan is not in place.

vii. With regard to ToR condition No. (xxxii) seeking measures of socio-economic influence to the local community proposed to be provided by the Project Proponent, the EIA Report is completely silent on this aspect and it only states that “community development activities will be taken up after finalization of the plan in consultation with the State Government.”

4. The Appellant further alleged certain other glaring omissions with regard to preparation of EIA Report and Environment Management Plan (for short EMP) after the expiry of the period of the ToR. He stated that the EIA Report has been submitted by the Project Proponent after expiry of the validity period of the ToR. Further, the primary data used for preparation of EIA Report is beyond the prescribed limit of 3 years and it is based on the data which was 4 years old and the same was submitted to the EAC after the validity of ToR i.e. after 31.07.2011 in violation of the Office Memorandum (for short OM) of the MoEF dated 22.03.2010 wherein the time limit for the validity of ToR has been prescribed.
5. The public hearing of the project was held on 23.12.2011 in Mahloi, Tehsil Pussore, District Raigarh, Chhattisgarh and the draft EIA Report was made available before the public. The public hearing was not conducted as per the ToR and it suffered with substantial irregularities. The Appellant states that there were several objections to the project and certain significant environmental issues were raised by the participants during the public hearing. The Appellant states that he himself (Speaker No. 69) attended the public hearing and raised objections with regard to non-compliance of the ToR and placing outdated data before the public. According to the Appellant some of the other important issues/objections raised by the public during public hearing are:

- i. Requirement of EIA of coal based Thermal Power Projects located in the area.
- ii. EIA Report is based on old environmental standards.
- iii. Detailed river flow assessment and cumulative impact of the project on ground water.
- iv. Impact of the pollution caused to the agricultural lands of farmers.
- v. No consideration of the nuclear radiation and its impact on human habitat.

Thus, the Appellant, in his appeal has stated that public hearing held on 23.12.2011 was not properly conducted as the participants were not informed about the true impact of the project and the concerns/issues raised by the public were not addressed by the EAC while appraising the project. He averred that for an effective public participation, it is necessary that there should be full and fair disclosure of all the material facts related to the project. He further stated that the EAC while dealing with the issues raised during the public hearing adopted a casual approach and most of the objections/issues raised during the public hearing have not been recorded in the Minutes and there is no mention by the EAC and there is nothing on record in the Minutes to show why the EAC has brushed aside the objections raised by the participants in the public hearing and how views expressed by them are not significant enough to comment upon.

6. With regard to the EIA Report, the Appellant alleged the following shortcomings/deficiencies :
  - i. Though at point No. 'C' of the amended order dated 27.04.2011, the MoEF has asked the Project Proponent to do the EIA study for 5x800 MW, the Project Proponent has done it only for 2x800 MW.
  - ii. The EIA lacks proper information on utilization and management of fly ash generated by the project.

- iii. The EIA Report is completely silent on the transport system, land requirement and its type.
  - iv. EIA Report does not focus on the management of the ash dykes.
  - v. EIA Report provides incomplete information on the Ambient Air Quality (for short AAQ). It is limited to RSPM (PM<sub>10</sub> and PM<sub>2.5</sub>), Sulphur Dioxide, Nitrogen Dioxide, Ozone and Mercury. The other pollutants such as Lead, Carbon Monoxide, Ammonia, Benzopyrene, Arsenic, and Nickel have not been stated as part of the EIA.
7. The Appellant has also prayed in his appeal that no study has been made on Volatile Organic Compounds (for short VOCs).
8. With regard to impact on river Mahanadi the Appellant states that the EIA study does not indicate as to whether the river Mahanadi has sufficient water to support the project of the Proponent and what would be the cumulative impact on the flow of the river during lean season i.e. summer. His contention is that the river Mahanadi is already over exploited by creating a number of such industries over its banks in the State of Chhattisgarh. He states that the EAC has not made any observation with regard to the availability of water in the river Mahanadi for the project of Respondent No. 3. He further makes a point that no cumulative impact study was conducted on the effect of large scale establishment of industries which are dependent on drawing water from the river Mahanadi and without taking into account of the availability of water, the project has been recommended by the EAC.
9. The Appellant makes it a point that the EAC did not make any reference nor sought any information from the Project Proponent with respect to the possible nuclear radiation from coal proposed to be used for the Thermal Power Project but recommended the project for clearance simply stating that “a long term study of

radioactive and heavy metal contents on coal to be used, shall be carried out through a reputed institute.”

10. With regard to the disposal of fly ash generated by the project, the Appellant states that the Respondent No. 3, NTPC has not submitted any concrete plan on fly ash utilization and the EAC only reiterated the requirement of utilization of fly ash without verifying the concrete plan of the Project Proponent prior to issuance of EC. The contention of the Appellant is that there are limitations in utilization of fly ash generated by the power plants located in the vicinity of the project in question and there are not many infrastructure development projects or abandoned mines close by to the proposed project and thus, huge quantity of ash generated is necessarily to be stored in the NTPC site itself and there are no such sites of ash disposal which probably makes plausible dangers of accident and pollution.

11. Finally, the Appellant prayed that the impugned order dated 13.12.2012 issued by the Respondent No. 1 granting EC may be set aside in the interest of protection of environment. In the appeal as well as during the hearing, the appellant has quoted the following judgments given by the Hon'ble Supreme Court, various High Courts and National Green Tribunal in support of his averments:

- i. *Rudresh Naik Vs. Goa State Coastal Zone Management Authority* [2013 ALL (I) NGT Reporter(2) (Delhi) 47]
- ii. *Samata Vs. Union of India* [Appeal No. 9 of 2011 of NGT Southern Zone]
- iii. *Gau Raxa Hitaraxak Manch and Gauchar Vs. Union of India* [2013 ALL (I) NGT Reporter (1) (Delhi) 506]
- iv. *Jeet Singh Kanwar Vs. MoEF and Ors* [2013 ALL (I) NGT Reporter (1) (Delhi) 129]
- v. *Ossie Fernandes Vs. Ministry of Environment and Forests* [Appeal No. 12/2011 of NGT Principal Bench, Delhi]
- vi. *Utkarsh Mandal Vs. Union of India* reported in 2009 (10) AD (Delhi) 365.
- vii. *T.Muruganadam Vs. Ministry of Environment and Forests* (Appeal No. 17 of 2011 of NGT Principal Bench, Delhi).

