

# Kaiga Anuvidyut Sthawarad vs Nuclear Power Corporataion Of India Ltd ... on 30 September, 2022

**Bench: K Ramakrishnan, K. Satyagopal**

Item No.2:-

Court No.1

BEFORE THE NATIONAL GREEN TRIBUNAL  
SOUTHERN ZONE, CHENNAI

(Through Video Conference)

Appeal No. 14 of 2019 (SZ) &  
I.A. No.19 of 2020 (SZ)

IN THE MATTER OF

Kaiga Anuvidyut Sthaward  
5 & 6 Ghataka Virodhi Horata Samiti  
Mallapur, Taluka Karwar,  
Represented by its President  
Shanta S/o. Bhikku Bandekar,  
Aged about 65 years  
R/o. 384, Hinduwada, Mallapur,  
Taluk Warwar, Karnataka and Ors.

...Appellant(s)

Versus

Nuclear Power Corporation of India Limited (NPCIL)  
Through its Director  
E-3, Nabhikiya Urja Bhavan  
Anushaktinagar,  
Mumbai - 400 094 and Anr.

...Respondent(s)

For Appellant(s): Mr. B.S. Pai.

For Respondent(s): Mr. Krishna Srinivasan, Mr. Shivathanu Mohan  
Mr. S.G. Vadiraj Anirudh, Mr. Jagvir Singh Ruhaz,  
Dr. Jitendra Singh, Mr. S. Venu Gopal for  
M/s. Ramasubramaniam Associates for R1.  
Mrs. Me. Saraswathy for R2.

Judgment Pronounced on: 30th September 2022.

CORAM:

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

HON'BLE Dr. SATYAGOPAL KORLAPATI, EXPERT MEMBER

ORDER

Judgment pronounced through Video Conference. The appeal is disposed of with directions vide separate Judgment.

Pending interlocutory application, if any, shall stand disposed of.

Sd/-

Justice K. Ramakrishnan, JM Sd/-

Dr. Satyagopal Korlapati, EM Appeal No.14/2019 (SZ) I.A. No.19/2020 (SZ) 30th September 2022.  
Mn.

Item No.2:-

Court No.1

BEFORE THE NATIONAL GREEN TRIBUNAL  
SOUTHERN ZONE, CHENNAI

(Through Video Conference)

Appeal No. 14 of 2019 (SZ) &

IN THE MATTER OF

- 1) Kaiga Anuvidyut Sthaward  
5 & 6 Ghataka Virodhi Horata Samiti  
Mallapur, Taluka Karwar,  
Represented by its President  
Shanta S/o. Bhikku Bandekar,  
Aged about 65 years  
R/o. 384, Hinduwada, Mallapur,  
Taluk Warwar, Karnataka.
- 2) Kadra Anekattina Nirashritar Sangha  
Mallapur,  
Represented by its President  
Babu Pandari Naik  
Aged about 42 years, Agriculturist,  
R/o. 18/4, Rehabilitation Centre,  
Mallapur, Taluka Karwar,  
Karnataka.
- 3) Kaiga Kali Santrastara Sangha  
Hartuga  
Represented by its President

Santhosh Timma Gouda  
Aged about 42 years, Agriculturist  
R/o. Hartuga, Post Mallapur,  
Karnataka.

...Appellant(s)

Versus

1) Nuclear Power Corporation of India Limited (NPCIL) Through its Director E-3, Nabhikiya Urja Bhavan Anushaktinagar, Mumbai - 400 094.

2) Union of India Through its Secretary Ministry of Environment and Forests and Climate Change IA Division Indira Paryavaran Bhawan, Jorbagh Road, Aligunj, New Delhi - 110 003.

...Respondent(s)

For Appellant(s): Mr. B.S. Pai.

For Respondent(s): Mr. Krishna Srinivasan, Mr. Shivathanu Mohan

Mr. S.G. Vadiraj Anirudh, Mr. Jagvir Singh Ruhaz, Dr. Jitendra Singh, Mr. S. Venu Gopal for M/s. Ramasubramaniam Associates for R1.

Mrs. Me. Saraswathy for R2.

Judgment Reserved on: 28th July 2022.

Judgment Pronounced on: 30th September 2022.

CORAM:

HON'BLE Mr. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER HON'BLE Dr. SATYAGOPAL KORLAPATI, EXPERT MEMBER Whether the Judgment is allowed to be published on the Internet - Yes.

Whether the Judgment is to be published in the All India NGT Reporter - Yes.

JUDGMENT Delivered by Justice K. Ramakrishnan, Judicial Member

1. The above appeal was filed challenging the Environmental Clearance (EC) granted to the 1st respondent/Nuclear Power Corporation of India Limited (NPCIL) by the 2nd respondent/Ministry of Environment, Forest and Climate Change (MoEF&CC) for expansion of the Unit - 5 & 6 of Kaiga Atomic Power Project for a capacity of 700

MW each (hereinafter referred to as 'KAPP Unit - 5 & 6') vide Proceedings F.No.J-

14011/1/2016-IA-1(N) dated 05.08.2019.

2. The appellants are certain association formed for the purpose of protection of people in Kaiga village against certain projects, including the Kaiga Atomic Power Project.

3. It is alleged in the appeal memorandum that earlier, the Environmental Clearance (EC) was granted to the 1st respondent for establishment of KAPP for Unit 1 to 6 of 235 MW each in Kaiga Village, Uttar Kannada, Karnataka by the erstwhile MoEF in the year 1992 and it was pertinent to note that area within 10 Km of the plant site is predominantly forest land with dense growth of tall and stout trees and the forest has also been categorized as reserve forest. Out of the 6 units for which Environmental Clearance (EC) was granted, Units 1 to 4 are currently operational, evidenced by the Operating Performance of the 1st respondent obtained from the website of NPCIL and produced as Annexure - A1. On 17.08.2011 the Central Government had accorded in-principle approval for setting up of 2 x 700 MW for expansion at existing site PHWRs at Kaiga. The proposal of NPCIL for the enhancement of Units - 5 and 6 was considered by the Expert Appraisal Committee (Nuclear) in its 10th meeting held on 12.08.2016 for grant of Terms of Reference ('ToR') for preparation of Environmental Impact Assessment ('EIA') for enhancing the capacity of the KAPP Unit 5 - 6 from 235 MW to 700 MW. The 2nd respondent vide communication dated 06.09.2016 laid down the ToRs for expansion of the capacity of Kaiga Units - 5 and 6 from 235 MW to 700 MW each. The 2nd respondent further made it clear that the project proponent/NPCIL will also be required to get a public hearing conducted and take further action for obtaining environmental clearance. The true copy of the communication dated 06.09.2016 along with the ToR was produced as Annexure - A2. After preparation of the Draft EIA Report, the Pollution Control Board had issued a public notice dated 09.11.2018, regarding conduct of a Public Hearing scheduled to be conducted on 15.12.2018, evidenced by Annexure - A3/Publications. After conducting the public hearing and preparing the Final EIA Report and EMP, the NPCIL had applied for Environmental Clearance to the 2nd respondent on 07.01.2019 for setting up of a Pressurized Heavy Water Reactor (PHWRs) based Kaiga Unit 5 and 6 with enhanced capacity of 2 x 700 MW. The same was appraised by the EAC and thereafter, it was recommended by them and based on the recommendations, the MoEF&CC had granted the impugned Environmental Clearance (EC) vide their Proceedings dated 05.08.2019.

