

**BEFORE THE NATIONAL GREEN TRIBUNAL
NEW DELHI**

REVIEW PETITION NO. 2 OF 2010
(Arising out of appeal No. 1 to 6 of 2010)

IN THE MATTER OF

1. M/s Nagarjuna Construction Company Ltd.,
Nagarjuna Hills, Punjagutta,
Hyderabad, A.P
 2. M/s Nagarjuna Construction Company Ltd.,
Project Office at Sompeta Town,
Sompeta, Mandal / Tahsil,
Srikakulam Dist. (A.P)
- Petitioners

Versus

1. T. Mohan Rao S/o Late Seetharam
Aged 65 years, Advocate,
Residing at Sompeta Town,
Sompeta Mandal / Tahsil, Sompeta P.O.,
Srikakulam Dist., (A.P), Pin: 532 284
2. Maddu Raja Rao S/o Lakshminarayana,
Member of Mandal Parishad Territorial
Constituency,
(M.P.T.C), Gollagandi of Sompeta Mandal,
Residing at Ramayyapatnam Village,
Sompeta Mandal / Tahsil, Isakalapalem B.P.O
Srikakulam Dist., (A.P), Pin: 532 284
3. Forum for Sustainable Development
(Regd. No. 305/2008),
D. No. 8-2-602/c, Flat No. 309,
Hanging Gardens, Road No. 10,
Banjara Hills, Hyderabad – 530 034,
Represented by its Member &
Convener of Coastal Area,
S. Bhujanga Rao S/o. Late Satyam,

R/o 4-71-1, Lawsonsbay Colony,
Visakhapatnam-17

4. Emami Anantha Satyanarayana Sarma
S/o Late Lakhminarayana
R/o 14-40-4-4/1, Gokhale Road,
Maharanipeta, Visakhapatnam – 530 002
5. Paryavarana Parirakshana Sangham
Sompeta, Srikakulam District (A.P)
Through Authorized Representative
Dr. Y. Krishnamurthy, M.B.B.S, D.A
6. Donnu Behara S/o. Late Ugadhi Behara
President, Inland Fisherman Association,
Residing at Isakalapalem Village,
Sompeta Mandal/Tehsil, Isakalapalem BPO,
Via: Sompeta,
Srikakulam Dist., (A.P) Pin-532 284.
7. Sandhi Kamaraju S/o Late Parasayya
Aged 52 years, Agriculturist & President,
Ayacutdars Association of Yettipothala
Pathakam,
Residing at Rushikudda Village,
Sompeta Mandal / Tehsil,
Rushikudda B.P.O Via Sompeta,
Srikakulam Dist. (A.P) Pin 532 284.
8. The Director,
Ministry of Environment and Forests,
Government of India
Paryavarana Bhawan, C.G.O. Complex,
Lodhi Road, New Delhi-110 003.
9. The Secretary (Environment & Forests)
Environment Department,
Government of Andhra Pradesh,
Hyderabad-500 018, A.P.
10. The Chairman,
Andhra Pradesh State Pollution Control Board,
Paryavarana Bhawan,

A-3, Industrial Estate, Sanath Nagar,
Hyderabad-500 018. A.P.

11. Environment Engineer,
Andhra Pradesh State Pollution Control Board,
A.P. Pollution Control Board,
Vizianagaram, A.P.
12. State of Andhra Pradesh,
Represented by the District Collector,
Srikakulam, A.P.
13. Government of Andhra Pradesh,
Represented by its Chief Secretary, A.P. Govt.
Secretariat, Hyderabad-500 022.
14. A.P. Industrial Infrastructure Corporation Ltd.,
Represented by its Managing Director and
Vice Chairman,
Parisarama Bhavan, Hyderguda,
Fateh Maidan Road, Hyderabad.
15. Commissioner,
Department of Revenue,
Government of Andhra Pradesh,
Hyderabad, Andhra Pradesh.

... Respondents

Counsel for petitioners: Mr. S.A. Sundaram, Sr. Adv.
Mr. Krishnan Venugopal, Sr. Adv.
Mr. A.D.N Rao, Adv.
Ms. Priya Kumar, Adv.
Ms. Rohini Musa, Adv.
Ms. Neelam Jain, Adv.

Counsel for Opp. Parties: Mr. Ritwick Dutta, Adv.
Ms. Parul Gupta, Adv.
Mr. W. Bharat Singh, Adv.
Mr. Nikhil Nayyar, Adv.