- viii. *Krishi Vigyan Arogya Sansthan vs. MoEF* (Appeal No. 07/2011 of NGT Principal Bench)
- ix. *M. P. Patil Vs. Union Of India and others* 2014 ALL (I) NGT REPORTER (1) (Delhi) 113
- x. *Karnataka Industrial Areas Development Board Vs. C. Kenchappa & others* (2006) 6 SCC 371 (Supreme Court)

12. The Respondent No. 3, NTPC (Project Proponent) submitted affidavit dated 20.05.2013 with detailed para-wise replies countering the allegations made by the Appellant in the appeal. It is the case of the Respondent No. 3, NTPC that it is true that a proposal was submitted to the MoEF for approval of the draft ToR for EIA study for Lara STPP with an ultimate capacity of 5x800 MW vide their letter dated 01.08.2007. However, due to delay in allocation of land and water by the State Government and also due to delay in the availability of coal from the coal mines, it was proposed to implement the project in stages with Stage-I beginning with a capacity of 2x800 MW and accordingly feasibility report and EIA Report for the project were prepared for 2x800 MW only and on the request, the MoEF vide letter dated 27.04.2011 issued corrigendum to the ToR making it for 2x800 MW. According to the Respondent No. 3, the conditions stipulated in the original ToR dated 01.08.2007 as well as corrigendum dated 27.04.2011 were complied with at various stages of environmental appraisal of the project. The Respondent No. 3 further states that the NTPC makes best efforts to optimize the utilization of natural resources like land, water and fuel by adopting the state of the art technologies and management practices as NTPC itself was a part of the team formulating the CEA guidelines on land requirement for thermal power projects. It is a general practice to acquire land for the entire project while feasibility reports are prepared in stages as and when other resources such as capital investment and coal are made available. The recommendations of the CEA are only general in nature and therefore, actual land requirement may vary depending

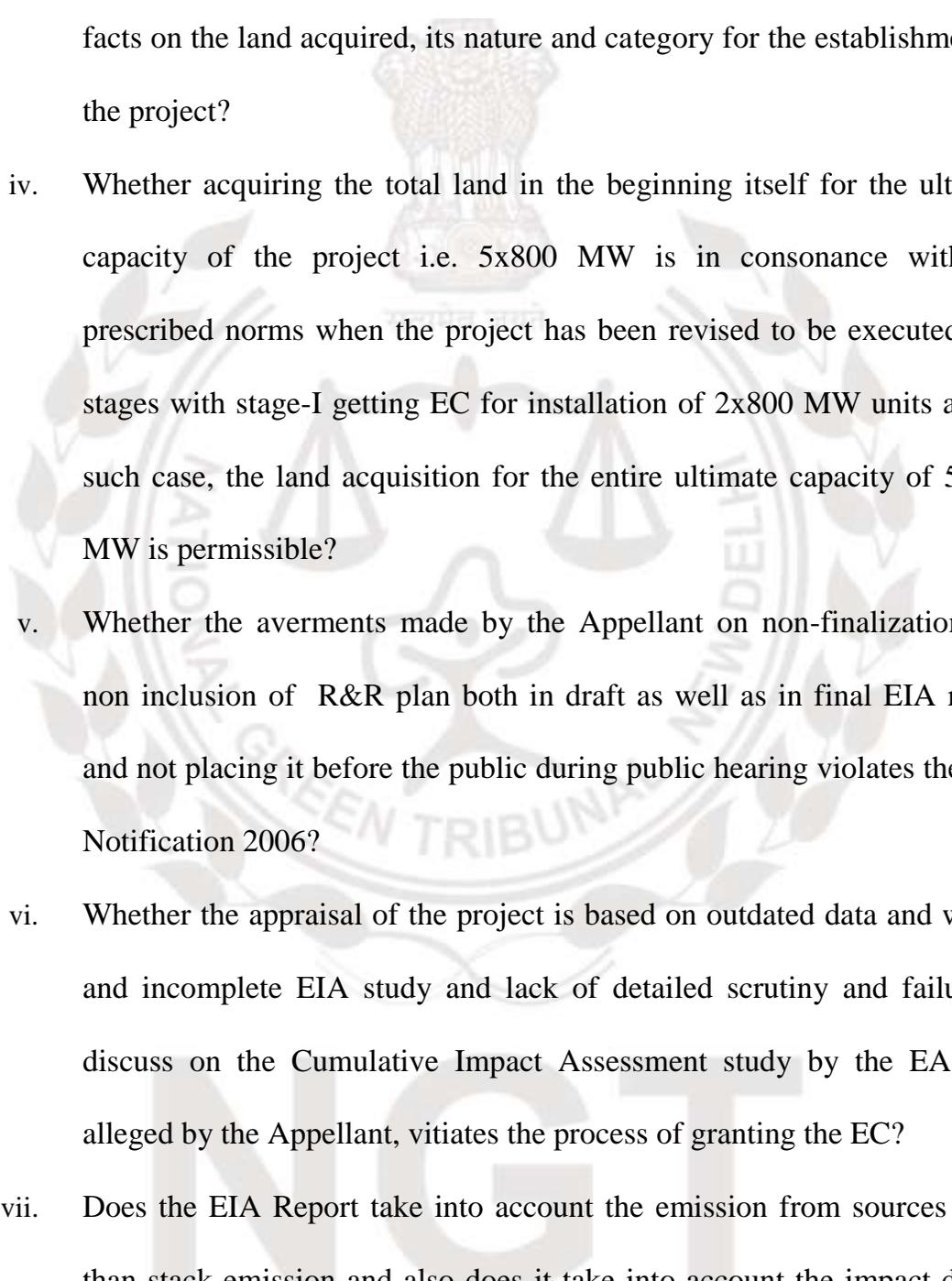
on the site conditions and therefore, the contention of the Appellant that the land requirement shall be restricted to 0.77 acre/MW may vary slightly on either side depending on the site conditions and no excess land has been acquired than what is required and whatever land that has been acquired by the NTPC will be put to optimum utilization keeping in view the future requirements of the project.

13. With regard to allegation of the Appellant that the requirement of the coal from the Talaipalli Coal Block has not been properly assessed, the Respondent NTPC replied that there is no discrepancy as UHV and the Gross Calorific Value (for short GCV) are two different characteristics of coal. The design value of coal requirement does not correspond to the arithmetic average of minimum and maximum value but the weighted average. With regard to the MGR, this aspect has been covered during environmental appraisal of the Talaipalli Coal Block project and MGR is not a part of the present project of Respondent No. 3.
14. According to the Respondent NTPC, as per the Technical EIA Guidance Manual for Thermal Power Plants prepared by IL&FS for MoEF, only one season data (except monsoon) is required for study and therefore, though the EIA Report contains the environmental data for the period from December 2006 to November 2007, the NTPC, as a responsible organization towards environment generated the fresh environmental monitoring data for all the disciplines of environment for pre-monsoon season of year 2011 and therefore the averments made by the Appellant that the DEIAR is based on imperfect data is not correct and the allegation is squarely denied.
15. With regard to the alleged shortcomings pointed out by the Appellant on the whole process of appraising and granting EC and the replies furnished by the Respondent Project Proponent on R&R plan as well as socio-economic and demographic aspects, it will be discussed in detail at a later stage in this judgment.