4. According to the appellants, the Environmental Clearance (EC) granted is vitiated for the following grounds:-

5. The terrain around the KAPP is made of undulating hills covered with thick forests, which are an important part of the Western Ghats on the west coast of India. The forests which are a World Heritage site are considered to be some of the best tropical forests in the world with very high ecological value, rich tropical bio-diversity and many kinds of unique species. The hill ranges of the Western Ghats, of which these forests are critical parts, are considered as the backbone of the ecology and economy of South India, and are also very good carbon sequestration systems in addition to being the water fountains of Peninsular India. The Western Ghats Ecology Expert Panel

('WGEEP'), headed by noted ecologist Prof. Madhav Gadgil, had in 2011 categorised the villages in which it was situated in Karwar Taluk as an Ecologically Sensitive Zone-1 (ESZ-1) because of its rich biodiversity and vulnerability to natural disasters. The Western Ghats Ecology Expert Panel (WGEEP) had also recommended that no mining and thermal power plants, among others, be allowed in areas graded as ESZ-1. The copy of the relevant portion of the Committee Report dated 31.08.2011 was produced as Annexure - A4. The Ministry of Environment and Forests thereafter constituted a High Level Working Group to study the preservation of the ecology, environmental integrity and holistic development of the Western Ghats, which has submitted its report on 15.04.2013 categorically recommending that all 'Red' category industries should be strictly banned in that area. The true copy of the summary of recommendations and action plan in the report dated 15.04.2013 submitted by the High Level Working Group on Western Ghats was produced as Annexure - A5 and the true copy of the relevant portion of the report dated 15.04.2013 submitted by the High Level Working Group on Western Ghats earmarking the list of villages in the State of Karnataka with the ESA of the Western Ghats was produced as Annexure - A6. The Ministry of Environment, Forest and Climate Change has issued draft notification dated 10.03.2014 followed by 04.09.2015, 27.02.2017 as well as on 03.10.2018 notification proposing to declare 56,825 Sq. Kms. of identified area spread across SIX states as the 'Western Ghats Ecologically Sensitive Area. The consequence of such declaration would be that all new 'Red' category of industries as specified by the CPCB or the SPCB and the expansion of such existing industries shall be banned. A true copy of the draft notification dated 10.03.2014, 04.09.2015, 27.02.2017 and 03.10.2018 along with the relevant portion of the annexure showing the mapping of the areas which form a part of the Western Ghats Eco Sensitive Zone in the State of Karnataka was produced as Annexure -

A7 (Series). The Karnataka State Pollution Control Board has already notified Nuclear Power Plants as a Red Category Industry w.e.f. 01.06.2016, evidenced by Annexure A8/List of Red Category of Industry notified by the Karnataka SPCB. The Anshi National Park which has also been granted status of a Tiger Sanctuary is also situated within 3 kms from the KAPP site. As such the enhancement of Units 5 and 6 of the KAPP as is sought to be done cannot be allowed as it is within the 10 kms radius of the National Park. The EIA has not properly considered this aspect of the location of the project site as well. The Hon'ble Apex Court in its Judgment delivered on 29.03.2019 in Hanuman Laxman Aroskar v. Union of India 2019 SCC Online SC 441, has given detailed discussion regarding the importance of the EIA report and its failure to notice the existence of ESZs within a buffer distance of 10 kms of the project site and non-compliance of the same will vitiate the proceedings granted. The Principal Bench of National Green Tribunal in O.A. No. 597 of 2018, by order dated 24.08.2018 after observing that "it is well acknowledged that ecology of the Western Ghats regions is under serious stress" directed the republication of the draft notification dated 27.02.2017 with further caveat that "no changes be made to reduce the area of Eco- Sensitive Zone in terms of notification dated 27.02.2017 without the same being considered by this Tribunal". It was also further specifically directed that "no environmental clearance be granted and no activity adversely impacting eco-sensitive area be permitted in the area covered by the draft notification dated 27.02.2017 till the matter is finalized", evidenced by Annexure - A9/Order in O.A. No. 597 of 2018.

6. Since the order dated 24.08.2018 was not enforced, an Execution Application as Execution Application No. 19 of 2019 was filed, in which, the Tribunal by order dated 03.09.2019 directed the MoEF&CC to finalise the matter within two months and has fixed the next date of hearing on 22.11.2019, evidenced by Annexure - 10. The existing transmission lines of Units 1, 2, 3 and 4 of the KAPP (having capacity of 235 MW each) to evacuate power cannot be said to be adequate for the new enhanced additional capacity of 1,400 MW as contended by the project proponent and no study was conducted on this aspect regarding the additional land (if any) required for drawing the transmission lines. There is a possibility of additional transmission lines to carry the new enhanced load of the additionally generated electricity would be required in the near future which would have to pass through the proposed Western Ghats Eco Sensitive Zone. This aspect has not been considered either in the Terms of Reference granted on 06.09.2016, EIA Report prepared on 21.08.2018 or in the Environment Clearance granted on 05.08.2019. The Power evacuation scheme will be finalized by Central Transmission Utility (CTU) in consultation with Central Electricity Authority (CEA) and constituents of Southern Regional Grid. Reference to the same has been intentionally omitted in the EIA so as to overcome any hurdle in enhancing the capacity of the plant. Once the plant has been enhanced after incurring enormous costs, it would be fait accompli in so far as the laying down of transmission lines is concerned which cannot be avoided, since lot of expenditure of public money would have been incurred by them.

7. As per the memorandum dated 24.12.2010 of the Ministry of Environment and Forests in cases of inter-linked projects, a common EIA report has to be submitted covering the impact of each of the component in a comprehensive manner. The project for enhancing the capacity of power generation at the KAPP site and the project for evacuating the power generated cannot be looked at in isolation as both the projects are intrinsically connected. The complete obliteration of the impact to be created as a result of laying down of additional transmission lines has rendered the entire exercise clearing the path for enhancement of KAPP Units 5 & 6 futile and Annexure - A-11 is the true copy of the memorandum dated 24.12.2010 of MoEF&CC in this regard. It is reported in the media that these new lines may require the clearance of a 75 meter wide corridor for more than 100 km for the right of way. This means the destruction of many Sq. Kms of thick tropical forest of very high ecological value not only for the Western Ghats, the State of Karnataka, and the country, but to the global environment itself because of the good Carbon sequestration capability of the thick forests in the tropics is likely to be affected. The total cost (both direct and indirect) of such a destruction of tropical forests will be incalculable from the ecological perspective to India, whereas the benefits of the additional electricity from the expanded project will be negligible from the country's projected power sector capability by 2030 (year by which the two reactors may get commissioned). The forest cover in the Uttara Kannada district, where KAPP/1st respondent unit is located, has come down from a high of about 70 per cent of the land area in the 1950s to less than 25% now due to various 'development projects' including the Konkan Railway, Sea-Bird naval base, national highways, industries, many dam-based hydel projects, and the KAPP since 2000. The National Forest Policy (adopted in the 1980s) target of 33 per cent land cover by forests & trees, Karnataka's forest & tree cover at present is less than 20 per cent for which the forests of Uttara Kannada district are major contributors. The river Kali flows from the east-west direction on the northern side of the project site, which is adjoining the Dandeli-Anshi Tiger Reserve. The minimum distance from the tiger reserve varies from 718 m to 1,734 m from KAPP site. A study by Indian Institute of Science,

