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

APPEAL No. 22 of 2011(T)

1. Jan Chetna
   Through its Member
   Ramesh Agrawal
   Satyam Kunj, Naya Ganj,
   Raigarh, Chhattisgarh-496001.

2. Rajesh Tripathi
   159-Kelo Vihar Colony
   Raigarh (C.G.)-496001

Applicant/Petitioner

Versus

1. Ministry of Environment & Forests
   Through the Secretary,
   Paryavaran Bhavan, CGO Complex,
   Lodhi Road, New Delhi-110003.

2. Chhattisgarh Environment conservation Board
   Through the Member Secretary
   1-Tilak Nagar,Shiv Mandir Chowkl,
   Main Road, Avanti Vihar, Raipur,
   Chhattisgarh.

3. M/s Scania Steel & Power Ltd.
   Post Punjipatra,
   22 Kms Gharghoda Road,
   District Raigarh (Chhattisgarh).

Respondents

Counsel for Appllent:
Shri Raj Panjwani, Sr. Advocate.
alongwith Shri Ritwick Dutta, Advocate and Shri Rahul Choudhary, Adv.

Counsel for Respondents:
Ms. Neelam Rathore, Advocate for R.1 (MoEF)
Ms. Yogmaya Agnihotri, Advocate for R-2 (CECB)
Ms. Kanika Agnihotri, Advocate
& Sh. Parikshit Kumar for R-3 (M/s Scania Steel Powers Ltd.)

JUDGMENT

PRESENT:

Justice A.S. Naidu (Acting Chairperson)
Dr. G.K. Pandey (Expert Member)

Dated 9th February, 2012

JUDGMENT BY THE BENCH

M/s. Scania Steels & Power Ltd. (formerly known as Sidhi Vinayak Sponge Iron Ltd.) was operating a Sponge Iron Plant in Village Punjipatra, Tehsil Gharghoda, District Raigarh in the State of Chhattisgarh, before 2004 i.e. prior to issuance of EIA Notification, 2006. The production capacity of the said existing unit was 66,000 TPA of Sponge Iron (2 x 100 TPD kilns). The rules which governed at the relevant time did not mandate any need for seeking environment clearance for establishing Sponge Iron Units and as such, no environmental clearance was obtained, for installation of the said unit.

2. In the year, 2008, M/s Scania Steels & Power Ltd. (hereinafter called as Scania for the sake of brevity) applied to the MoEF for expansion of the existing project. It proposed to enhance the production of Sponge Iron from 66,000 TPA to 1,32,000 TPA by

adding another unit or 66,000 TPA, install a Steel Melting Shop (Induction Furnace, 3x15 tons) with CCM facility of 1,35,000 TPA capacity, a Ferro Alloy Plant (5MVA) of 7,5000 TPA and Captive Power Plant of 25 MW, (AFBC 17 MW + WHRB 8 MW). The proposal was considered by the MoEF and environment clearance (EC) was granted by letter dated 5th November, 2008 for the proposed expansion.

3. Jan Chetna (Appellant No.1) claiming to be a social and environmental group formed with the objective of working for the welfare of the local communities and creating awareness on social and environmental issues, represented through one or its Member Shri Ramesh Agrawal, and Shri Rajesh Tripathi claiming to be a Project affected person, having agriculture land adjacent to the project site and also claiming to be a social activist and a member of Jan Chetna, assailed the order dated 5th November, 2008, passed by the Ministry of Environment and Forests **(MoEF)** granting EC for expansion of the project in question before the then National Environment Appellate Authority **(NEAA)**. The said Appeal was registered as NEAA Appeal No. 8/2009.

4. On preliminary scrutiny the NEAA noticed that the Appeal was presented beyond the period prescribed and posted the matter for hearing on condonation of delay. After hearing parties the NEAA declined to condone the delay and dismissed the Appeal. The said order was assailed by the present Appellant before the High Court of Delhi in WPC No.11157 of 2009. The Hon'ble High Court by order dated 14th October, 2009 set aside the order passed by NEAA and directed the said Authority to dispose of the Appeal on merits, as expeditiously as possible. The Hon'ble High Court further observed that the question of *locus standi* of the Appellants can be raised by Scania and the said contention shall be dealt with in accordance with

law. While NEAA was in session of the case, The NGT Act was promulgated and in consonance with the provisions of the said Act, the Appeal stood transferred to this Tribunal and was registered as NGT Appeal No.22/2011.

5. The main grievances of the Appellants are two fold:

a) That the Environment Clearance was granted to the project without Public Hearing, required under Clause-7 of EIA Notification, 2006.

b) The EAC in its meeting held on 15th April, 2008 erroneously exempted the proposal for Public Hearing under Clause-7(ii) of EIA Notification, 2006, construing the proposal to be an expansion project**.**

The Appellants have elaborated the said contentions in different paragraph of their Memorandum of Appeal and contented that the EC to the project, having been granted by the MoEF without conducting proper Public Hearing which is a pre-requisite under the EIA Notification, the same is illegal and needs to be quashed. In support of their contentions they have enclosed as many as 16 documents which are marked as **Annexure A-1 to A-16, to the Appeal Memorandum.**

6. Respondent No.2-Chhattisgarh Environment Conservation Board (CECB), has filed a reply mainly taking the stand that the MoEF after examining all the aspects of the matter had come to the conclusion that no Public Hearing/consultation was required as per Clause-7(ii) of the EIA Notification, 2006, as the proposal was one for expansion of the proposed unit in the same campus. It further contended that the EC was granted subject to certain specific and general conditions enumerated in the letter itself, and it appears that Respondent No.3, had not adhered to some of the conditions and as such a criminal complaint, has been initiated against the said Respondent. It is further, averred that Respondent No.2 is vigilant

and will take appropriated action if there is any deviation or breach of conditions as and when it occurs.