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

19th September, 2011

JUSTICE A.S. NAIDU

M/s Nagarjuna Construction Company limited has filed this review petition, inter-alia praying to review / recall the judgement dt. 14th July, 2010 passed by the Member of the National Environment Appellate Authority, New Delhi, in Appeal No. 1 to 6 of 2010.

2. Before transgressing into the submissions advanced by Mr. Sundaram learned Senior Advocate, appearing for the petitioner, it would be apt to state the background facts of the case in brief for appreciating the intense controversies.

3. The opposite parties 1 to 7, as appellants had filed six separate Appeals which were registered as Appeal No. 1 to 6 of 2010 Under Section 11 (1) of the National Environment Appellate Authority Act, 1997 assailing the order dt. 9th December, 2009 passed by the Ministry of Environment and Forests conveying Environmental Clearance for Construction of 2 x 660 MW (Phase-1) Super Critical Coal based Thermal Power Plant, at Sompeta of Srikakulam District of Andhra Pradesh, before the National Environment Appellate Authority (herein after referred to as NEAA). The NEAA, presided by a Single Expert Member, issued notice and admitted the appeals for hearing. All the opposite parties i.e. the present petitioners and the opposite parties 8 to 15 appeared and filed their Counter affidavits enclosing several documents and reports justifying issuance of the Environmental Clearance dt. 9th December, 2009 issued by Respondent No. 1 the Ministry of Environment & Forests.

4. It was contended by the appellants (Respondents 1 to 7 in the present case) before the NEAA that the Minutes of public hearing was suppressed and that the "Beela Swamp" of Somepta where the project was proposed to be established, being very important from Environmental angle, the authorities acted illegally and with material irregularity granting Environment Clearance. Further the authorities also

did not keep in mind that the said "Beela Swamp" being an internationally recognized Wet Land, establishment of the Project thereon shall affect not only the eco system but also affect the migration of different birds. Several other infirmities, illegalities, omissions and commissions said to have been committed by the concerned authorities, while granting Environment Clearance, were put forth before the NEAA in course of hearing.

5. On the other hand Respondent No. 1 Ministry of Environment and Forests in their Counter-Affidavit categorically denied the allegations made and took the stand that after field verification by the Expert Members, the EAC in its 42nd Meeting came to the conclusion that the site in question does not fall in any of the prohibited areas. To arrive at such conclusion the EAC relied upon the report submitted by the Sub-Committee which was constituted and deputed to visit the site and submit its report. It was further averred that the Sub-Committee after conducting field enquiry submitted a report and the EAC after consideration of the report and other materials available in its 56th meeting recommended for grant of Environment Clearance, to the project in question.

6. The present petitioners, who are the proponents, in their counter affidavit more or less reiterated the stand taken by the Ministry and added that after complying all paraphernalia sacrosanctly the EAC had granted the clearance and as such the submissions made to the contrary are unfounded.

7. In course of hearing it appears that the Member of the NEAA along with Dr. S. Kaul visited the site on 29th June, 2010. There-after all the Appeals were heard, and the Member of the NEAA solely basing upon the knowledge derived by him during his field visit allowed the Appeals by a common order and set aside the Environment Clearance dt. 9th December, 2009, granted by the Ministry.

8. The said order as stated earlier, is sought to be reviewed / recalled in this Review petition mainly on the ground that, the Appellant Authority acted illegally and with material irregularity in not supplying a copy of the inspection report dt. 29th June 2010 basing upon which the order was

passed resulting in gross failure of principles of natural justice. Further it is submitted that the appellate authority should have given weightage to the documents which were available in record as well as the report of the Sub-Group which had visited the site on being deputed by the Ministry. Non-consideration of the said vital documents, according to the Review petitioner goes to the root of the order and it is a fit case where the order should be varied.

9. In course of hearing Mr. Sundaram, learned Senior Advocate appearing for the petitioner drew our attention to paragraph 6 (six) of the order and submitted that the Member of the NEAA had committed gross error apparent on the face of the record in conducting the site visit himself along with Dr. S.Kaul on 29th June, 2010, and has gone one step further by utilizing his personal knowledge without giving any opportunity to the parties. Thus he had become the "Judge of his own cause" and on that ground alone the order should be reviewed. It is further submitted that the observations made in paragraph 6 (six) of the order unambiguously reveals that the sole basis for setting aside the environmental clearance order was his personal knowledge derived from inspection of the site and it appears, the Member had pre-judged the issue and had arrived at a conclusion before commencement of hearing of the case. The conclusions arrived at by the Appellate Authority on the basis of such finding it is contended cannot be sustained in the eye of law.