Bangalore, published in 2016 titled, "Stimulus of developmental projects to landscape dynamics in Uttara Kannada, Central Western Ghats"

found that there was an adverse effect on the aquatic fauna in the region because of the KAPP project. Land use at Kadra dam adjoining the project site and buffer region shows a decline of evergreen forest from 69.92% (in 1973) to 50.98% (2013) and the relevant portion of the report was produced as Annexure - A12. The increase in nuclear power capacity by more than two times at KAPP should also mean an additional fresh water demand on the Kali river, which is flowing adjacent to the project, by a similar magnitude. This will lead to an increase in the temperature of the discharged water from the project back to the river, and is a matter of concern from the perspective of the creatures dependent on that river. Due to the increased volume of the used water discharge from the project, the pollution level of the river water downstream of the project is likely to go up, despite the claims of project authorities on water purification processes to be deployed. This distorted quality of river water would have an adverse impact on the concerned stakeholders. It is impossible to imagine that it will be beneficial from any perspective. The impact of the vastly increased radiation density (because of the increase in nuclear reactor activity by double the present capacity) on the bio-diversity and the people working and living in the project area as well as nearby villages cannot be anything but deleterious. A study conducted by the Mumbai based Tata Memorial Centre has found that the number of cancer cases in Karwar taluk where the KAPP is located, has increased by 200% over a period of three years from 2010 to 2013. A true copy of the article published in Indian Express titled "Cancer cases up near Kaiga Plant: Study" on 21.06.2018 and available at online, evidenced by Annexure - A3. The Plant decommissioning and fuel storage costs have not been adequately considered/ calculated. Decommissioning costs are shown as a percentage of commissioning costs which is not correct. India has already decommissioned two reactors and is aware of the costs. So also, internationally lot of reactors are being decommissioned and the costs of such decommissioning is publicly available and from available data it is sometimes, if not always more than and not less the cost of commissioning a reactor. This aspect has not been properly considered while preparing the EIA Report. The risk of any unfortunate nuclear accident can only multiply because of the need to store on site the vastly additional quantity of highly radioactive spent fuel for hundreds of years (India has no policy as yet to store the spent nuclear fuel and other associated wastes away from the nuclear reactor site). The economic feasibility of the power generated from this unit and the cost benefit of the project for benefit of the public has not been properly considered and in fact, this is not a cost beneficial project, as the cost for production of electricity per unit is more than 11 to 12 rupees. India has presently surplus generation capacity of power from different sources and many thermal power plants are running at less than half of their capacity. There was no necessity for new power generating stations for the next 15-20 years because of the alternate energy used to substitute the electricity is also going up and if that be the case, there was no necessity for such project. These aspects have not been properly considered. The

possibility of impact was also not properly reflected in the EIA Report and the public hearing was not conducted near to the project area and it was conducted in NPCIL Township nearly 18 Kms away from the villages of Hartuga, Balemmane, Devkar and Harbour whose residents are most affected by the plant and this is in violation of Clause 7 (i) (I) (ii) (a) of the EIA Notification, 2006 and thereby denied the opportunity for the local public to attend the public hearing.

<http://www.newindianexpress.com/states/karnataka/2018/jun/21/cancer-cases-up-near-kaiga-plant-study-1831251.html>

8. So under such circumstances, non-compliance of those statutory provisions and non-consideration of these aspects by EAC or by issuing authority will show the non-application of mind on the part of the authorities in considering the project in the right perspective and granting Environmental Clearance (EC) and thereby, the same is vitiated and liable to be set aside.

9. Aggrieved by the grant of Environmental Clearance (EC), they filed this appeal seeking the following reliefs:-

"a) Quash and set aside the Environmental Clearance granted by the Ministry of Environment, Forests and Climate Change vide its letter dated 05.08.2019 communicated to the Nuclear Power Corporation of India Limited for expansion of the capacity of Units 5 and 6 of the Kaiga Atomic Power Plant from 235 MWe each to 700 MWe each; and / or

b) In the alternative, direct the Respondents to reframe the Terms of Reference taking into account the issues raised in the instant Appeal and thereafter carry out a detailed joint Environmental Impact Assessment of enhancing the capacity of Unit 5 and 6 of the Kaiga Generating Station together with the Environmental Impact Assessment of the laying down of transmission lines for creation of the evacuation path for the enhanced power so generated.; and

c) Pass any other order / s which this Hon'ble Tribunal may deem fit and proper, in the interest of justice."

10. Since the appeal was not filed within the time provided viz., 30 days, the appellant filed this appeal along with I.A. No.35 of 2019 (SZ) to condone the delay in filing the appeal and as per order dated 16.03.2020, this Tribunal allowed the I.A. No.35 of 2019 and condoned the delay in filing the appeal and admitted the matter.

11. The 1st respondent filed counter affidavit contending that the appeal is not maintainable and the grounds mentioned in the appeal are not sufficient to set aside the Environmental Clearance (EC) granted. They have given the details of establishment of Nuclear Power Corporation of India Limited and also the evolution of use of Atomic Energy by enacting the Atomic Energy Act, 1962 and the purpose for which the power projects have been created using Atomic Energy in an effective



manner for utilizing the same for social benefit. They also mentioned about the various stages at which this programme was envisaged and implemented. The mission of the 1st respondent is to develop nuclear power technology and produce nuclear power as a safe, environmentally benign and an economically viable source of electrical energy to meet the increasing electricity needs of the country. Its mission is to implement the clear and unwavering policy choice, decision and long-term vision of the Government of India which is the broader public interest is determined to provide energy to all the people of India. They also developed their Corporate Environmental Policy by which they have committed to protect the environment and have proper Environmental Management System and they have all operating units except KKNPP (Kudankulam, Tamil Nadu), which have recently been commissioned have obtained a certified Environmental Management System in line with ISO/IS - 14001 and Occupational Health & Safety Management System in line with IS 18001. These systems are regularly audited and not only comply with the legislative and other Environmental, Health & Safety ("EHS") requirements, but also to achieve the continuous improvement in the environmental and safety performance of all the NPCIL units. There is a long procedure for identifying the site for establishment of such units. In the case of plant where NPP(s) is already in operation, and is being considered for the establishment of another NPP(s), the same is referred to as an "brown site" and where NPP is to be established for the first time, it is referred to as "virgin / Greenfield site". While assessing the suitability of a particular site, the Site Selection Committee considers the following aspects:

"a) Codes of practices on safety in Nuclear Power Plant Siting published by the AERB.

b) All relevant Guidelines of the Union Ministry of Environment, Forests & Climate Change (MoEFCC).

c) Technical and engineering considerations in selection of sites.

d) Electricity demand, supply, transmission, alternate fuel options.

e) Considerations based on inputs from Central Electricity Authority, India.

f) Water availability and quality, its drawl and discharge. g) Expected burden of radiological, conventional, thermal pollution load, etc."