7. Respondent No.3 Scania has filed a reply before the NEAA. The said Respondent also filed another reply before this Tribunal with regard to the merits of the case. In its reply Scania raised preliminary objection with regard to the *locus-standi* of the Appellants and contended that the present Appeal having been filed under the National Environment Appellate Authority Act, 1997, the mandatory requirement of the said Act has to be considered. Under the said Act, it is averred, an Appeal can be filed only by a person who is:

a) Either affected by the grant of Environment Clearance;
b) xxx
c) Any association of persons (whether incorporated or not) likely to be affected by such order and functioning in the field of environment.

According to **Scania** the Appellants do not satisfy either of the clauses, and as such they have no *locus-satndi to* prefer this Appeal, and the same may be dismissed, in *limine,* on that ground alone.

8. Scania further contended that the EC, having been granted, by Statutory Authorities, in consonance with settled procedure established under law, the Appellants who are nothing but *meddlesome interloper* cannot question the same. Further, according to said Respondent, the proposal being one for expansion of a existing plant, is squarely covered under Calause-7(ii) of EIA Notification, 2006 and did not require any Public consultation. That apart it is contended that persons having highly technical knowledge and expertise in the field, have examined the project proposal for expansion, and being satisfied that the proposal is only for expansion have rightly accorded

clearance. In support of the contentions raised, Respondent No.3 has also annexed several documents to its reply.

9. In course of hearing Mr. Panjwani, Learned Senior Advocate, submitted that EIA Notification of 1994, was amended in the year 1997 by incorporating Public Hearing as a mandatory requirement, before granting or refusing issuance of EC. The Notification of the year 2006, has gone one step further and introduce "Public Consultation also to be mandatory a requirement. The purpose of EIA is not just to assess environmental impacts as a procedural formality, but it is meant to improve the quality of the decision and in particular to ensure that the decision is based on proper assessment, evaluation of the pros and cons including cost and benefit in general, and in particular to ensure that the project is not thrust upon the citizens against their wishes, without taking into account their comforts and other living conditions. It is submitted that the process of public consultation / hearing is not to be viewed as a part of only an environmental law requirement, on the other hand the same should be viewed as an essential feature of democracy. Transparency being the key to the democratic system, informing the public and seeking their views, comments and suggestions, before taking any socially sensitive decision, like granting clearance to a project, is contrary to the mandates of the law. The essential part of good governance requires that the public in general should not be kept in dark and the persons who are likely to be affected by the project are to be informed in advance about the consequences thereon and also granted an opportunity to participate in the decision making process. Public participation, according to Mr. Panjwani is also required to ensure that the project meets citizens' need and is viable and beneficial to the common man.

Relying upon the decision of ***S.P. Gupta V/s Union of India & Others (1981) SCC Supplementary (Page-87)***, it is submitted that "a

popular Govt. without popular information or the means of obtaining it, is but a prologue to a fast or tragedy or perhaps both. The citizens' right to know the facts, the true facts, about, the administration of the country is thus one of the pillars of democratic State and that is why the demand for openness in the Government is increasingly growing in different parts of the world".

Mr. Panjwani had also relied upon the judgment of the Supreme Court in the cases of **Dinesh Trivedi V/s Union of India and Others (1997) 3 SCC 306, Secretary, Ministry of Information and Broadcasting V/s. Cricket Association of Bengal (1995) 2 SCC 161, State of U.P. V/s Rajnarayan & Others (1975) 4 SCC 428, Research Foundation for Science Technology National Research Policy V/s Union of India and another (2003) 9 SCALE 303), Essar Oil Ltd. V/s Halar Utkarsh Samiti (2004) 2 SCC 392, Lafarge Umium Pvt. Ltd. V/s Union of India, Uttkarsh Mandal V/s Union of India, 2009 (10) AD (Delhi) 365 (28, 33-35, 36-42).**

Drawing attention to the facts of the case, Mr. Panjwani submitted that **Scania** prior to 2006, had established a plant for manufacturing Sponge Iron, with an existing capacity of 66,000 TPA. At the relevant time the law did not mandate EC to be granted to such plants and as such no EC was granted. In the year 2008, **Scania** submitted Form-1, where the product and production of the projects has become manifold. In as much as it intends to double the capacity of Sponge Iron Plant, install a Steel Melting Shop, a Ferro Alloy Plant and a Captive Power Plant. A cumulative assessment of the entire proposal would lead to an irresistible conclusion that; in a camaflouge way, the said Respondent, not only intends to double the capacity of the existing Sponge Iron Plant, but also is trying to install Steel Melting Shop, Ferro Alloy Plant and Captive Power Plant. Law is well settled that if a new project proponent, in the year 2008, wants to establish a

Sponge Iron Plant (Unit) having a capacity of 66,000 TPA, and or wants to install a Steel Melting Shop of 1,35,000 TPA and or Ferro Alloy Plant having a capacity of 7,500 TPA and or a Captive Power Plant, it has to undergo the process stipulated in the EIA Notification, 2006. The said Notification, according to Mr. Panjwani, mandatorily requires Public consultation either for each of the plant or cumulatively for all. The present proposal, at no stretch of imagination can be considered to be an expansion of an old Sponge Iron Plant having a capacity of 66,000 TPA installed much prior to 2006. Each of the proposed units are independent and have to be assessed according to the norms stipulated for granting EC, for any new project, and that too, after following the requirements of EIA Notification, 2006. The present attempt is to bypass the requirement of 2006 Notification, by nomenclaturing all the new four units as expansion of the existing unit, according to the Appellants, is misnomer, and the EC granted for all the four units enumerated above, treating them to be expansion of the existing unit and avoiding Public consultation cannot be sustained.