10. Mr. Dutta, learned Counsel appearing for the contesting Respondents at the thrash hold invited our attention to the cause title of the review petition and submitted that the petition having been filed as per the provisions of National Environment Tribunal Act, 1995 which is non-existent, the Review Petition should be dismissed at limini.

11. Mr. Dutta further submitted that the Member of the NEAA visited the site along with Dr. S.Kaul who is an expert, on 29th June, 2010 to appreciate the intense controversy and the said visit having been taken place by the consent of the parties, the objections raised at this belated stage, should not be accepted. Mr. Dutta also strenuously wanted to convince us that the Appellate Authority had considered all facts and

circumstances in proper perspective and the conclusions arrived at being justified, the order needs no interference.

12. We have heard learned counsel for the parties diligently. We have gone through the records meticulously. We have also appreciated the intense arguments bonafidely.

13. The first submission of Mr. Dutta so far as the provisions mention in the cause title of the review petition is concerned, it is no more res-integra that if the Tribunal has power, only because a wrong provision has been mentioned in the petition such power cannot be taken away. In other words nomenclature of a Petition cannot circumvent the Powers of a Court or Tribunal. This Tribunal is constituted under the National Environment Tribunal Act 1999. Section 19(4) (f) of the said Act gives power to the Tribunal to review the orders. Thus only because the petitioner has nomenclature the review petition under a wrong provision the power of this Tribunal to review the order cannot be out stead. Therefore we are not able to accept the first contention raised by Mr. Dutta.

14. So far as other contention(s) of Mr. Dutta are concerned, we are conscious that power of review should be sparingly exercised that too only on very exceptional circumstances. The first and foremost requirement to exercise the power of review is to be satisfied that the order sought to be reviewed:-

(a) suffers from any error apparent on the face of record.

(b) permitting the error to stand will lead to failure of justice

(See Rajendra Kumar and others Vrs. Ramvhai and others reported in AIR 2003- SC-209)

15. The Supreme Court in case of **S. Nagraj Vs. State of Karnataka and others, 1993 – Supp (4) SCC 595** observed as follows:-

“Justice is a virtue which transcends all barriers. Neither the rules of procedures nor technicalities of law can stand in its way If the Court is satisfied of the injustice then it is its constitutional and legal obligation to see it right.....”

In the said decision, the following principles to review an order were formulated:-

“(1) If the judgment is vitiated by an error apparent on the face of the record in the sense that it is evident on a mere looking at the record without any long drawn process of reasoning, a review application is maintainable.

(2) If there is a serious irregularity in the proceeding, such as violation of the principles of natural justice, a review application can be entertained.

(3) If a mistake is committed by erroneous assumptions of a fact which if allowed to stand would cause miscarriage of justice, then also an application for review can be entertained.

It is not necessary to point out that the above principles are applicable de hors the provisions of Order XLVII, Rule 1 of the Code of Civil Procedure”.

16. Considering the submissions made before this Court in the light of the ratio decided by the Supreme Court in the case of **S. Nagraj (Supra)** we find that the Member of NEAA did not bear in mind the cardinal principles of law while passing the impugned order. He has not only utilized his personal knowledge, but also did not follow the fundamental principles of Natural Justice. He has also not discussed voluminous records produced before him and arrived at a conclusion abruptly only on the basis of facts gathered by him during the visit. To appreciate the aforesaid observation it would be prudent to refer to Paragraph 6 of the order which reads as follows:-

“The area was visited by the Authority along with wet lands expert Dr. S. Kaul on 29th June, 2010 basically to ascertain whether, on environment consideration, the project could come up on this site. It was noted that an extent of 972.69 acres of Government land in Rashikuda, Golagandi, Baruapetta, and Benkili villages has been alienated by the

Government in favour of APIIC for onward transfer to M/s Nagarjuna Construction Company Ltd, Hyderabad for setting up of 1980 MW Thermal Power Project on payment of market value of Rs. 80000 per acres. On inspection, the Authority found this land a typical wetland of great ecological importance and a source of water for nearby villagers upon which three important lift irrigation projects of the Government depend. The report of various agencies including that of sub-committee of EAC was found misleading. The EAC was also carried away by these reports and reversed its decision of 32nd meeting on 13-14th October, 2008.”