12. The Committee also considers other aspects such as available electrical systems, construction facilities, meteorology, population density in the area, land use, geology, geo-hydrology, flood and seismo-tectonics, etc. It further carries out detailed evaluation to assess and ensure the safety of the plant and the environment. The site is also examined with respect to the "rejection criteria" spelled out in the regulatory codes of practice for selection of sites. Subsequently, the recommendations of the Committee are submitted to the Government of India and after essential inter-ministerial consultations, the "Cabinet Committee on Security" consider this and accord "In Principle" approval towards setting up the plant at a particular area. Since the inception of Atomic Energy Programme in the country in the 1950s, highest importance has always been given to the adoption and maintenance of highest safety standards. In order to enforce safety standards, Government of India

constituted the AERB formally in 1983 (a role which was fulfilled by a different Safety Review Committee of the DAE before that). The AERB is entrusted with the responsibilities for laying down safety standards and framing rules and regulations covering regulatory and safety functions envisaged under the Atomic Energy Act, 1962. The AERB has also been empowered as an enforcing agency in respect of implementation and monitoring aspects, including for industrial safety, under the Factories Act, 1948. The Mission of the AERB is to ensure that the use of ionizing radiation and nuclear energy in India does not cause undue risk to the health of people and the environment. While undertaking the review activities relating to the establishment and operation of a NPP, the safety of workers, the public and the environment is to be ensured, and is a prime importance of the AERB. They also adopted certain methods relating to reduction in generation, treatment, handling, monitoring, disposal and safe storage of various radioactive wastes generated in a NPP. They also have given the details for obtaining site clearance and other procedure for obtaining other clearance and permissions under the respective statutes for the purpose of starting the unit. Further, they will have to obtain consent from the AERB regarding the siting of nuclear power plants and only after approved by the AERB, the same will be selected for that purpose. They also have given the details of the procedure to be followed under the EIA Notification for getting clearance and also if it is near coastal zone, the procedure for obtaining CRZ Clearance under the CRZ Notification. During the appraisal by the EAC and MoEF&CC, the 1st respondent had submitted that for power evacuation, no extra corridor is proposed. Up- gradation of existing ones is proposed utilizing High Tension Low Sag (HTLS) Conductor and the studies to establish the same has to be conducted by Power Grid Corporation of India Ltd. (PGCIL) as per regulations. They also mentioned that since the inception of this project of six units (6 x 235 MW) in 1988, that there will be a common corridor required to evacuate Power from 6 x 235 MW units. With the help of Power system planning and appraisal division of CEA and KPTCL survey, two power corridors were designed and maintained with sufficient margins for maintenance and extra power capacity for transients. During the consideration of upgrading 235 MW to 700 MW, NPCIL maintained the earlier policy decision that, no additional power corridor, land or water is required for up-gradation of Kaiga - 5 & 6 Unit. For power transmission lines, already a lot of work has been carried out including feasibility studies and power flow studies for using existing power corridor lines to evacuate additional 960 MW. After detailed review at their design office, it was decided to replace the existing conductors with High Tension Low Sag (HTLS) conductors. The 1st respondent had approached CEA for application of grant of connectivity on 11.06.2019 along with the requisite fees. They also paid fees for feasibility studies and load diagram. Report has been submitted indicating a satisfactory and favourable power flow in most of the transients. Two meetings have been held by Southern Regional Standing Committee on Transmission (SRST) and in its 2nd meeting, where on a query that for changing the power cables, NPCIL will provide a long shutdown which will cost for power generation. As per the TOR, NPCIL obtained the Wildlife Clearance for Kaiga 5 & 6 vide dated 17th September, 2019 from National Board for Wild Life. This was based on the Wild Life Clearance recommendations of the Forest, Ecology & Environment Department of Government of Karnataka vide dated 8th March, 2019, which was submitted to the EAC, MoEF&CC as a part of the appraisal, evidenced by Exhibit-1. The Wild Life Clearance Stipulations and Conservations Plan as outlined in the Annexure-14, EIA Vol-II report for Kaiga 5 & 6 will be implemented to conserve the biodiversity in the area around the Kaiga Project. An exclusion zone of 2.3 km around the existing units of Kaiga Project is maintained, where no habitation is permitted in line with the requirements of AERB. The exclusion zone is

protected habitat for variety of flora and fauna species. This exclusion zone will be maintained, which will further flourish the bio-diversity around the Kaiga Project. So, it will have only minimum impact on forest & environment due to power evacuation from the proposed units and the apprehensions raised by the appellants are not correct. The EIA Report of Kaiga Unit 5 & 6 was prepared addressing all the ToR conditions. However, MoEFCC prior to grant of Environmental Clearance (EC) for Kaiga 5 & 6 again reviewed the NPCIL submissions made vide mail dated 12th July, 2019, evidenced by Exhibit II. Although nuclear power projects are categorised as Red Category projects by State Pollution Control Board, but pollution load from NPPs is not of the same magnitude as from Red Category industries as the environmental impact due to conventional pollutants from NPPs is negligible and impact due to radiation exposure in public domain is a small fraction of the limits specified by AERB. The EIA study was conducted on these aspects and they have provided all necessary precautionary and mitigating measures. The erstwhile Ministry of Environment & Forest (MoEF) accorded Environmental Clearance (EC) vide letter dated 10/01/1992 for setting up of six units (6 x 235 MW capacity) at Kaiga Site in two stages (unit 1 & 2 in first stage and units 3 to 6 in second stage). Presently, 4 units (Kaiga-1 to 4) of capacity 4 x 235 MW are in operation. Kaiga 5 & 6 (each of 235 MW) NPP units were part of the Stage-II nuclear power project program at Kaiga Site for which MoEF has already granted environmental clearance in 1992. It was not a new project or new expansion conceived on a later date. In line with Govt. of India approval dated 17th August, 2011 for revised generating capacity of Kaiga Unit 5 & 6 (each of 700 MW), NPCIL obtained environmental clearance from MoEFCC in due compliance of the requirements of EIA Notification, 2006 and its amendment from time to time. So, the grounds raised that it has not considered all these aspects are not correct. They have detailed the various clearances obtained and the studies conducted on these aspects and also they have obtained necessary permissions required under the various departments in this regard. They also obtained Wildlife Clearance and they are prepared to abide by the conditions imposed in the Wildlife Clearance by the National Board of Wildlife. They will also strictly implement the recommendations made by various authorities and all these aspects were reflected in the EIA Study and the documents produced. They denied the various reports relied on by the appellants regarding the health impact on account of the proposed unit and also denied the allegation of cost benefit feasibility of the project for the reasons mentioned in the appeal. All these aspects were considered by the Government and other authorities which are expected to grant clearance to the project proponent in this regard. They also mentioned about the procedure to be followed for disposing the waste as per the procedure provided which they are strictly adhered to. The place of public hearing approved by the District Administration in line with the requirement of EIA Notification, 2006 and lot of people attended the meeting and 225 queries were raised including written queries and those things were properly addressed by the project proponent and this was compiled in Volume - VIII of the EIA Report. Several persons have attended the meeting including the higher officials. It cannot be said to be a new project and it is existing ongoing project and all these aspects were considered by the EAC as well as the MoEF&CC before granting the clearance. So, they prayed for accepting their contentions and dismiss the appeal, as no grounds made out for setting aside the Environmental Clearance (EC) granted.