10. Further, according to Mr. Panjwani, the attempt made to bring the proposal, within the purview of Clause-7(ii) of the EIA Notification, 2006 is also misconceived. The said provision, it is submitted can be involved if a Project Proponent had prior environmental clearance for the plant which is intended to be expanded or modernized. Mr. Panjwani forcefully submitted that even otherwise Caluse-7(ii) of the EIA Notification, 2006 has absolutely no application to the case in hand in as much as, the plant, which is sought to be expanded had not obtained prior environmental clearance under EIA Notification, 2006. The MoEF, it is submitted had misguided itself in not properly interpreting Clause 7(ii) of the EIA Notification, 2006 and the EC granted, being contrary to law, needs to be set aside.

11. The allegation with regard to the *locus-standi* is strongly repudiated on behalf of the Appellants and it is submitted that the Appellants squarely satisfy Clause (a) and (c) of Sub-Section 2 of Section 11 of the NEAA Act, 1997. In this connection Mr. Panjwani drew our attention to Para 2 & 3 of the Memorandum of Appeal and submitted that Appellant No.2 is the owner of agricultural lands situated adjacent to the project site appertaining to Patwari Halka No. 34 and would be directly affected by the project. Appellant No.1 is an Association of inhabitants of the locality who are also going to be affected by the project. Added to it, members of Appellant No.1 have filed objections and taken active interest and participated in the process, thus, it is not correct to say that they have no *locus-standi* to file the present Appeal.

12. Ms. Kanika Agnihotri, Learned Counsel appearing for Respondent No.3 "**Scania**", repudiated the submissions made on behalf of the Appellants. According to Ms. Agnihotri, the present Appellant does not have the *locus-standi* to file the Appeal. Drawing our attention to Section-11(1) and 11(2) of the National Environment Appellate Authority Act, 1997, under which the Appeal was filed, it is submitted that, only a person or an Association of person, who are likely to be affected by the grant of EC to the proponent, can file an Appeal. The Appellants, it is submitted have miserably failed to satisfy as to how they are affected by the grant of EC. In the alternative it is submitted that as the project was only for expansion of an existing plant, the only grievance of any person could be with regard to the environmental impact, and the said aspect has been duly considered by the EAC, therefore, the Appeal filed by the Appellants is not maintainable.

13. In support of the contention that the project in question was an expansion project and not a new project, Ms Agnihotri made following submissions:

i) No other land was required for setting up the proposed new units, and thus there is no question of displacement of any person nor there is necessity to acquire any further land.

ii) The proposal is confined to expansion of an already existing project, and as such it attracts the provisions of Clause 7(ii) of the EIA Notification, 2006.

Expanding here arguments, Ms Agnihotri submitted that as no lands are required to be acquired, the only concern that can trouble the Appellants would be any damage which may be caused to the environment. The question whether the proposed project is damaging or is capable of damaging the environment is a scientific proposition and the same was considered and taken care of by Competent Authorities on the basis of numerous documents, data and research work produced by the **Scania**, before the Environment Appraisal Committee (EAC). Relying upon the EIA report dated July, 2008, **Annexure-I**, it is submitted that the Authorities have made, in-depths analysis of all the relevant factors of Environmental Impacts such as impact on ambient air quality, impact on ecology, water, environment, topography, land use, traffic pattern, air pollution, noise pollution, water pollution, solid waste management, green belt development, occupational health management, and rain water harvesting etc. and were satisfied and submitted their Report.

14. The concept of Public Consultation, according to Ms. Kanika Agnihotri is to achieve greater objectivity and to ensure that the interest of the public are protected. The said contingency arises only if a new project is set up, and not when an expansion takes place of an existing project. Relying upon the decision of Bombay High Court, in the case of **Dighi Koli Samaj Mumbai Rahivasi Sangh Vs UOI &**

Ors., 2009 (50 Bom CR 97), it is submitted that the proposal being one for expansion, Public Hearing is not necessary.

Relying upon the decision of the Supreme Court in the case of **ND Jayal & Another Vs. Union of India & Ors. (2004) 9 SCC 362.** Ms Agnihotri further submitted that the Appellant being a busy body should not be permitted to sit in judgment over the scientific analysis relating to the safety of the project, more so because, Competent Government Authorities possessing sound technical knowledge have taken a decision after due consideration of all the materials available.

15. With regard to the exemption of Public Consultation, granted to the proposed project, it is submitted that the contents of EIA Notification, 2006, lead to no doubt, that the project is squarely covered under Clause7(ii) of the said Notification. It was emphatically submitted by her that the said Clause cannot be limited only to projects to which EC was granted under the EIA Notification, 2006, but also extends to ECs, where the proposal pertains to increase in production or increase in the lease area or production capacity or modernization of an existing unit, with increase in total production capacity. Therefore the argument to limit the application of Clause 7(ii) only to such projects for which clearances have been granted earlier under 2006 Notification, would not only be erroneous but also would defeat the entire purpose of the Notification. In support of her contention that the proposal is not for a new unit but was only for expansion of the old unit, Ms. Agnihotri relied upon the decision **State of Gujarat and Ors. Vs Saurashtra Cement and Chemical Industries Ltd. AIR 2003 SC 1132).**

On the basis of aforesaid submission, it is contended that the project was rightly granted exemption from the Public Consultation as the

same is squarely covered under Clause-7(ii) of the EIA Notification, 2006.