16. The Respondent No. 3 NTPC denied the allegation of the Appellant that OM dated 22.03.2010 of MoEF has been violated as ToR were more than 4 years old and the environmental data was more than 3 years old and the project was appraised on incomplete information. It was stated by the Project Proponent that they are fully aware of the provisions of the aforesaid OM and realizing that the project was delayed due to delay in allocation of land and water and also due to delay in availability of coal the installed capacity was reduced and the MoEF was requested to amend the ToR. The MoEF accordingly considered the application and amended the ToR by issuing corrigendum dated 27.04.2011. Therefore, the Project Proponent has taken up fresh environmental data generation for all the disciplines including pre-monsoon season of 2011 and the same was available before the public during public hearing and it was included in the final EIA Report after public hearing was conducted on 23.12.2011. Thus, there is no violation of the aforesaid memorandum and the appraisal taken up by the EAC has been approved by the MoEF based on the latest data collected as per the revised ToR.
17. The issues raised by the members of public during the public hearing were taken into account and suitable response/answers were also commented upon and were incorporated in the final EIA Report submitted to MoEF which were deliberated during the 50<sup>th</sup> EAC meeting on 26.06.2012 and 56<sup>th</sup> EAC meeting held on 04.09.2012.
18. The Project Proponent stated that the company is in touch with various industries such as cement and brick manufacturers on utilization of the ash generated by the plant and once the project comes into force, the ash will be utilized as per the MoEF notification dated 03.11.2009 and therefore, it is not possible to undertake the ash utilization activities at the time of preparation of draft EIA Report when the project itself was not accorded final clearance and granted approval.

19. With regard to transmission system for the project, the Project Proponent states that it is to be implemented by the Power Grid Corporation Ltd., it being the public sector undertaking and therefore, this is not a part of the EIA study or clearance of project for Lara STPP.
20. According to respondent No. 3, the alleged violation of environmental norms with regard to emission and effect of project on the environment, a detailed impact analysis was carried out and incorporated in the EIA report and all the parameters prescribed under law with regard to environmental standards will be fulfilled and implemented. Apprehensions expressed by the Appellant are unfounded and not based on any facts.
21. It is the case of the Respondent No. 3 Project Proponent that the cumulative impact of the proposed project within the area was undertaken separately and submitted to MoEF vide letter dated 21.08.2012. The same was taken into account by the EAC during its 56<sup>th</sup> meeting held on 04.09.2012 and therefore, it is not correct to say that the cumulative impact of the project has not been taken into account by the EAC during the appraisal of the project.
22. With regard to effect of the project on environment due to increase of traffic both directly and indirectly as a result of setting up of the project, the Appellant states that as per the Technical EIA Guidance Manual because of higher levels of uncertainties, the cumulative impacts due to induced development or third level or even secondary indirect impacts are difficult to be quantified and therefore, the apprehensions of the Appellant are unjustified.
23. With regard to the shortage of water in river Mahanadi, excess acquisition of land for the project and perceived effect of pollution as alleged by the Appellant in his appeal, the respondent NTPC squarely denied the facts by providing details under each such allegation which will be dealt in detail while dealing with the issues at appropriate place in this judgment.

24. The Respondent No. 1 MoEF filed their reply dated 25.07.2013 denying the averments made by the appellant on the alleged shortcomings of appraisal of the project by the EAC and subsequent granting of EC by the MoEF. It was mentioned in the counter of MoEF that the EAC in its 56<sup>th</sup> meeting held on 3<sup>rd</sup> and 4<sup>th</sup> September, 2012 and 60<sup>th</sup> meeting held on 5<sup>th</sup> and 6<sup>th</sup> November, 2012 widely deliberated the concerns on various issues and having satisfied itself with the proposals of the Project Proponent and after going into the details of the EIA Report, recommended for granting EC and the appeal does not demand any merit and is liable to be dismissed.
25. The Respondent No. 2 Chhattisgarh Environment Conservation Board (for short CECB) filed their reply dated 11.07.2013 mainly on the issues pertaining to public hearing conducted by the CECB duly stating that the issues raised by the public during the public hearing were taken into account while making the report and there is no deviation from the procedure prescribed in the EIA Notification, 2006 at any stage. It was stated that there were about 950 persons who attended the public hearing and among them 92 persons have expressed their views which were duly recorded. Finally, it was stated in the counter by the CECB that the entire procedure of placing documents before the public, conducting public hearing and compliance of the procedure has been strictly done as prescribed under the EIA notification, 2006 and the appeal does not merit any consideration and is liable for dismissal.
26. From all the above discussions and deliberations on the issues raised by the Appellant as well as the replies furnished by the Respondents and after perusal of the records placed before us and having heard the parties at length, the following points have emerged for adjudication of this case :
- i. Whether the appeal filed by the Appellant is within the period of limitation?

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- ii. Whether non furnishing of information regarding the exact boundaries along with coordinates of the proposed project site in the draft EIA report and not making them available during the public hearing vitiates the whole process of appraisal and granting EC?
  - iii. Whether there is any concealment/suppression or misrepresentation of facts on the land acquired, its nature and category for the establishment of the project?
  - iv. Whether acquiring the total land in the beginning itself for the ultimate capacity of the project i.e. 5x800 MW is in consonance with the prescribed norms when the project has been revised to be executed in 2 stages with stage-I getting EC for installation of 2x800 MW units and in such case, the land acquisition for the entire ultimate capacity of 5x800 MW is permissible?
  - v. Whether the averments made by the Appellant on non-finalization and non inclusion of R&R plan both in draft as well as in final EIA report and not placing it before the public during public hearing violates the EIA Notification 2006?
  - vi. Whether the appraisal of the project is based on outdated data and wrong and incomplete EIA study and lack of detailed scrutiny and failure to discuss on the Cumulative Impact Assessment study by the EAC, as alleged by the Appellant, vitiates the process of granting the EC?
  - vii. Does the EIA Report take into account the emission from sources other than stack emission and also does it take into account the impact due to transmission line?
  - viii. Whether the water requirement for the project and the cumulative impact of the project on river Mahanadi has been studied and it fulfills the environmental norms?

- ix. Whether the issues raised during the public hearing have been addressed and taken into consideration while finalizing the EIA report based on which EAC appraised the project and MoEF granted the EC?
- x. Whether the contention of the Appellant that the EIA study doesn't include information on significant pollutants emitted due to establishment of the power plant in question, is correct?

27. Now we may take up the above points which were pressed by the Learned Counsel for the appellant, as follows.

**i. Whether the appeal filed by the Appellant is within the period of limitation?**

The Appellant has filed Miscellaneous Application (for short MA) No. 165/2013 for condonation of delay in filing the Appeal. The Appellant states that the EC dated 13.12.2012 was communicated to the Appellant on 28.12.2012 by the Respondent No.3, NTPC along with covering letter dated 24.12.2012 and the Appeal was filed on 16/23.03.2013 with a delay as the Appellant was on complete bed rest after undergoing treatment in a hospital in Mumbai due to a gunshot injury. Therefore, the delay was neither deliberate nor intended.

In reply to the M.A. the Respondent No. 3, NTPC stated that in addition to personally delivering a copy of the EC to the Appellant, the EC was advertised in two local newspapers on 18.12.2012. In spite of that the Appellant has filed the appeal on 16/23 .03.2013 i.e. 93 days after the date of accord of EC, 88 days after publication of notice regarding accord of EC in newspapers and 78 days after the copy of EC was delivered to him. Therefore, the appeal is not maintainable and barred by limitation and deserves to be dismissed.