13. The 2nd respondent filed counter contending that for the purpose of consideration of Nuclear Power Plant, a committee comprising of sector specific experts was constituted as per Annexure - R2

(1) and the project since falling under A - Category, this was appraised by the MoEF&CC and they have produced the relevant portion of the EIA Notification, 2006 - Schedule - I as Annexure R2(2). The ToR for the present project was issued based on the deliberation made in the meeting held on 12.08.2016 and copy of the said Office Memorandum dated 06.09.2016 was produced as Annexure - R2(3). Earlier, the Environmental Clearance (EC) was granted for this project having 6 units with capacity of 235 MW as per proceedings dated 10.01.1992 at Kaiga and four units were functioning at a capacity of 4 x 235 MW and it is in operation. They filed an application for Kaiga Unit - 5 & 6 for enhanced capacity of 2 x 700 MW in place of 2 x 235 MW and it is part of the Stage - II Nuclear Power Program at Kaiga Site and a consolidated Environmental Clearance (EC) was granted for Unit 5 & 6 even in 1992. The project in question has gone through Public Hearing presided by Deputy Commissioner, Uttara Kannada District held on 15.12.2018, at NPCIL Kaiga Township, Mallapura-Virje, Karwar Taluk, Uttara Kannada District, Karnataka and written responses from other concerned persons who have a plausible stake in the environment aspects of the project or activity were obtained. This was adequately addressed while granting the Environmental Clearance (EC). After the public hearing, they applied for Environmental Clearance (EC) and the same was granted by their letter dated 05.08.2019, evidenced by Annexure - R2 (4). Due diligence was done while appraising the project by the EAC(N&D). The committee noted that no fresh, land acquisition for Kaiga 5 & 6 is required. A total of 1665 ha. of land is in possession of NPCIL the break-up of which is as given below: "i. 829 ha. (submerged in Kadra reservoir). ii. 665 ha. (forestland). iii. 171 ha. (other land)"

That 120 ha. out of 665 ha of forest land was diverted for Unit 1 to 6 of Kaiga plant vide order dated 19/02/1988. The break-up for same was as given below: "(a) 65.91 ha. utilized for KGS 1 to 4 (b) 54.09 ha. will utilized for Kaiga 5 & 6." Compensatory Afforestation for 120 Ha of diverted forest land (identified for Kaiga 1 to 6) was made in 732 Ha of Land at Chamarajanagar and Mandya Districts of Karnataka with the help of Forest Department. The results of the environmental surveillance shows that due to operation of KGS 1 to 4, the radiation dose received by a member of public staying at fence post (2.3 km) is 1.3  $\mu$ Sv, which is 0.13% of the annual dose limit of 1000  $\mu$ Sv prescribed by AERB/ICRP and is within statistical variation of the annual average dose of 2400  $\mu$ Sv due to natural radioactivity. Radiation release from nuclear power plant at Kaiga is negligible and is only a small fraction of AERB specified limits. The environment around Kaiga (30 km radius) is monitored for radioactivity levels by independent agency ESL, BARC. The results indicate that radiation exposure due to operation of KGS Units 1 to 4 is negligible as compared to AERB dose limit. The documentary proof of following was ensured: "Forest Clearance (FC-1); State Wildlife Clearance; Clearance from State Govt. for water utilization from the Kali river to the quantum expected for the Plant; Clearance from State Govt. for felling of 8700 trees as proposed for the expansion; health impact study been conducted for the people in the surrounding radius of the existing plant; Environmental Clearance (EC) conditions compliance report w.r.t. Environmental Clearance (EC) issued previously by the Ministry, from RO, Bangalore; existing effluent treatment mechanism and impact on Kali river; and types of Hazardous Waste and the mechanism for its management." Taking into account the Western

Ghat region and Tiger Reserve in the vicinity, the Environmental Clearance (EC) was issued subject to National Board of Wildlife (NBWL) Clearance, which NPCIL informed that is under consideration.

Due deliberations have been done on the conditions stipulated in the environmental clearance for preservation and protection of the environment. The condition of Environmental Clearance (EC) mandates that green belt shall be developed in 33 % area around the project boundary with the native species of adequate density and width. In addition, plantation shall be raised in other vacant areas within the plant site. Epidemiological study covering 20km radius around the Kaiga Site has been carried out during the year 2000. Recently another study covering 30km radius around the site has been carried out by Tata Memorial Centre (TMC), Mumbai. The final report is awaited. As part of Environmental Clearance (EC) conditions it was mandated that Periodic health survey of the population residing within 20 km around the proposed plant site shall be undertaken and the activities under the expansion project will be initiated only after availability of positive report from Tata Memorial Centre (TMC) Mumbai with respect to recent health study. The Environmental Clearance (EC) was issued to the project after undertaking the cost benefit analysis of the project. As was observed by the EAC(N&D), the major benefit of the project is generation of 1400 MW clean power to meet the growing energy demand of the country. There are associated benefits which include industrial growth, direct & indirect employment, infrastructure development of the local areas etc. 50% of the power generated from Kaiga 5 & 6 is for Karnataka and with compliance of all the environmental conditions any impact of environment and health can be significantly minimized. So, they prayed for accepting their contentions and passing appropriate orders.

14. Heard the learned counsel appearing for the appellant and respondents.

15. The learned counsel appearing for the appellant mainly relied on the notification issued by the MoEF&CC in respect of Western Ghats on various times regarding the restriction of conduct of certain Red Category industries, including Power Plants and without considering these aspects, the Environmental Clearance (EC) was granted. He had also argued that the health impact study and the interlinked project viz., the requirement of further site for transmission of excess power to be generated on account of this unit etc. have not been considered. Further, the Environmental Clearance (EC) granted was in violation of the direction of the Principal Bench of National Green Tribunal, New Delhi in O.A.597 of 2018.

16. On the other hand, the learned counsel appearing for the 2nd respondent/MoEF&CC argued that all necessary studies have been conducted and all these aspects have been considered by the sector specific experts constituted for this purpose and only after proper deliberation and consideration and also considering the impact of the project on Western Ghats, the project was recommended by the EAC and the MoEF&CC has granted the Environmental Clearance (EC) with specific and general conditions taking into account all possible impact on the same. There was no irregularity and impropriety committed by the MoEF&CC in granting the Environmental Clearance (EC) and in fact, it was an ongoing project and earlier, the Environmental Clearance (EC) was granted for six units including this project but with a limited capacity of 235 MW which they want to enhance to 700 MW each only for Unit - 5 & 6.

17. The learned counsel appearing for the 1st respondent argued that the notification in respect of Western Ghats is only in the draft stage and it has not attained the finality and the unit was in existence since 1992 for which Environmental Clearance (EC) was granted and they are only enhancing the power generation in respect of the Unit - 5 & 6 and since it is being an ongoing project, the restrictions relied on by the appellant on the basis of the circular issued by the MoEF&CC is not applicable. Further, they have taken all necessary precautions and no eco-sensitive zone has been fixed and this is an existing unit and as such, the notification is not applicable. Further, these aspects have been considered by the MoEF&CC and clearance was granted after taking due care of all environmental issues. Further, they have categorically mentioned that there was no additional land required or additional transmission lines required for drawing the power generated and they have already upgraded the existing lines in consultation with the concerned authorities to cater the need for transmission of power that is likely to be generated by these units with enhanced capacity.

18. The learned counsel further argued that as per the draft notification issued in 2017, the already developed areas have been excluded and only those areas which are having dense ecologically sensitiveness and biodiversity alone were retained under the notification and only in that area, the restrictions will apply. The learned counsel further submitted that they will abide by any conditions imposed by this Tribunal. So, according to the learned counsel, there was no merit in the appeal and they prayed for dismissal of the appeal.

19. We have considered the pleadings, submissions (both oral and written) made by the learned counsel appearing for the parties and also perused the documents available on record.