Ms. Kanika Agnihotri also, brought to our notice that the MoEF had extended the benefit of exemption of Public Hearing in accordance with Clause-7(ii) of EIA Notification, 2006, in respect of several other projects and thus Respondent No.3 not the only exception, and as the allegations made by the Appellants are not bona fide or in accordance with law, the Appeal should be dismissed with exemplary costs.

16. Respondent No.1 (MOEF) has entered appearance through Ms. Neelam Rathore, Learned Counsel. The stand of MoEF is that the proposal submitted by Scania is one for expansion of an existing Sponge Iron Unit only. No extra land would be required as the expansion would be confined to the land which is used by **Scania**. The documents submitted and the particulars furnished by **Scania** were duly considered by the MoEF, and on being satisfied that there is no park / wild life sanctuary, within 10 km radius of the project, approved the same. The further stand of MoEF is that Clause-7(ii) of the EIA Notification, 2006, is squarely applicable to the proposed project and the EAC in its 80th meeting dated 15th April, 2008, after exercising due diligence and proper consideration, exempted the proposal from Public Hearing / Public consultation, and called upon the Proponent to prepare the EIA/EMP report as per the prescribed TORs.

17. Heard Learned Counsel for the parties at length. Perused the pleadings, documents annexed by the parties and notes of submissions, meticulously. Considered the submissions of all the Learned Counsel diligently. The controversies involved in this Appeal are as follows:-

i) Whether the Appellants have *locus-standi* to prefer the Appeal and assail the EC granted in favour of Respondent No.3 (**Scania)**?

ii) Whether the proposal submitted to enhance the production of existing Sponge Iron Unit from 66,000 TPA to further 66,000 TPA by installing a new unit, setting up a Steel Melting Shop with CCM facility of 1,35,000 TPA capacity, a Ferro Alloy Plant of 7,500 TPA and Captive Power Plant of 25 MW, would amount to expansion of the existing Sponge Iron Plant of 66,000 TPA established prior to 2004 or amounts to installing new projects?

iii) As to whether the proposal satisfies the requirement of Clause-7(ii) of EIA Notification, 2006 and Public Hearing / consultation can be exempted?

iv) Whether the Authorities have duly applied their mind to the facts and circumstances, the scientific data and other particulars submitted by the Project Proponent, and the decision taken to grant EC was justified or proper?

18. We propose to deal with the question of *locus-standi* at the first instance. Admittedly, this Appeal was filed in the year 2009 invoking jurisdiction under NEAA Act, 1997. Though the said Act has been repealed and National Green Tribunal Act, 2010 has come into force, the Appeal having been filed under the NEAA Act, 2009, has to be disposed of under the provisions of the said Act.

19. Before entering into the area of controversy, we propose to recapitulate the principles relating to Industrial Development vis-à-vis sustainable development.

It is now well settled by a series of judgments of the Supreme Court that though the industrial development is of vital importance to the country as it generates foreign exchange and provides

employment avenues, it has no right to destroy the ecology, degrade the environment and pose health hazards. In **Vellore Citizens' Welfare Forum Vs. Union of India, (1996 5 SCC 647,** the Supreme Court held that the traditional concept, that development and ecology are opposed to each other, is no longer acceptable and "Sustainable Development" is the answer. In the international sphere, "Sustainable Development" as a concept came to be known for the first time in Stockholm Declaration of 1972. Thereafter in 1987, the concept was given a definite shape by the World Commission on Environment and Development in its report called "Our Common Future" popularly known as "Brundtland Report". In 1991, the World Conservation Union, United Nations Environment Programme and World Wide Fund for Nature, jointly came out with a document called "Caring for the Earth" which is a strategy for sustainable living. Finally, came the Earth Summit held in June, 1992 at Rio where as many as 153 nations signed two conventions, one on biological diversity and another on climate change. The delegates also approved by consensus, three non-binding documents, namely, a Statement on Forestry Principles, a declaration of Principles on Environmental Policy and Development Initiatives, a programme of action into the next century in areas like poverty, population and pollution vide Agenda 21. The Supreme Court noted that some of the salient principles of "Sustainable Development", as culled-out from Brundtland Report and other international documents, are Inter-Generational Equity, use and Conservation of Natural Resources, Environmental Protection, the Precautionary Principle, Polluter Pays Principle, Obligation to Assist and Cooperate, Eradication of Poverty and Financial Assistance to the developing countries. The Hon'ble Court noticed that Article 21 of the Constitution of India guarantees protection of life and personal liberty. The Court also noticed that Article 48A of the Constitution cast a duty on the State to protect and improve the environment and safeguard the forests and wild life of the

country, Article 51 A(g) of the Constitution spells out duty of citizens to protect and improve the environment including forests, lakes, rivers and wild life, and to have compassion for living creatures. The Court also noted that apart from the constitutional mandate to protect and improve the environment, there are plenty of post-independence legislations on the subject, namely, The Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Environment Protection Act, 1986. In view of the above mentioned constitutional and statutory provisions, the Court held that "Precautionary Principle" and the "Polluter Pays Principle" are part of the environment law of the country.

20. Keeping in view these well settled principles, we may now proceed to examine the provisions of the NEAA Act. Section 11 of the Act which is material for the purpose of this appeal, is reproduced herein below:-

> *"11. (1) Any person aggrieved by an order granting environmental clearance in the areas in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards may, within thirty days from the date of such order, prefer an appeal to the Authority in such form as may be prescribed.*
>
> *Provided that Authority may entertain any appeal after the expiry of the said period of thirty days but not after ninety days from the date aforesaid if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.*
>
> *2. For the purposes of sub-section (1) "Perons" means -*

a) any person who is likely to be affected by the grant of environmental clearance;

b) any person who owns or has control over the project with respect to which an application has been submitted for environmental clearance;

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

d) the Central Government, where the environmental clearance is granted by the State Government and the State Government, where the environmental clearance is granted by the Central Government; or

e) any local authority, any part of whose local limits is within the neighbourhood of the area wherein the project is proposed to be located".