Having considered the facts and the contents of the MA along with the supporting medical documents filed by the Appellant, we are inclined to accept the same as the respondent too not controverted the facts or disputed the medical records of the Appellant who reportedly got injured in a shooting incident and

had to undergo treatment for gunshot wounds as well as attend follow up procedures till February, 2013 and despite the fact that notice was sent to him by the Project Proponent, he was unable to travel to Delhi for filing this appeal. In the facts and circumstances, we are inclined to allow the MA No. 165/2013 and condone the delay.

**ii. Whether non furnishing of information regarding the exact boundaries along with coordinates of the proposed project site in the draft EIA report and not making them available during the public hearing vitiates the whole process of appraisal and granting EC?**

The contention of the Appellant is that the location of the site is a critical component in order to examine as to whether the proposed site is in conformity with the 'siting criteria' and once the ToR states that the site locations and the coordinates have to be given it is mandatory on the part of the Project Proponent to disclose the same in the EIA report. The Project Proponent i.e. Respondent No. 3 in their counter affidavit has accepted that at the time of the preparation of Draft Report, exact boundaries of land under acquisition were still under finalization in consultation with the State Government and hence, the location of the project was indicated through a single point coordinate instead of the coordinates of all the four corners. After the boundaries of the land, being under acquisition, were finalized, the coordinates of all the four corners for Main Plant and Township as well as ash pond were included in the final EIA Report dated 04.04.2012 submitted to MoEF. But the Appellant avers that the final EIA Report is not before the public and therefore no opportunity has been provided for the public to give their comments as to the location of the power plant and its impact. It was also submitted that by looking at the coordinates provided by the Project Proponent in the final EIA Report a major wetland is found located towards the North West section where coal ash dyke is proposed and this is contrary to the requirement of Technical EIA Guidelines Manual for Thermal

Power Plants and wetlands are not mentioned in the chapter on baseline environmental studies of 2011 EIA Report.

The MoEF in their reply stated that it is not a pre-requisite that the land required for the power project shall be in complete possession prior to appraisal by the EAC and that while there cannot be a deviation in location of a thermal power plant as stated in the final EIA Report, the EAC ensures that the site so selected does not have potential adverse environmental impacts that cannot be mitigated substantially.

It may be a fact that acquisition of huge chunk of land for the project of such magnitude is a difficult task and time consuming process and so also the scrutiny and appraisal process. But as brought out by the Appellant the *Hon'ble Supreme Court in Karnataka Industrial Areas Development Board Vs. C. Kenchappa & others* (Supra) directed that in future, before acquisition of land for development works consequences and adverse impact of development on environment must be properly comprehended and the lands be acquired for development ensuring that they do not gravely impair the ecology and environment. The necessity of conducting EIA study, including it in the DEIAR and placing it before the public during public hearing as the very basis of EIA study is on the location of the project and its surroundings.

However, in the present case though it is a fact that after acquisition of total land and after knowing the exact boundaries, final EIA report was prepared and submitted to MoEF and it was placed before the EAC which examined it and recommended the grant of EC, the point that it was not part of the DEIAR and not placed before public still remains and it is a deviation from the procedure. In the present case the single point coordinate alone was given as the land acquisition procedure has not been finalised by the Government. Based on the single point coordinate the public hearing was held at Mahloi and was attended by a large number of persons who did not raise any grievance of absence of this

information. The affected persons appeared and only raised issues of rehabilitation etc. The fact also remains that the final EIA Report does not indicate location of any such critical sites as stated supra and does not involve any potential adverse environmental impacts. Therefore, considering that it as an important infrastructural project for power generation by a Public Sector Undertaking and no motive can be attributed, some amount of flexibility is required to be given more particularly when substantial progress has already been made in the construction of the project. Certain amount of marginal variation is also required to be given keeping in view of the nature of the project, its location, economic development of the Nation albeit without allowing blatant environmental and ecological deviations, particularly when the interest of the affected persons has been taken care of.

Therefore issue No. 2 is decided against the Appellant and we hold that in the facts and circumstances of the present case non-providing of the coordinates in the DEIAR was neither deliberate nor motivated by any malafides and as such it does not vitiate the whole process of appraisal and grant of EC particularly when the same was provided in the final Environment Impact Assessment Report which was considered by the MoEF and the impact of development on environment has been taken care of and examined and no adverse impact found so as not to grant clearance, but precautionary measures by way of conditions were imposed while granting the EC.

**iii. Whether there is any concealment/suppression or misrepresentation of facts on the land acquired, its nature and category for the establishment of the project?**

According to the Appellant in the final EIA Report in the section with respect to social impact it is stated that the total land area proposed for the site is 2859 acres comprising barren and single crop agriculture land. However, it is only in the counter affidavit filed by the Respondent that the real break up of land is given. It is specifically stated in the counter affidavit that out of 944.608

hectares of private land, 681.604 hectares is of single crop and 263.004 hectares of double crop agricultural land. Thus out of the total area involved so far as private land is concerned 23% is double crop agricultural land and 59% is single crop agricultural land. The Appellant further states that the siting criteria of the MoEF clearly prohibits the use of prime agricultural land for setting up of thermal power plants and NTPC made a false statement both in Form I and in the Draft and final EIA Report that the land was barren and single crop. It was neither part of the discussion nor formed part of the project description so far as the EAC meeting is concerned nor it is mentioned in the EC. Thus this amounts to deliberate concealment of information which is material to scoping, public consultation and appraisal. The EAC has rejected thermal power plants which are located in double crop agricultural land in the past. Had the Project Proponent disclosed the existence of the same, it would have rejected the present proposal also.

However, the Respondent NTPC states that at the time of preparation of DEIAR, exact boundaries for land under acquisition were still under finalization in consultation with State Government. Hence, it was not possible to give a detailed break-up of the land in DEIAR. However, the same was presented before EAC during its 56<sup>th</sup> meeting held on 04.09.2012. The detailed break-up of land being acquired for the project is as follows:

Type of Land	Area involved	% Area involved
Pvt. Land (Single Crop Land Double Crop Land)	944.608 ha. (681.604 ha. 263.004 ha)	82% of total land (59% of Total land 23% of Total land)
Govt. Land	60.296 ha.	5% of Total land
Revenue Forest Land	151.762 ha.	13% of Total land
Total	1156.666 ha.	100%

The EIA in its 50<sup>th</sup> meeting held on 25<sup>th</sup> and 26<sup>th</sup> June, 2012 sought many additional information from the Project Proponent apart from examining the proposals submitted by the Project Proponent in compliance of the prescribed

TOR. Accordingly the Project Proponent submitted further information clarifying the issues raised by the EAC in its 50th meeting.

Subsequently, in the 56<sup>th</sup> EAC meeting dated 3rd & 4th September, 2012 further information was called by the EAC from the Project Proponent in compliance of which the Project Proponent vide their letter dated 10<sup>th</sup> Sept, 2012 furnished the information including all the details of cultivable land involved in the project. The Project Proponent has enclosed a copy of the letter dated 13.06.2011 of Chief General Manager, District Trade & Industries Centre, Raigarh, Chhattisgarh addressed to the Commissioner of Industries, Chhattisgarh enclosing the details of joint inspection carried out by the officials of the Industries Centre along with the officials of the Revenue Department on 02.06.2011 in the 9 villages where the land for project was acquired. The joint inspection report clearly gives details of private land proposed for acquisition measuring 944.608 hectares constituting approximately 681.604 hectares of single crop land and approximately 263.004 hectares of double crop land.