20. The points that arose for consideration are:-

- a. Whether the Environmental Clearance (EC) granted to the 1st respondent by the 2nd respondent is liable to be set aside for any of the reasons stated in the appeal memorandum and also points raised at the time of hearing?
- b. What are all the further directions (if any) to be issued to protect environment applying the principles of 'Precautionary Principle' and „Sustainable Development' ?
- c. Relief and costs.

POINTS:-

21. The appeal was filed challenging the Environmental Clearance (EC) granted to the 1st respondent for their Nuclear Power Plant viz., Kaiga Atomic Power Plant Unit - 5 & 6 for their enhanced capacity of 2 x 700 MW each.

22. According to the appellant, the entire area where the existing power plant is situated is within the Western Ghats on ecologically sensitive area and as per the report of the Western Ghats Ecology Expert Panel Part - I submitted by Prof. Madhav Gadgil and Ors., they have categorically identified certain areas as highly ecologically sensitive and delineated 188 taluks in six States of western Ghats

on the basis of the exercise made by the High Level Working Group Committee appointed for this purpose. The High Level Working Group had made certain development restrictions in the proposed ecologically sensitive area some of them are prohibitory in nature and some of regulatory in nature. It was further mentioned that all other infrastructure development activities necessary for the region will be carefully scrutinized and assessed for cumulative impact and development needs for granting clearance. It was also mentioned that there should be complete ban on mining, quarrying and sand mining in the ecologically sensitive area. All current mining area should be phased out in the next five years or at the time of expiry of mining lease whichever is earlier. No thermal power plants should be allowed in Eco-Sensitive Aaea. Hydro power projects may be allowed but subject to following conditions:-

"A) Uninterrupted ecological flow at atleast 30 percent level of the rivers flow in lean season till a comprehensive study establishes individual baselines.

B) After cumulative study which assesses the impact of each project on the flow pattern of the rivers and forest and biodiversity loss.

C) ensuring that the minimum distance between the projects is maintained at 3 Km and that not more than 50% of the river basin is affected at any time."

23. The High Level Working Group (HLWG) recommended that wind energy should be included in the EIA Notification and brought under the purview of assessment and clearance. All Red category industries should be strictly banned. As the list of industries as 'Orange' includes many activities like food and fruit processing, there will not be a complete prohibition on this category. But all efforts should be made to promote industries with low environmental impacts. Building and construction project of 20,000 Sq. M. and above should not be allowed. Townships and area development projects should be prohibited. All other infrastructure and development projects / schemes should be subject to environmental clearance under Category 'A' projects under ELA Notification 2006. Additional safeguard for forest diversion in Eco-Sensitive Area should be introduced. In cases of forest clearance required in Eco-Sensitive Area, all information of the project, from application stage to approval should be placed in the public domain on the website of MoEF&CC and of the Forest Department of the respective States. All development projects, located within 10 km of the Western Ghats Eco-Sensitive Area and requiring Environment Clearance (EC), shall be regulated as per the provisions of the EIA Notification, 2006. The HLWG recommended a framework for governance and regulation of Eco- Sensitive Area, which draws on current regulatory institutions for decision-making, but simultaneously, strengthens the data monitoring systems and the participation and involvement of local communities in decision-making. Existing regulatory institutions and processes for environment and forest clearances and project monitoring would need to be greatly strengthened for the governance framework to be enforced and monitored effectively. The villages falling under Eco-Sensitive Area will be involved in decision making on the future projects. All projects will require prior-informed consent and no objection from the Gram Sabha of the village. The provision for prior informed consent under the Forest Rights Act will also be strictly enforced and certain other restrictions were also made.

24. According to the learned counsel appearing for the appellant, the report of the High Level Working Group of Western Ghats Volume II submitted on 15.04.2013 gave the list of villages coming under the eco-sensitive zone of Western Ghats and Kaiga village is one among them as shown as Sl. No.729 of the list published. Further, according to the learned counsel, the MoEF&CC on the basis of the recommendation made by the committee had issued draft Notification S.O. 733 (E) dated 10.03.2014, wherein the Central Government notified the identified area of 56,825 Sq.Km. which is spread across six States viz., Gujarat, Maharashtra, Goa, Karnataka, Kerala and Tamil Nadu as Western Ghats ecologically sensitive area. They also given the eco-sensitive area falling in each state as Annexure - A with state wise map of the portion of the eco-sensitive area in each state as Annexure B1 to B5 and state wise list of villages falling with the eco-sensitive area along the respective districts and taluks as Annexure - C. As regards the eco-sensitive area in the State of Kerala, they have restricted the area of 9993.7 Sq. Km. which includes 9107 Sq. Km of forest area and 886.7 Sq. Km. of non-forest area and the boundary and description of the eco-sensitive area and the village wise details of Eco-Sensitive Area proposed by the State Government are available on the website of Kerala State Biodiversity Board. But such an exercise was not done in respect of other states. The notification also says that the following categories of projects and activities shall be prohibited in eco-sensitive area except those proposal which have been received by the EAC or the MoEF&CC or SEAC or SEIAA before 17.04.2013, the date on which the HLWG report was uploaded on the website of the Ministry and are pending consideration and such proposals shall be dealt in accordance with the guidelines and rules in existence at that time. The following were prohibited activities viz., Mining, Thermal Power Plants where no new thermal power projects and expansion of the existing plants shall be allowed in the eco-sensitive area. As regards Industry, all new category industries as specified by the CPCB/SPCB and the expansion of such existing industries shall be banned apart from other projects which were enumerated therein, where certain things were prohibited and regulated.

25. As regards the State of Karnataka is concerned, 20,668 Sq. Km. were identified as Ecologically Sensitive Area. Further, in the year 2018, the MoEF&CC had issued further draft notification in respect of Western Ghats as S.O. No.5135 (E) dated 03.10.2018 in supersession of the earlier notification viz., S.O. 667 (E) dated 27.02.2017, wherein also they reiterated the same thing and identified area has been ascertained as 56,825 Sq. Km. in six states including State of Karnataka as western Ghats ecologically sensitive area. There also the same restrictions mentioned in the earlier notification were reiterated.

26. According to the learned counsel, as per the Annexure - 8/Circular issued by the Pollution Control Board, Nuclear Power Plant is categorized as Sl. No.1135 as Red Category.

27. Further, in Goa Foundation Vs. Union of India (O.A. No.597 of 2018), the Principal Bench of National Green Tribunal, New Delhi by order dated 28.08.2018 directed the State of Karnataka to ensure that the notification in relation to the declaration of forest land/deemed forest should be processed and notified within three months from the date, wherein they have specifically mentioned that any alteration in the draft notification dated 27.02.2017 may seriously affect the environment and especially in view of the recent incidents in Kerala, we direct that no changes be made to reduce the area of eco-sensitive area in terms of Notification dated 27.02.2017 without the same being



considered by the Tribunal. Further, no Environmental Clearance (EC) may be granted and no activity adversely impacting the eco-sensitive area be permitted in the area covered by draft notification dated 27.02.2017 till the matter is finalized. Again as per order in E.A. No.19 of 2019 in O.A. No.597 of 2018, (Goa Foundation Vs. Union of India), the Principal Bench of National Green Tribunal, New Delhi by order dated 03.09.2019 directed the MoEF&CC to take immediate steps to finalize the notification to be issued.