21. On a plain reading of Section11, it is seen that any person aggrieved by an order granting environmental clearance has a right to prefer an appeal to the Authority. The definition of 'person' as contained in sub-section (2) of Section 11 (a), provides that any person who is likely to be affected by the grant of environmental clearance has an undoubted *locus standi* to file an appeal. Section 11(2)(c) is worded differently and is wider in scope than sub-clause (a). Sub-clause (c) speaks of "association of persons" (whether incorporated or not) who are likely to be affected by the impugned action and who work in the field of environment. In other words, sub-clause (a) talks of those who are affected or are likely to be affected and the emphasis is on the impact on an individual, though the sub-clause, does not rule out more than one person likely to be affected and/or actually aggrieved. In contrast, sub-clause (c) refers to an association of persons, incorporated one. Such association of persons, (incorporated association), cannot be said to be affected in

the manner traditionally understood. Moreover, in environmental cases the damage is not necessarily confined to the local area where the industry is set up. The effect of environmental pollution or environmental degradation might have far-reaching effects going beyond the local area and create national or global effects. For example, the destruction of forests is said to be one of the causes leading to global warming. Therefore, the aggrieved person need not be resident of the local area. Such an interpretation would also result in defeating the very objective of this enactment in terms of access to justice. **(see Judgment of High Court of Delhi passed in LPA No. 277/2009 dated 14th September, 2009 in the case of Vedanta Alumina Ltd. Vs Prafulla Samantra & Ors.)**

22. The expression "aggrieved persons" cannot be considered in a restricted manner. Its scope and meaning depends on variable factors i.e. the aims and objectives and the intend of the Statute out of which the controversy arises. In the case of **Gulam Qadir Vs Special Tribunal and other 2002 (1) SCC 33,** the Supreme Court observed that an orthodox rule of interpretation regarding the *locus-standi* of a person to reach the Court has undergone a sea change and the constitutional courts have been adopting a liberal approach in dealing with the cases or the claims of litigants. It is well settled that in construing remedial statute the courts ought to give to it widest operation which its language will permit. The words of such a statue must be so construed as to give the most complete remedy which the phraseology will permit, so as to secure the relief contemplated by the Statute is not denied to the class intended to be relieved. The statute being remedial in nature is given liberal construction to promote the beneficent object behind it.

23. In so far as, the present case is concerned, it appears from the records, that the first Appellant a social Environment activist had in

several occasions in past, made representations before Competent Authority. The organization of the first Appellant is working in the area in question and as it appears from the deliberations made in the court, was following the issue of the project in question, during various stages of the project, it had complained about the impact of the project on ecology and environment and prayed to direct Respondent No.3 not to go ahead with the project. The second Appellant is a resident of the locality and is the owner of agriculture land situate in the vicinity. In the above circumstances, it is not right to say that the Appellants are not aggrieved persons within the meaning of Section 11 of NEAA Act. Denial of the right to file an appeal to the Appellants would virtually defeat the legislative intentions of granting access to justice.

24. A dispute involving similar controversy arose earlier in the case of '**Prafulla Samantra Vs MoEF & Ors.'** Prafulla claiming to be a social and environmental activist challenged an order granting EC by the MoEF for setting up of a Alumina Smelter Plant, before the NEAA, by filing an appeal. The said appeal was resisted on the ground that he is not a "person aggrieved" and is not covered under Section 11 of the NEAA Act. The Authority dismissed the Appeal holding that he is not a "person aggrieved". Being aggrieved by the said order, Prafulla Samantra approached the Hon'ble High Court of Delhi in WP(C) No. 3126/2008. After hearing parties Hon'ble single judge of the High Court of Delhi by a well discussed judgment dated 6.5.2009 allowed the writ petition. The Hon'ble Judge observed as follows:-

> "India, even today, lives largely in its villages. A project or scheme, which is likely to affect or impact a remote community, that may comprise even a cluster of villages, may or may not have an "association of persons" who work in the field of environment. The villagers, like most others, are unlikely to know about the project clearance, or possess the wherewithal to

question it, through an appeal. If the third respondent's contention, and the authority's impugned order were to be accepted, and upheld, such community's right to appeal, meaningfully, would be rendered a chimera, an illusion. In their case, the Act would be a crude joke, paying lip service, while promising access to justice, but in reality depriving such a right…."

The Hon'ble Single Judge came to the conclusion that Prafulla Samantra satisfies the expression "Person aggrieved" and set aside the order passed by the NEAA. The said judgment was assailed by Vedanta Alumina Ltd., Respondent in the said case, before the High Court of Delhi in LPA No. 277 of 2009. The Divisional Bench of High Court of Delhi, by judgment dated 14th September, 2009, confirmed the finding of the Hon'ble single Judge, and held that Prafulla can be construed to a be a "Person aggrieved" in consonance with Section 11 of NEAA Act and dismissed the LPA. The findings arrived at by the Division Bench of Delhi High Court are squarely applicable to the case in hand, and we have no hesitation to hold that the Appellants satisfy the definition of "Person aggrieved" and they have *locus-standi* to file this Appeal.