Therefore, it is clear that the MoEF before granting the EC dated 13.12.2012 was aware of the land requirement including that of all the crop lands acquired from the farmers and sought all necessary information. It cannot, therefore be held that the Project Proponent had concealed or misrepresented about the acquisition of agricultural land for establishing the project. Even in the final EIA report submitted by the Project Proponent the land use pattern of the study area was also furnished as soon as the acquisition details were finalized and made available by the concerned authorities of the State. Details of agricultural land and forest land were included as also the fact that several clarifications were sought from the Project Proponent by the EAC in this regard and necessary inputs were provided before the EC was granted.

We may only point out that this issue of land acquisition came out once the information was submitted by way of reply to the appeal by the respondent.

Had it been the intention to suppress the same there was no reason for the respondents to disclose the same and no issue to this effect could have been raised by the Appellant. These are thus issues of afterthought raised during the hearing of appeal.

- iv. **Whether acquiring the total land in the beginning itself for the ultimate capacity of the project i.e. 5x800 MW is in consonance with the prescribed norms when the project itself has been revised to be executed in 2 stages with stage-I getting EC for installation of 2x800 MW units and in such case, the land acquisition for the entire ultimate capacity of 5x800 MW is permissible?**

According to the Appellant's version, contrary to the direction of the MoEF, the project was not assessed for its ultimate capacity of 5x800 MW but rather for its first stage of 2x800 MW. The Project Proponent contends that it is a general practice to acquire the land for the entire project while feasibility reports are prepared in stages as and when the other resources are available. This is done to avoid the subsequent stages becoming unviable due to other major projects coming up in adjacent area and preventing further acquisition of adjoining land for later stages of concerned project as well as more importantly cost escalation due to increase in land prices at a later point of time.

We are of the view that in the facts and circumstances of this case looking to the original capacity as proposed of 5x800 MW generation and having confined the first stage to 2x800 MW it cannot be held that the land requirement should have been restricted for 2x800 MW capacity alone. We do not in the present case in the absence of any material before us to suggest that the acquisition of land by NTPC, a Public Sector Undertaking of the Govt. of India of such large tracts of land was actuated by any ulterior motive so as to call for interference in this matter.

- v. **Whether the averments made by the Appellant on non-finalization and non inclusion of R&R plan both in draft as well as in final EIA report and not placing it before the public during public hearing violates the EIA Notification 2006?**

It is the contention of the Appellant that as per the ToR issued by the MoEF detailed R&R plan shall be prepared taking into account the socio economic status of the area, homestead oustees, land labourers. But the EIA report has only stated that the “Details will be included after completion of Socio Economic Survey.” Thus, it is clear that the EIA report has failed to address the very vital issue of R&R which was mandatorily required under EIA Notification, 2006. The Appellant further submits that the R&R is an integral component of the EIA Notification, 2006 and all details with respect to the same are to be the part of the draft EIA Report. It is further submitted by the Appellant that in case the Project Proponent wanted to delink the R&R component from the EC process the same should have been brought to the notice of EAC and MoEF. In its reply the Project Proponent has stated that the project specific details of exact no. of Project Affected Persons (for short PAPs) due to land acquisition and details of compensation and R&R benefits etc. are not necessarily available at the time of public hearing and environmental appraisal. The Project Proponent pleads that the processes of EC and formulation of R&R plan are two independent activities. R&R plan is consequent to the process of land acquisition and is formulated with the National Policy on R&R issued by the Ministry of Rural Development, Government of India. It is further replied that while EIA Report covers the demographic and socio-economic aspects of population within the study area of 10 Kms radius, the project specific details of exact number of PAPs due to land acquisition and details of compensation and R&R benefits are not necessarily available at the time of public hearing.

Perusal of the ToR item No. (xxviii) indicates that detailed R&R plan is required to be prepared by the Project Proponent taking into account the socio-economic status of the area, homestead oustees, land oustees and landless labourers. But there is no specific reference that R&R plan shall be placed before the public during public hearing.

Learned counsel for the Appellant relied upon the decision of the Principal Bench of this Tribunal in the case of *M. P. Patil* (supra), relating to NTPC Kudgi Super Thermal Power Project in Bijapur District of Karnataka, wherein despite taking note of the R&R policy framed by the Ministry of Rural Development, Government of India in the year 2007 and the R&R policy prepared by the NTPC in June, 2010 the importance of the requirement of having an R&R policy was stressed and emphasis was laid on furnishing of specific details in the draft EIA report as well as in the Environment Impact Assessment Report.

We have considered the aforesaid submissions. However, in the present case there are certain salient features which have to be taken note of. In Annexure -A9, the objections which were filed by the *Jan Chetna* Organization of which the present Appellant Ramesh Agarwal claims to be an active member and which filed objections on 23<sup>rd</sup> December, 2011, there is no objection with regard to the Project Proponent not having provided the information regarding the R&R activity or programme with reference to the PAPs. Even in the original appeal which was filed on 16<sup>th</sup>/23<sup>rd</sup> March, 2013 no challenge to the EC has been raised on account of non-furnishing of the R&R plan by the Project Proponent in any specific terms other than submitting that the draft EIA report was silent on this issue, which at best is a general and passing reference

Be that as it may. From the reply of the Respondents and the documents annexed thereto it is clearly spelt out as to why the R&R and details thereof could not be included in the draft EIA report as in fact the details of the PAPs as also the area to be affected was not finalized and land acquisition proceedings were not completed. Therefore, in our view, statement of the Project Proponent in the draft EIA report that the R&R plan shall be submitted separately and shall be prepared taking into account the socio-economic status of the area, homestead oustees, land oustees, landless labourers etc. is justified and in fact the same was

duly included in the final EIA report submitted by the NTPC in March, 2012 itself before the grant of EC. Later, in compliance of the minutes of the 50<sup>th</sup> EAC meeting dated 26.06.2012 the Respondent NTPC submitted final R&R plan to MoEF on 24.08.2012 and the same was considered by EAC during its 56<sup>th</sup> meeting held on 04.09.2012. Nevertheless, it is clear that final EIA Report was prepared in March 2012 without including the detailed/final R&R plan. However, the final R&R plan was put-up in the 56<sup>th</sup> meeting of EAC and after examining the plan, EAC recommended for grant of EC based on the details of activities proposed under R&R.