28. So, according to the learned counsel appearing for the appellant, though a serious objection was raised regarding the expansion to be granted, as the area falls within the eco-sensitive area of Western Ghats, nothing was mentioned about the same in the appraisal of the project. No specific or other conditions have been imposed on this aspects well. Further, the grievance of the public in this regard has not been properly considered and not addressed as well even by the project proponent, except stating the MoEF&CC has issued ToR and it is on that basis, the EIA Report and EMP have been prepared and Wildlife Conservation Plan has also been provided and that is not sufficient for this purpose. No proper health study has been conducted, though a study conducted by the Tata Memorial Centre, Mumbai revealed that number of cancer patients increased on account of the radioactivity generated from the Nuclear Power Plants. Further, the MoEF&CC had issued directions under Section 5 of the Environment (Protection) Act, 1986 dated 13.11.2013, on the basis of the recommendations made by the High Level Working Group of Prof. Madhav Gadgil as well as Prof. Kasturirangan reports, where also the mining, quarrying and thermal power plants were prohibited and they were directed to consider those projects which were received prior to 17.04.2013 and pending. Though an application was made by the 1st respondent to the Ministry for exempting the Kaiga Atomic Power Plant at Kaiga Village and residential colony at Mallapaur Village from eco-sensitive area falling under the Western Ghats and the restrictions made, the same has not been considered and no further orders have been passed regarding the same. This aspect has not been considered by the MoEF&CC while considering the project. They also raised objection that the public hearing was not conducted at a proper place and no impact assessment regarding the inter-linked project of further transmission lines require for transmission of the additional power that is being generated on the basis of the expansion of the Unit 5 & 6 of the 1st respondent unit and as such, according to the learned counsel, the entire proceeding is vitiated and the same is liable to set aside.

29. On the other hand, the case of the MoEF&CC was that all these things have been considered and only thereafter, the Environmental Clearance (EC) was granted.

30. The case of the project proponent was that the EAC had considered all these aspects and it is not a new project but an ongoing project in respect of five units viz., Unit 1 to 5 earlier Environmental Clearance (EC) was granted after conducting proper studies and it is thereafter, they wanted to enhance the capacity of the Unit - 5 & 6 which was even at the earlier stage to be treated as Stage - II development enhancing the capacity to 700 MW each and for that purpose, the proposals were mooted and the Government of India has issued in- principle approval for this purpose and it is on that basis, they have started the process of obtaining Environmental Clearance (EC). Further, considering the public interest and the necessity for power generation considering the sustainable development for meeting the demand of electricity in respect of industries this is highly necessary

and it is only in the draft notification stage, unless it become final, the same cannot be affecting the ongoing projects which are under consideration as later if these areas are excluded, then any stalling of the project on the basis of the draft notification will have great impact on economy and cost exploration of the project and that will have impact on the public only. Further, they will be strictly abide by the conditions imposed and there is no necessity to set aside the Environmental Clearance (EC) and if at all any further study is to be conducted, they are prepared to conduct the same.

31. The Hon'ble Supreme Court in the second case of Hanuman Laxaman Arsokar Vs. Union of India (2020) 12 SCC 1 did not deem it fit to interfere with the Environmental Clearance (EC) for setting up an airport in the State of Goa in which an objection was also raised on the basis of the O.M. dated 13.11.2013. The Hon'ble Apex Court also considered the greater public utility and accordingly, decided not to interfere with the grant of Environmental Clearance (EC), though the Hon'ble Supreme Court had initially found fault with the manner in which the Environmental Clearance (EC) has been granted by the MoEF&CC and remanded the matter for fresh consideration, as Hanuman Laxaman Arsokar Vs. Union of India (1st case) reported in 2019 SCC Online SC 441.

32. The project proponent further submitted that they have conducted proper impact assessment study and it was mentioned that there was no impact on radiation exposure and there was no necessity for any further area for this purpose and with the existing transmission lines, they will be able to proceed with the project. They also denied other aspects. They also obtained Wildlife Clearance for this unit dated 17.09.2019 from the National Board for Wildlife and this was based on the Wildlife Clearance's recommendations of the Forest, Ecological and Environment Department of Government of Karnataka which was submitted to the EAC, MoEF&CC as part of their appraisal and they also obtained FC as early as in 1988 and they do not require any further area for this purpose.

33. In the decision reported in Hanuman Laxman Aroskar Vs. Union of India & Ors. (2020) 12 SCC 1, the Hon'ble Apex Court has considered the grant of Environmental Clearance (EC) in the second round of litigation challenging the same, wherein a specific study was conducted in respect of impact of the project on Western Ghats and it is thereafter, came to the conclusion that there was no much impact of the project on the villages covered under the Eco-Sensitive Area of Western Ghats and this aspect has been considered by the EAC and as such, there is no necessity for interfering with the Environmental Clearance (EC) granted.

34. Further, the dictum laid down in Tata Power Company Limited & Ors. Vs. Union of India & Ors. reported in MANU/MH/0877/2022 that was related to grant of FC for the power plant for cutting and removal of the trees which includes mangroves and after considering the circumstances and evaluating all the aspects, permission was granted with certain conditions. The same was the view taken by the Hon'ble High Court of Bombay in Goa Foundation & Anr. Vs. Konkan Railway Corporation & Ors. 1994 MH LJ 21. Further, in that case, an attempt was made by the Senior Advocate appearing for the applicant that in the draft notification certain restrictions have been made but the Hon'ble High Court has held that it is not possible to take any notice of such draft notification because it has no legal existence till the objections are examined and final notification is issued.

35. But it may be mentioned here that in Hanuman Laxman Aroskar (1st case), the Hon'ble Apex Court had considered the fact of suppression of fact of the ecologically sensitive area, including the Western Ghats and non-application of mind by the EAC and the MoEF&CC in granting the Environmental Clearance (EC) and on that ground, it was sent back and it is thereafter, a further study was conducted and then, the Environmental Clearance (EC) was granted and later, it was considered by the Hon'ble Apex Court in Hanuman Laxman Aroskar (2nd case) reported in (2020) 12 SCC 1 and on satisfaction of the study conducted, approved the same.

36. In this case, at the time when the application was filed for Environmental Clearance (EC), this aspect was not mentioned in the Form - I application. Further, nothing was mentioned in the discussion of the minutes of EAC regarding the scope of the impact of the project on Western Ghats and the prohibitions imposed therein and the ToR also did not provide for any specific study of the project on the ecological sensitive area of the Western Ghats and also the reason for exempting this expansion project in spite of the prohibition imposed in the Office Memorandum issued during 2013 and also restrictions made by the Principal Bench of National Green Tribunal, New Delhi in E.A. 19 of 2019 in O.A. No.597 of 2018.