25. Now we propose to deal with point No. 2 & 3 of the controversy together as both the issues are connected with each other:-

Admittedly, **Scania** was running a Sponge Iron Plant having the capacity of 66,000 TPA. The said plant having been set up much prior to 2004, no EC was required to be granted. In the year 2008, Scania applied to the MoEF seeking permission for enhancing the production of Sponge Iron from 66,000 TPA to 1,32,000 TPA by setting up another unit and, to install a Steel Melting Shop with CCM facility of 1,35,000, TPA capacity, further install a Ferro Alloy Plant of

7,500 TPA and also to set up a Captive Plant of 25 MW. According to **Scania**, the proposal was one for expansion of the existing Sponge Iron Plant and the units which are ancillary to each other and as such, the proposal is squarely covered by Clause -7(ii) of the EIA Notification, 2006; consequently Public Consultation was rightly exempted by the Competent Authority. The said contention was repudiated by the Appellants. According to Mr. Panjwani, the endeavourance of the **Scania** was to set up three separate project/units, in the grab of expansion and as such, Clause-7 (ii) of the EIA Notification, 2006 has any application, to the proposal submitted.

26. Before entering into the controversy, it will be prudent to refer to some of the provisions of EIA Notification, 2006. Clause-2 of the said Notification deals with mandatory requirement of prior Environment Clearance (EC) and reads as follows:-

> ***"Requirements of prior Environmental Clearance (EC):-*** *The following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for matters falling under Category 'A' in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category 'B' in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity:*
>
> *i) All new projects or activities listed in the Schedule to this notification;*
>
> *ii) Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of*

capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization

iii) Any change in product – mix in an existing manufacturing unit included in Schedule beyond the specified range. "

27. It is no more *resintegra* that environment is a right guaranteed under Article-21 of the Constitution. The Environment (Protection) Act, 1986 and EIA Notification are the means adopted, to protect the right in discharge of the obligations enjoined under Article-48 A of the Constitution. Citizens have a right to know and also equal right to object to any activity that may impair the right to environment. In the case of **Dinesh Trivedi MP and Others Vs Union of India and |Others (1974) 4 SCC 306,** Hon'ble the Supreme Court held as follows**:-**

"In modern constitutional democracies, it is axiomatic that citizens have a right to know about the affairs of the Government which, having been elected by them, seeks to formulate sound policies of governance aimed at their welfare".

28. In the democratic set up, all the authorities discharging public duties must be responsible for their conduct and there should be no secrets. The people of this country have a right to know every public Act, every decision that is done in a public way, by the public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one way, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public securities. **(See State of UP Vs Raj Narayan (1975) 4 SCC 428).**

29. A cumulative reading of the provisions of EIA Notifications, 2006 in the touch stone of the principles laid down by the Hon'ble Supreme court in different decisions, gives an impression that public consultations as incorporated in 2006 Notification is in recognition and in furtherance of the rights to the environment. Clause-7 (iii) Stage (3) of EIA Notification, 2006 deals with public consultation which reads as follows:-

> *"**Public Consultation**" refers to the process by which the concerns of local affected persons and others who have plausible stake in the environmental impacts of the project or activity are ascertained with a view to taking into account all the material concerns in the project or activity design as appropriate.*

Public consultations ordinarily have two components; (i) public hearing at the site or in its close proximity and (ii) to obtain responses in writing from other concerned persons having a plausible stake in the environmental aspects of the project or activity. Thus public hearing is an integral part in the process of granting EC.

30. According to Ms. Kanika Agnihotri, the proposal of **Scania** being one for expansion, with increase in production capacity and also change of product-mix by modernization, is squarely covered under Clause-7 (ii) of EIA Notification, 2006, and as such the Expert Appraisal Committee (EAC), in consonance with and in exercise of the powers conferred upon it under the said Clause, have rightly taken the decision to exempt public consultation, and granted EC. It is further, submitted that to limit application of Clause-7(ii), only to those projects, which got EC under the EIA Notification, 2006, would be not only erroneous but would in fact, defeat the entire purpose of the Notification.

In support of her submission that further enhancing the production of Sponge Iron by 66,000 TPA by installing a separate unit, and to set up a Steel Melting Shop by utilizing the Sponge Iron produced, and also to utilize the product therefrom, by setting up a Ferro Alloy, Plant and further, use the bye-products and waste by setting up a Captive Power Plant, can only be nomenclatured as modernization and expansion of the existing unit. In as much as the new units set up, are not independent but are expansion of the existing unit. The word "expansion" according to Ms. Agnihotri means to become greater and bigger in size. The new units proposed to be set up, it is submitted, are not self-contained or independently viable, on the other hand they are dependent on products of the existing plant and as such, the only inevitable conclusion that can be drawn is that, the proposed units are expansion of the existing Sponge Iron Unit. In support of such submission Ms Agnihotri relied upon the decision in the case of **State of Gujarat and Others Vs Saurashtra Cement and Chemical Industries Ltd. AIR (2003) Supreme Court 1132.**

In the said decision the Hon'ble Court dealt with the provisions for exemption under Section 15 C of the Income Tax Act. The facts and circumstance and the provisions of Law of the said case being distinctly separate, it has little help to the Respondent.

31. To appreciate the arguments advanced with regard to the exemption of the public Consultant, to the proposed unit, under Clause-7 (ii) of the EIA Notification, 2006, it would be necessary to quote the said clause:-

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

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

32. There is no dispute with regard to the fact that **Scania** had established a Sponge Iron unit, having a capacity of 66,000 TPA, before 2004. No EC, under EIA Notification, 1994, was granted to the said unit, as it was not covered under the said Notification. Further, admittedly, the unit in question had not obtained "Prior Environment Clearance" under the 2006 Notification, more so because, it was already in operation before the said Notification came in to force. There is no quarrel to the proposition that if **Scania** intends to expand and or modernize the existing project or activities and enhance the capacity and or intends to change its product mix, it has to obtain environmental clearance from the concerned regulatory authority. Therefore, the only dispute which has to be resolved is, whether the exemption of public consultation can be extended to the proposed project in consonance with the provisions of Clause 7(ii) of the EIA Notification, 2006 quoted *supra* and EC can be granted neither holding Public Consultation.