17. It is admitted that the Member along with Dr. S. Kaul visited the site on 29th July, 2010. We do not find any order appointing Dr. S. Kaul nor he was called upon to visit the site. We fail to understand as to how and under what capacity Dr. Kaul visited the site along with the Member of NEAA. No report of the so called visit was prepared nor was copies thereof served upon the learned Counsel any of the Parties. Thus the Parties were prevented from explaining the queries/ doubts which percolated from the aforesaid visit. Non- supply of such report and not granting an opportunity to the parties infringed the cardinal principle of *Audi Ulterem Pattern* as well as the principles of natural Justice and equity.

18. To add to it the member, as would be apparent from the order, observed “on inspection the authority found that this land is a typical wet land of great ecological impotence and a source of water for nearby villagers upon which three important Lift Irrigation Project of the Government depend”.

19. The said observation as would be evident from the next sentence of the order is contrary to the reports submitted by various agencies including the sub- Committee constituted by the EAC. The Member held the said reports to be misleading, without any discussion, and without giving any opportunity to the Parties to justify the reports.

20. After going through Paragraph 6 (six) we find that the Member, NEAA who visited the site has disposed of the case solely on the basis of the impression gathered by him personally without granting any opportunity to any of the

Parties to answer/ meet or clarify such impression. Thus he has become the “judge of his own cause”. The order further reveals that he had made up his mind before commencement of the hearing and the hearings made thereafter were only a empty formalities. It is well settled that justice should not only be done but it should appear to have been done. None of the Parties should feel that he has not been given an opportunity to rebut materials which form the basis of the order/judgement.

21. In view of the discussions made above we are satisfied that the impugned order suffers from the vice of errors apparent on the face of record and that permitting the order to stand would lead to failure of justice. Accordingly we have no hesitation to recall the order dt. 14th July, 2010 passed by the Member, NEAA in Appeal No. 1 to 6 of 2010.

22. Learned Counsels for the Parties tried to convenience us with regard to the facts leading to the merits of the case but then we refrained ourself from entering into such controversies at this stage and direct that all the appeals be heard on merit once again. It would be open for the parties to argue the case on merit then.

23. In course of hearing it was brought to our notice that by order dated 15th July, 2010 the Ministry of Environment and Forests suspended the Environment Clearance granted to the Project and further directed the petitioner to maintain status quo as on that date with regard to implementation of the Project. It is apt to note that, the order granting Environment clearance dt. 9th December, 2009 was set aside by the NEAA on 14th July, 2010, thus nothing remained to be suspended on 15th July, 2010. This aspect was not kept in mind while passing order dated 15th July, 2010.

24. In the above said scenario while recalling the impugned Order dt. 14th July, 2010 and directing to re-hear the appeals, we feel ends of justice and equity shall be better served if the Ministry of ‘Environment and Forests’ is directed not to pass any order (s) with regard to the aforesaid Project, without obtaining prior permission from this Tribunal. The parties are also directed to maintain status quo as on date until further order.

25. Before concluding we feel it necessary to deal with the question of maintainability of one Review Petition against a Common Judgement passed in six appeals. Admittedly the appeals were filed by different persons, assailing the order dated 9th December, 2009, passed by the Ministry of Environment and Forests, conveying Environmental Clearance to the project in question. The NEAA heard and disposed of all the appeals by a common judgment dated 14th July, 2010. The present review Petition was filed before the NEAA for reviewing / recalling the Judgement dt. 14th July, 2010. It is pertinent to mention that all the Appellants who had filed different appeals were impleaded as parties to the Review Petition notices were not only issued to all of them but also the same were duly served upon them. Thus no prejudice what so-ever was caused to any of the parties.

In course of hearing of the Review Petition also no objection was raised by Respondents (opposite parties) with regard to maintainability of one review.

In course of hearing being conscious about the fact that only one Review Petition has been filed, learned Counsel filed a petition to segregate the Review Petitions. He has also filed five separate review petitions. After considering the submissions made on merits of the case for the reasons stated in the proceeding paragraphs, we were satisfied that the order passed by the NEAA, suffers from errors apparent on the face of the record and permitting the said errors to stand will lead to failure of justice and would also create a dent in the mode of judicial adjudication. Therefore de hors of the technicalities we take a liberal view and disposed of this Review Petition on merits.

The Review petition is accordingly allowed. Parties are directed to bear their own costs.

(Justice A.S. Naidu)
Judicial Member

(Dr. G.K. Pandey)
Expert Member

New Delhi
September 19, 2011