Having said so it may also be stated that the Respondent NTPC placed on record details of the R&R works which had been initiated right from the year 2011-12 in accordance with the guidelines framed by the Ministry of Rural Development, Govt. of India and the R&R policy prepared by the NTPC itself in June, 2012. The documents and report prepared by the NTPC in February, 2014 spells out the works which were undertaken in the year 2011-12 and specifically completed as also the works which have been subsequently undertaken in the year 2012-13 and 2013-14. As per the aforesaid information R&R and CSR activities were commenced right from the year 2011-12 even before the preparation and finalization of the R&R plan, in consultation with State government officials and some of the issues which were raised during the public hearing were taken note of and works initiated by the Project Proponent as per the details given in the said documents. These included not only community works but also economic activities undertaken by the cooperative societies of the PAPs and individual works awarded to the individual PAPs. The fears which were expressed in the case of NTPC Kudgi power plant judgment (supra) that R&R claims and plans should take into consideration the hardships being faced by the persons who are likely to be displaced or adversely affected and specific measures should be taken with reference to such persons and included in the

R&R claims, we are of the opinion that the present case on the basis of the information provided by the Respondents by way of their report of February, 2014 as also the commitment under the final EIA report as well as in the draft EIA report along with the policy of the NTPC framed in June, 2010 for all the NTPC projects leaves no room for doubt that the process of grant of EC has been vitiated as a result of non-furnishing of the detailed R&R plan by the Project Proponent during public hearing.

We are therefore, unable to accept the aforesaid contention of the Appellant that failure on the part of the Project Proponent of not having finalised and not included the R&R plan in the draft as well as in the final EIA report vitiates the EC so as to violate the provision of the EIA Notification, 2006.

That apart, even as per the case of the Appellant, as submitted, was that it was permissible for the Project Proponent to have sought delinking of the R&R process from the EC process but the same was not sought. This, in itself suggests that the two can be delinked and examined separately. The R&R component is also linked to the acquisition of land and adverse effect it may have on the PAPs. This leads us to further issues of not having provided the four coordinates and not provided the full information about the nature of land to be acquired etc. Thus, the three issues are interlinked and if it is permissible for delinking the R&R from EC process then surely it cannot be a material defect by not providing this information in detail in the DEIAR so as to affect the grant of EC after final assessment when these issues have been considered before grant of EC even though information was not supplied in the DEIAR by the Project Proponent.

We are therefore of the view that any deficiency in the DEIAR with regard to R&R will not affect or result in the total cancellation of the EC when in the present case R&R plans have been submitted before grant of EC and made

part of EC condition and being executed by the Project Proponent in terms of the EC conditions.

- vi. **Whether the appraisal of the project is based on outdated data and wrong and incomplete EIA study and lack of detailed scrutiny and failure to discuss on the Cumulative Impact Assessment by the EAC, as alleged by the Appellant, vitiates the process of granting the EC?**

As already brought out (supra) the contention of the Appellant is that the EIA Report is prepared on the basis of outdated data collected for the period from December, 2006 to November, 2007. Even though, the Project Proponent justified the same by stating that one season data of pre-monsoon period of 2011 has been included in the Final Report submitted to MoEF as the DEIAR was submitted at the initial stage in 2007, the public were not aware of the latest data collected during pre-monsoon season of 2011 as the same was not available at the time of public hearing conducted on 23.12.2011. The Project Proponent justifies that only one season data (except monsoon season) is required for EIA study of thermal power projects as per the Technical EIA Guidance manual for Thermal Power Plants. Moreover, the thermal power plant is yet to come and hence its contribution is not part of existing ambient air quality, whether it was measured in 2006-07 or in 2011. It is only giving the background concentration. It is the incremental ground level concentration, which is more important for ambient air quality of the area after the thermal power plant is established and operated.

We are of the view that as submitted by the Learned Counsel for the Project Proponent that due to installation of high efficiency Electrostatic Precipitators the emission of particulate matter shall be limited to 50 mg/Nm<sup>3</sup> and the incremental ground level of the particulate matter due to operation of the stage-I of 2 x 800 MW of the project shall be order of 1.03µg/m<sup>3</sup>. Therefore there is no possibility of exceeding the standards prescribed under National

Ambient Air Quality Standards (NAAQS) by the Project Proponent and as such no interference is called for by this Tribunal.

Further, it is clear that cumulative impact of the existing and proposed projects within the area was undertaken separately and submitted by the Project Proponent to MoEF vide letter dated 24.8.2012 and the same was considered by the EAC in its 56<sup>th</sup> meeting held on 4.9.2012.

With regard to the averments made by the Appellant pointing out the deficiencies at the appraisal stage by the EAC it is clear from the record placed before us that the EAC has appraised the project with updated data on air, noise, meteorological and water quality collected for pre-monsoon season of 2011 as mentioned in the final EIA report submitted by the Project Proponent to the Respondent No. 1/ MoEF vide its letter dated 3<sup>rd</sup> April, 2011 and therefore no interference is called for by this Tribunal .

**vii. Does the EIA Report take into account the emission from sources other than stack emission and also does it take into account the impact due to transmission line?**

It is the case of the Appellant that the EIA has to take into account the impact due to both non-stack emissions (fugitive emissions) as well as transmission lines. But this is not done in this project. The Appellant further states that the EIA Report is silent on the layout of transmission system, land requirement and its type and it is also not clear whether the land required for transmission line is free of encumbrances. The Project Proponent denied that the impact analysis on ambient air was incomplete and indirect contributions of the project as stated in the appeal cannot be taken into account in such analysis. Here it is important to mention that the fugitive emissions are relevant in industries where process emissions are significant source of air pollution. In thermal power plants, there is no process emission. The emission is mainly due to burning of coal. The fugitive emissions or non-stack emissions are only due to coal

handling, which is taken care of by dust suppression measures adopted including sprinkling of water on coal during handling. The Technical EIA Guidance Manual for Thermal Power Plants states that the cumulative impacts due to induced development or their level or even secondary indirect impacts are difficult to be quantified and because of higher level of uncertainties, these impacts cannot normally be assessed over a long time of horizon. Further, the guidelines for conducting Air Quality Modeling for Assessment of impacts to Air Environment published by Central Pollution Control Board (for short CPCB) also considers the impacts due to stack emissions only. Therefore, the impact analysis on ambient air was in accordance with the relevant manuals and guidelines and as per the prevailing practice for EIA studies for Thermal Power Projects.

Respondent NTPC has clearly stated that it has already adopted an emission limit of 50 mg/Nm<sup>3</sup> for the project, which is much below the National Standards of 150 mg/Nm<sup>3</sup> for Thermal Power Plants with generation capacity of 210 MW and above, notified under Schedule-I of Environment (Protection) Rules, 1986 at serial number 25. With regard to the allegation of the appellant that EIA Report provided incomplete impact analysis of NAAQS, the Project Proponent states that the indirect contributions of the project cannot be taken into account in such analysis and Technical EIA Guidance Manual for Thermal Power Plants 2010 states that “the cumulative impacts due to induced development or third level or even secondary indirect impacts are difficult to be quantified. Because of higher levels of uncertainties these impacts cannot normally be assessed for a long time horizon.” Moreover the guidelines for conducting air quality modeling for assessment of impacts to air environment published by CPCB also considers the impacts due to stack emissions only as this is the main source of air pollution and other indirect sources are not significant.

The Project Proponent further stated that the coal handling areas where the coal is unloaded from the railway wagons as well as coal yards are provided with dust suppression system having water sprinklers to minimize emission of dust and conveyer belt carrying coal from unloading area to coal stock yards and all the transfer points are also covered and have the provisions for dust suppression systems. Apart from the above, green belt is proposed to act as wind breaks and further prevent emissions of fugitive dust.