33. Before answering the said controversy, it would be just and necessary to once again consider the proposal given by **Scania** for expansion and or expanding the existing unit. From the submissions, advanced, we gather that **Scania** proposes to install another unit of Sponge Iron Plant having further capacity of 66,000 TPA near the existing one, and thereby enhance the production of Sponge Iron from 66,000 TPA to 1,32,000 TPA. It proposes to use the said enhanced product by installing a Steel Melting Shop and the product therefrom in the Ferro Alloy Plant. The heat generated from the aforesaid new units is proposed to be used in the captive power plant. Thus, the main basis for installation of Steel Melting Shop, Ferro Alloy Plant, and Captive Power Plant is dependent upon the second unit of Sponge Iron Plant and increasing the capacity of Sponge Iron Plant from 66,000 TPA to 1,32,000 TPA. If the argument advanced on behalf of **Scania** is accepted, then installation of second unit of Sponge Iron Plant and thereby increasing the production capacity of the Sponge Iron Plant which is already existing, would not attract the exemption as per 7(ii) of the EIA Notification, 2006, for the simple reason, that, the existing Sponge Iron Unit has not obtained prior environmental clearance under EIA Notification 2006. The wording of Clause 7(ii) is very clear and is bereft of any ambiguity. It stipulates that all applications seeking prior environmental clearance for expansion, with increase in the production capacity beyond the capacity for which **Prior Environmental Clearance has been granted uder this Notification, o**r with increase either in lease area or production capacity etc. etc., would attract the exclusion of Public consultation. In the case in hand, the production capacity of an existing Sponge Iron Unit is sought to be enhanced, and its production capacity increased, but then no environmental clearance has been granted to the said existing Sponge Iron Unit, under EIA Notification, 2006, thus the concession not to hold public consultation cannot be extended to the expansion of the existing Sponge Iron Unit. In other words Clasuse-7(ii) is not applicable to the proposed expansion of Sponge Iron Unit. Further, the intention behind

giving exemption under Clause 7(ii) with reference to public hearing could have been due to the fact that Public Consultation process for the existing unit would have already been done as required under EIA Notification, 2006 and as such, Public Hearing again is not necessary.

34. It is implicit that the entire proposal for installation of the aforesaid four units is interdependent on each other, in as much as, only if the production capacity of Sponge Iron is increased, installation of Steel Melting Shops is feasible. Similarly only, if the Steel Melting Shop is set up, then then Ferro alloy Plant would be viable. In the absence of the aforesaid new units, it is not possible to install a Captive Power Plant as enough electricity and waste heat or raw materials would not be available. All the proposed units being interlinked and dependent on one another, and as no unit can be established in the absence of the other, we are of the view that the decision taken to exempt Public Consultation to the entire project under Clause 7(ii) of the EIA Notification, 2006, was not just and proper specially due to significant increase in pollution load and consequential environmental ramifications. Considering the magnitude of the proposed project, we further feel that the public in general should have given an opportunity of putting forth their views with regard to the projects.

35. A submission has been advanced on behalf of **Scania** that neither the Appellant nor this Tribunal can sit in judgment over the cutting edge of scientific analysis relating to any project. According to Ms. Kanika Agnihotri, Competent Authorities had granted environmental clearance after considering the pros and cons of the projects, it would therefore, not be proper for this Tribunal to sit in judgment. But then, legislature in its wisdom has set up this Tribunal under the National Green Tribunal Act, 2010. The corum of the Bench consists of a former Judge of the High Court and an Expert Member, who possesses the scientific know-how and also expertised knowledge in the subject. The Expert Members are

very experienced and had gathered vast knowledge in the subject matter. Thus the submissions made are neither justified nor tenable. That apart the scope of judicial review is very wide and most of it depends upon the scientific data as well as other matters which are produced before this Tribunal. While dealing with a litigation of present nature, the Tribunal is very careful and takes care to see that it does not over step the limitation of its jurisdiction. On scrutiny of the materials, if the Tribunal is satisfied that the decision taken by the Authority suffers from WEDNESDURY Principle and that no reasonable person should have taken such a decision, it would have no hesitation to deal with it in accordance with law.

36. Before concluding we feel it necessary to examine the correctness of the EIA report. Perusal of the EIA report indicates that the study period (1.12.2007 to 28.2.2008) indicated in Table3.1 of EIA Report for collection of base line data regarding meteorology, ambient air quality, noise quality, surface and ground water quality, soil quality etc., are much earlier to the date Terms of Reference (TORs) were communicated to the Project Proponents. In fact, the collection of base line data should have been started after receiving TORs, but in this case, the data collection started more than 4 months before the TORs were communicated by MoEF, defeating the very purpose of collection of latest base line data based on TORs prescribed by Expert Appraisal Committee (EAC)/MoEF. The said particulars are very much important to adjudge the prevailing pollution levels and environmental status of the study area, and were not kept in mind.

The minimum detectable limit for SO_2 and NO_2 as given in EIA report is 6 µg/m^3. However, it is seen from Table 3.7 of the EIA report that almost all the minimum values reported for SO_2 (5.0 to 5.3 µg/m^3.) are below the minimum detectable limit of 6 µg/m^3. Even the mean 3 (three) values of SO_2 are ranging between 5.1 to 5.3 µg/m^3, which are below the minimum

detectable limit. The background air quality in the area specially with respect to SO_2 is expected to be more due to existence of a number of sponge iron units located in the area, but the mean ambient levels of SO_2 as given in the EIA report are ranging between 5.1 to 8.7 $\mu g/m^3$ are low even during the winter months when the inversion levels become quite low due to meteorological conditions. The reflected data casts a doubt on the reliability of the ambient air quality data produced in the EIA report, specially due to existence of a number of Sponge Iron Units, burning of domestic coal, vehicular traffic etc., in the area.