Likewise, ash handling will be done to prevent pollution. Fly ash is extracted from flu gas through high efficiency Electrostatic Precipitators. Ash is taken from Electrostatic Hoppers in dry form and transported to ash storage silos using pneumatic conveying system through closed pipelines so that there are no chances of fugitive emissions. Storage silos are provided with bag fitters to prevent fugitive dust emission.

All the above precautions have been highlighted in the minutes of the EAC meeting and form part of EC conditions. Further, the Project Proponent has undertaken that fugitive emissions due to vehicular movement are controlled through paving of all roads within the plant area and its vicinity as well as proper maintenance of vehicles. The final EIA Report also gives the particulars of impact of fugitive emissions from various sources and measures to be taken to control them.

With regard to perceived impact of transmission line to be laid, though it is not a part of ToR, the Technical EIA Guidance Manual for Thermal Power Plants states that the major component of Thermal Power Plants includes the power system i.e. power source turbine and generator and associated facilities which may include the electrical substation and transmission line which will determine the nature and intensity of environmental impact. The Respondent No. 3 NTPC avers that the Power Grid Corporation of India Ltd. (for short PGCIL) is the concerned authority to develop the transmission and distribution system and

in this regard PGCIL to take necessary clearance. Therefore, the answer to the point No. vii is in affirmative and no interference is called for by this Tribunal

**viii. Whether the water requirement for the project and the cumulative impact of the project on river Mahanadi has been studied and it fulfills the environmental norms?**

The Appellant has highlighted the impact on river Mahanadi in the Appeal and expressed his apprehensions whether river Mahanadi will be able to meet the water requirement of various power projects including the project of the Respondent NTPC and other activities on its course. As per the ToR data on source of water and its availability and territorial and river ecology has to be collected. The EIA report details the surface water quality and the Project Proponent stated that the backwaters of Hirakund Reservoir on river Mahanadi existing within 10 km. of the project are not having any ecologically sensitive wetlands and the notification on the Wetlands (Conservation & Management) Rules, 2010 are not violated in this case and both the Central and State Water Commissions have undertaken detailed study on the availability of water in Mahanadi before according the water commitment to the project and only the surplus water flowing in the river during the monsoon period will be tapped by constructing a barrage and utilized for the project. Thus we find that on consideration of the relevant material the appraisals have been made and no exception can be taken to the same.

**ix. Whether the issues raised during the public hearing have been addressed and taken into consideration while finalizing the EIA report based on which EAC appraised the project and MoEF granted the EC?**

The Appellant has contended that the public was not informed about the true impact of the project. However, the Respondent NTPC in its reply has averred that questions raised by the public and NTPC's response were recorded and submitted to the EAC and they find place in the final EIA report. They also

argued that the objections raised by the public were due to lack of understanding of the issues by the public rather than the deficiency in the EIA report.

On perusal of the written submissions of the Appellant listing the issues raised during the public hearing and NTPC's response, which are furnished in a tabular form, we are of the opinion that the questions were recorded and answered by the Respondent NTPC which as per the Appellant are not to his satisfaction. Nonetheless, all were answered and response recorded and the EAC was the authority that needs to scrutinise the validity of the NTPC's response which it has done in the meeting. Therefore the contention of the Appellant is not well founded.

- x. **Whether the contention of the Appellant that the EIA study does not include information on significant pollutants emitted due to establishment of the power plant in question, is correct?**

The major concern expressed by the Appellant is with regard to the effect of radioactivity from the coal ash, emission of VOCs and other pollutants such as Lead, Carbon Monoxide, Ammonia, Benzene, Benzo(o)Pyrene, Arsenic, Nickel etc. With regard to effect of nuclear radiation from the coal powered Thermal Power Plants the Project Proponent states that there are no standards for radioactivity from coal ash. The monitoring and regulation of presence of radioactive materials comes under Atomic Energy Act, 1962 and is being regulated by Department of Atomic Energy, Government of India, which is beyond the purview of Air (Prevention and Control of Pollution) Act, 1981 and also NGT Act, 2010. The relevant section under the Air (Prevention and Control of Pollution) Act, 1981 is reproduced hereunder:

***Section 52. Effect of other Laws:*** *Save as otherwise provided by or under the Atomic Energy Act, 1962 (33 of 1962), in relation to radioactive air pollution the provision of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act.*

As stated himself by the Appellant in his *Appeal No. 07/2011 in Krishi Vigyan Arogya Sansthan vs. MoEF*, this Tribunal has agreed that no such

standards are prescribed with regard to nuclear radiation from the coal fired Thermal Power Plants and therefore the MoEF was directed to initiate long term study with reference to coal ash generated by the Thermal Power Plants. Accordingly, the Respondent No.1 has written to the Department of Atomic Energy, Bhabha Atomic Research Centre and CPCB on 24.05.2012 for formulation of standards for level of radiation from coal based Thermal Power Plants and the Department of Atomic Energy has constituted a task group review the matter and make necessary recommendations. Thus, it was not possible for EAC to make any reference on possible nuclear radioactivity level of the coal used for the proposed Thermal Power Plant. Therefore, the contention of the Appellant that the EAC neither made any reference nor sought any information from the Project Proponent with respect to the possible radioactivity levels, is not sustainable as EAC being aware that no such standards are prescribed.

With regard to VOCs and other pollutants stated above, the Project Proponent in the draft EIA report has stated that NTPC had undertaken fresh environmental monitoring for pre monsoon season of 2011 in all the 4 monitoring locations and noted that the monitored base line values are far below NAAQ standards with respect to Suspended Particulate Matter, Respirable Particulate Matter, Sulphur Dioxide, Oxides of Nitrogen, Mercury and Ozone. As stated by the Appellant study on the rest of the aforesaid pollutants is not done and included in the EIA report and it is a fact that there is no mention about these pollutants in the EIA report. ToR dated 01.08.2007 prescribed in this case relating to AAQ data, are reproduced below:

- xii One season data (except monsoon) to be given*
- xiii Impact of the project on the AAQ of the area, details of the model used and the input data used for modelling should also be provided.*

At the time of collection of environmental data from December, 2006 to

November, 2007 NAAQS notified by the CPCB does not include Benzene, Benzo(o) Pyrene, Arsenic and Nickel. These pollutants were included in NAAQS in 2009 notification. With regard to VOCs, they were never a part of NAAQ Standards notified by the CPCB. Normally, the impact on ambient air quality is studied for the parameters which are prescribed for regulating emissions from thermal power plants. In the EIA Manual or the Standards notified under Environment (Protection) Rules, 1986, these parameters are not prescribed as regulating parameters for the monitoring and regulation. In such situation monitoring of these parameters in ambient air quality before the industry is established, will not in any manner help assessing its impact. If at all such pollutants are detected in the ambient air quality, they might be present due to some other sources. If such parameters are not regulatory parameters for the thermal power plants, such monitoring will not provide any information on impact of thermal power plants on ambient air quality. However, as per specific condition no. (v) of EC a long term study on radio-activity and heavy metals contents has to be done by the Project Proponent. Thus taking into account of the overall impact of the project and since sufficient safeguards have been incorporated in the conditions while granting the EC and regular monitoring of pollutants is a necessity once the project comes into being the apprehension expressed by the Appellant is not significant enough to take into account when considered with the overall process of EIA preparation, appraisal and grant of EC.