In addition, it is seen from the EIA report that heavy metals such as Fe, Ni, Zn, Mn and Cu have been estimated in the Respirable Suspended Particulate Matters (RSPM) but the important heavy metal, such as mercury, has not been estimated, even though the mercury level in the ambient air is likely to be significant, specially in view of the consumption of large quantities of coal by a number of sponge iron plants located in the area. It would have been proper to prescribe estimation of mercury in the ambient air during the TOR stage by EAC/MoEF specially in view of the fact that the mercury levels are likely to increase due to doubling of the proposed capacity of the sponge iron plant from existing 66,000 TPA to 1,32,000 TPA. Besides, captive power plant of 25 MW (17+8 MW) is also based on coal as its main feed stock, and it would also contribute to mercury emission. In view of the unrealistic air quality data, the overall impacts as worked out based on mathematical modeling, does not appear to reflect the true picture in terms of likely impacts on air quality. There was need to look at base line/background air quality and meteorological data in a more critical way. It appears that the EIA Consultant has taken it in a very casual way.

Regarding water quality data, it is seen from Table 3.10 and Table 3.11 of the EIA Report that the fluoride levels are almost same in the ground water and surface water, which appears to be unrealistic.

37. During the course of hearing, Learned Counsel for **Scania** informed, that no trade effluent will be discharged outside the plant boundaries and the entire effluent generated will be reused after treatment. However, to a query from the Court, as to what would happen to the effluent during the monsoon season when the requirement of treated effluent for irrigation purposes within the plant will get drastically reduced and as to how during the monsoon, "zero discharge" concept will be achieved, no convincing response came forward from the Learned Counsel for R-3. As such, we direct the MoEF to examine the water balance which would indicate as to how the treated effluent will be utilized and for what purposes.

In view of the infirmities noticed, we direct MoEF to develop appropriate mechanism, to check the authenticity of environmental data reported in the EIA/EMP report which would facilitate a more realistic environmental appraisal of project. Steps should also be taken for black listing Consultants found to have reported **"**cooked data**"** or "wrong data" and for producing sub-standard EIA/EMP report.

38. Learned Counsel for **Scania** in course of her submission brought to our notice that the requirement of public hearing for the expansion project for M/s. Scania Steel Power Ltd., was waived by EAC during its meeting held on 15th April, 2008 as per Clause 7(ii) of EIA Notification, 2006. She further, submitted that EAC/MoEF has also given exemption from public hearing in some other projects under Clause 7(ii) of EIA Notification, 2006 viz. M/s Rashmi Cement Limited, West Bengal and M/s Concast Ferro Inc., Andhra Pradesh, and EC was granted on 12th February, 2009 and 2nd February, 2009 respectively.

Strict reading of Clause 7(ii) of EIA Notification, 2006 clearly provides power to EAC or State Level EAC to decide on due diligence necessary including preparation of EIA and Public Consultations only for those expansion proposals or modernization of existing units, which were accorded

prior environmental clearance, under this Notification (EIA Notification, 2006). In the present case, as has been held, neither exemption from Public Consultation is applicable under expansion category nor under modernization pretext as the expansion proposal of M/s Scania Steel and Power Ltd., which is an existing Sponge Iron Plant, was not accorded prior environmental clearance under the EIA Notification, 2006. It also does not satisfy the category of modernization of the existing unit, as a number of new facilities such as Induction Furnace, Ferro Allow Plant and Captive Power Plant have been proposed to be added which would certainly result in additional pollution load in the area. The legislators, while framing Clause 7(ii) of EIA Notification, 2006, might have kept in mind that if Public Consultation has already been done earlier under EIA Notification, 2006 while giving prior EC, the same Public Hearing (PH) need not be required again at the time of expansion or modernization of unit.

Only because, the authorities have exempted Public Consultation in respect of some other projects, cannot be ground for exempting the same so far as **Scania** is concerned. Law is well settled that each case has to be determined and decided in consonance with the facts and circumstances relating to the said case and there cannot be an universal decision to either conduct or exempt public hearing while granting EC.

The decision to exempt Public Consultation in the case in hand was that of the MoEF and the **Scania** had no role to play. Therefore, we cannot find fault with the petitioner and feel that due to the error committed by the MoEF the EC granted in favour of **Scania** should not be cancelled.

39. In view of the discussions made in the preceding paragraphs, we direct the MoEF to get public consultation (Public Hearing) conducted for the proposed projects at the site or nearby area of the site as per the provisions contained in the EIA Notification, 2006. This direction is necessary in order to achieve the object and purpose of the Notification

vis-a-vis the Statute. Till the aforesaid exercise is completed, the EC granted on 5th November, 2008 for the proposed expansion of Integrated Steel Plant and Captive Power Plant at Village Kunjipatra, District Raigarh, Chhattisgarh by M/s. Scania Steel & Power Limited, shall remain suspended. It is needless to say that the MoEF shall take prompt steps for completing the exercise of public consultation (Public Hearing) and curing the deficiency in EIA/EMP, and re-visit the entire project in the light of the observations made by us and complete entire exercise as expeditiously as possible. It is needless to be said that the EC granted would be subject to the decision to be taken by the MoEF after public consultation, and other directions.

The Appeal is allowed in part. Parties to bear their own costs.

Dr. G.K Pandey
Expert Member

Justice A.S. Naidu
Acting Chairperson

Durga Malhotra
9th February, 2012