28. Lastly, it has been submitted by the Appellant that the EAC ought to have given reasons for acceptance or rejection. We find from the material on record that at several stages of the appraisal various queries were raised and further information was sought from the Project Proponent. This is evident from the Minutes of the Meetings of the EAC. After each such meeting the NTPC has submitted its response with supporting material and documents which came to be placed before

the EAC in the subsequent meetings where it is recorded that various material received from the Project Proponent was placed before the members for consideration and on having considered the same the Committee was satisfied and recommended that the EC may be granted.

29. Learned Counsel argued at length that this was not in accordance with the law as laid down in various judgements regarding appreciation of the material, its consideration and requirement to give reasons. We have given our thoughtful consideration to the above submission and the judgements relied upon by the Learned Counsel for the Appellant. While there can be no quarrel with the general proposition of recording the facts and circumstances of the present case, the procedure for appraisal has been prescribed under the Environment Clearance Regulations, 2006 itself in detail along with the format prescribed under Appendix V in which the order is required to be passed. Unfortunately, in the cases cited before us this aspect has not at all been cited.
30. The procedure as provided and prescribed under the Environment Clearance Regulations, 2006 is as follows:

***“7. Stages in the Prior Environmental Clearance (EC) Process for New Projects***

*I. Stage (1) .....*

*II. Stage (2) .....*

*III. Stage (3) .....*

*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 ;*

**APPENDIX –V**  
**(See paragraph 7)**

**PROCEDURE PRESCRIBED FOR APPRAISAL**

*1. The applicant shall apply to the concerned regulatory authority through a simple communication enclosing the following documents where public consultations are mandatory: -*

- Final Environment Impact Assessment Report [20(twenty) hard copies and 1 (one) soft copy]*
- A copy of the video tape or CD of the public hearing proceedings*
- A copy of final layout plan (20 copies)*
- A copy of the project feasibility report (1 copy)*

*2. The Final EIA Report and the other relevant documents submitted by the applicant shall be scrutinized in office within 30 days from the date of its receipt by the concerned Regulatory Authority strictly with reference to the TOR and the inadequacies noted shall be communicated electronically or otherwise in a single set to the Members of the EAC /SEAC enclosing a copy each of the Final EIA Report including the public hearing proceedings and other public responses received along with a copy of Form -1or Form 1A and scheduled date of the EAC /SEAC meeting for considering the proposal .*

*3. Where a public consultation is not mandatory and therefore a formal EIA study is not required, the appraisal shall be made on the basis of the prescribed application Form 1 and a pre-feasibility report in the case of all projects and activities other than Item 8 of the*

*Schedule .In the case of Item 8 of the Schedule, considering its unique project cycle , the EAC or SEAC concerned shall appraise all Category B projects or activities on the basis of Form 1, Form 1A and the conceptual plan and stipulate the conditions for environmental clearance . As and when the applicant submits the approved scheme /building plans complying with the stipulated environmental clearance conditions with all other necessary statutory approvals, the EAC /SEAC shall recommend the grant of environmental clearance to the competent authority.*

*4. Every application shall be placed before the EAC /SEAC and its appraisal completed within 60 days of its receipt with requisite documents / details in the prescribed manner.*

*5. The applicant shall be informed at least 15 (fifteen) days prior to the scheduled date of the EAC /SEAC meeting for considering the project proposal.*

*6. The minutes of the EAC /SEAC meeting shall be finalized within 5 working days of the meeting and displayed on the website of the concerned regulatory authority. In case the project or activity is recommended for grant of EC, then the minutes shall clearly list out the specific environmental safeguards and conditions. In case the recommendations are for rejection, the reasons for the same shall also be explicitly stated.”*

31. The Scheme of appraisal quoted above clearly goes to show that under para IV Stage (4) Sub para (i) while carrying out appraisal the Expert may seek to clarify any doubts by inviting the Project Proponent if any clarification is required. The necessity is only in the event of any doubts requiring clarification from the Project Proponent and not any other person. On conclusion of these proceedings the EAC or SEAC concerned shall make their recommendations to the regulatory authority either for grant of prior EC on terms and conditions or for rejection of the application for prior EC. In our view the words “together with reasons for the same” only refer to reasons for rejection. This is clear from a perusal of sub-para (iii) of Para IV. Stage (4) under which it is provided that “the prescribed procedure for appraisal is given in Appendix V”. A perusal of Appendix V para 6 quoted above only requires that in the case of favourable recommendation for grant of EC “the minutes shall clearly list out the specific environmental safeguards and conditions” as opposed to giving any reason for acceptance of the application. It further provides that it is only “in case the recommendations are for rejection, the reasons for the same shall also be explicitly stated.”

32. Unfortunately while deciding some of the cases the above statutory provision and requirement of giving reasons only in the case of rejection as opposed to reasons for giving a favourable recommendation with specific environmental safeguards and conditions, was not cited and thus the judgements came to be delivered on the basis of general principles of administrative law. When there is a specific provision and a format is prescribed under the law dealing the special subject the special law shall override the general law and no fault can be found if the recommendations for grant of EC by the EAC in favour of the Project Proponent when made without elaborating the same in the order for acceptance. The law has taken care to provide remedy to any person aggrieved in the form of filing an appeal against the grant of EC which the Appellant has done in the present case and on a consideration of the issues raised in the appeal, we do not find any substance in any of the objections raised before us so as to warrant interference even assuming the reasons ought to have been recorded for the benefit of any objector or member of general public.
33. The entire scope of the operation and implementation of the Environmental Laws takes care to see that all possible aspects are analysed before the permissions are granted. The EC when granted takes care of putting various conditions which must at all times be observed by the Project Proponent. Implementation of such conditions is mandatory and continuous monitoring of emissions and discharge under Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974 is mandatory and non-compliance can result in withholding of consents under the aforesaid acts which are to be given on inspection. The PAPs can also in the event of non-implementation of R&R measures or CSR measures approach for their implementation and seek additional measures if required in the interest of general public. Thus, in the present case we

do not find from the issues raised that grievances of the appellant are such so as to call for interference as discussed above.

34. We accordingly hold that the EC granted based on such recommendation of the EAC in accordance with Para IV. Stage (4), Sub-para (iii) and as per procedure prescribed for Appraisal in Appendix V cannot be found fault with. Having said so we may add that the objections which were raised by the Appellant are the same as those which have been raised in this appeal which we have already dealt with above and we have found no merit in the same. As such we find no merit in the submission and the same is accordingly rejected.
35. As a result of our above discussion, we are of the opinion that the grant of EC to the NTPC Respondent No. 3 vide letter dated 31.12.2012 does not call for any interference. The appeal is accordingly dismissed.
36. There shall be no order as to costs.

**Bhopal;**  
**August 22<sup>nd</sup>, 2014**

**(Mr. Justice Dalip Singh)**  
**Judicial Member**

**(Mr. P.S.Rao)**  
**Expert Member**

**NGT**