37. The report of the High Level Working Group on Western Ghats in Volume No. I and II by Professor Madhav Gadgil and later by Prof. Kasturirangan, they have identified certain areas as ecologically sensitive area with 188 villages in different taluks and also made certain restrictions of new projects or expansion of the existing projects in such areas which includes Thermal Power Plants and Red Category industries as categorized by the CPCB and admittedly, including the Nuclear Power Plant was categorized as Red category by the CPCB in their categorization and it was recommended to be prohibited in the identified eco-sensitive zone by the High Level Working Group. It is on that basis, in 2013, the MoEF&CC has issued a circular under Section 5 of the Environment (Protection) Act, 1986 as F.No.1-4/2012/RE (Pt.) dated 13.11.2013 reiterating all these aspects and restricting certain activities in eco-sensitive zone which reads as follows:-

"F. No. 1-4/2012 - RE (Pt.) Government of India Ministry of Environment and Forests Paryavaran Bhavan, CGO Complex, Lodhi Road, New Delhi - 110003 Dated: 13 .11.2013 Sub: Directions under Section 5 of the Environment (Protection) Act, WHEREAS, Western Ghats is an important geological landform on the fringe of the west coast of India. It is the origin of Godavari, Krishna, Cauvery and a number of other rivers. It extends over a distance of approximately 1500 km and traverses through Six States viz. Gujarat, Maharashtra, Goa, Karnataka, Kerala and Tamil Nadu;

2. And whereas, Western Ghats is a global biodiversity hotspot and a treasure trove of biological diversity. Western Ghats harbour many endemic species of flowering plants, endemic fishes, amphibians, reptiles, birds, mammals and invertebrates. It is also important center of evolution of economically important domesticated plant species such as pepper, cardamom, cinnamom, mango and jackfruit. Western Ghats has many unique habitats which are home to a variety of endemic species of flora and fauna such as Myristica swamps, the flat- topped lateritic plateaus, the Sholas and

wetland and riverine ecosystems. UNESCO has included certain identified parts of Western Ghats in the UNESCO World Natural Heritage List because Western Ghats is a Centre of origin of many species as also home for rich endemic biodiversity and hence a cradle for biological evolution;

3. And whereas, the Ministry of Environment and Forests (MoE F) had constituted a High Level Working Group (HL WG) under the Chairmanship of Dr. K. Kasturirangan, Member (Science), Planning Commission vide office order dated 17.8.2012 (O study the preservation of the ecology. environmental integrity and holistic development of the Western Ghats in view of their rich and unique biodiversity;

4. And whereas, the HLWG submitted its report to the MoEF on 15 lh April 2013 and it was thereafter put in public domain by hosting on the website of the Ministry, and also disseminated to all stakeholders including the six State Governments of Western Ghat region for their feedback and comments. All stakeholders were also invited to offer their views on the HL WG report. Thereafter, on completion of a transparent process, the Ministry has accepted the HL WG report " in principle" with certain stipulations;

5. And whereas, HL WG noted that approximately 60 per cent of the Western Ghats region is under cultural landscape i.e. it has human dominated land use of settlements, agriculture and plantations (other than forest plantations) and around 40 per cent of the land area is under natural landscape. Of the natural landscape, the biological y rich areas, with some measure of contiguity are roughly 37 per cent of the Western Ghats which is 59,940 km<sup>2</sup>. HLWG identified this 37% of natural landscape having high biological richness, low forest fragmentation, low population density and containing Protected Areas (PAs), World Heritage Sites (WHSs) and Tiger and Elephant corridors as an Ecologically Sensitive Area (ESA);

6. And whereas the list of State-wise, District-wise and Taluk-wise villages in ESA identified by the HL WG is at Annexure - A;

7. And whereas, because of unprecedented threats to natural landscape of Western Ghats region by development projects and urban growth, the Working Group has recommended a non-tolerance policy with respect to highly interventionist and environmentally damaging activities like mining or polluting industries. HL WG has highlighted the need for urgent action for protection of biologically rich, diverse and natural landscape of Western Ghats;

8. And whereas, keeping in view the above, immediate action is required to be taken by the Central Government in publi c interest in light of Rule 4(5) and Rule 5(4) of the Environment (Protection) Rules, 1986 as amended from time to lime to preserve the environmental integrity of the Western Ghats;

9. Now therefore, in exercise of powers conferred under Section 5 of Environment (Protection) Act, 1986, the fo llowing directions are hereby issued:

The followi ng category of new and/or expansion projectslactivities shall be prohibited in ESA from date of issue of these directions except those cases which have been received by EACslMoEF or SEACS/SEIAAs before the date of putting HL WG report on the website of the Ministry, i.e., 17.4.20 13 and which are pending with EACslMoEF or SEACs/SEIAAs.

Such projects will be dealt under the guidelines and rules applicable at the time of application before the respective EACslMoEF or SEACs/SEIAAs. Apart from such cases, no pending case or any fresh case shall be considered by the EACs/MoEF or SEACs/SEIAAs from the date of issue of these directions.

(a) Mining, quarrying and sand mining

(b) Thermal Power Plants

(c) Building and construction projects of 20,000 sq. m. area and above

(d) Township and area development projects with an area of 50 ha and above and/or with built up area of 1,50,000 sq.m. and above

(e) Red category of industries· (\* The CPCS list of red category industries would be the minimum list. Industries not included in the CPCB list but mentioned in the Red Category list of the SPCS of the concerned Western Ghats State shall also be categorized as Red category for that State.)

10. These directions will come into force with immediate effect and remain in force till further orders. In case of any violation, appropriate legal action under the Environment (Protection) Act, 1986 shall be taken.

11. This issues with the approval of the Competent Authority."

38. Further, Kaiga Village was one of the village coming under the said area of 188 villages identified by the High Level Working Group on Western Ghats. Based on that, the MoEF&CC has issued a draft notification earlier in 2014 restricting certain activities and also identifying the total extent of the eco-sensitive zone on Western Ghats and issued a draft notification viz., S.O. 733 (E) dated 10.03.2014, wherein they have mentioned that the Central Government hereby notified the identified area of 56,825 Sq. Km. which is scattered across the six states viz., Gujarat, Maharashtra, Goa, Karnataka, Kerala and Tamil Nadu as Ecologically Sensitive Area on Western Ghats and also marking certain restrictions regarding certain categories which includes Thermal Power Plants, Red Category industries and expansion of the existing units. They also insisted for Environmental Clearance (EC) for this purpose. As far as the Karnataka is concerned, the extent of ecologically sensitive area was identified as 20,668 Sq. Km. and Annexure - B4 to the said Notification is the

state wise map of the Western Ghats falling in the State of Karnataka. In modification of the 2014 Notification, another draft notification was issued as S.O. 2435 (E) dated 04.09.2015, wherein they have mentioned that High Level Working Group has notified approximately 37% of the Western Ghats as ecologically sensitive area which covers an area of 59,940 Sq. Km. of natural landscape of Western Ghats and represents a continuous band of natural vegetation extending over a horizontal distance of 1,500 Km and is spread cross six States of Western Ghats region viz., Gujarat, Maharashtra, Goa, Karnataka, Kerala and Tamil Nadu and recommended prohibition or regulation of identified projects and activities in the Ecologically Sensitive Area which have minimum interventionist and destructive impacts on eco-system and they have reiterated the same extent of 56,825 Sq. Km as identified ecologically sensitive area. There also, the same restrictions were imposed but with certain modifications. Further, it was again re-notified in 2017 vide S.O. 667 (E) dated 27.02.2017, wherein also the same extent was reiterated as ecologically sensitive area.

39. The Principal Bench of National Green Tribunal in O.A. No.597 of 2018 restricted the alternations of any extent mentioned in the Notification dated 27.02.2017. However, another draft notification was issued in 2018 by the MoEF&CC dated 03.10.2018. The MoEF&CC also issued further draft notification in respect of Western Ghats as S.O. No.3072 (E) dated 06.07.2022, wherein also they have restricted the area as identified as eco-sensitive zone as 56,825 Sq. Km with same restrictions.

40. It is also an admitted fact that 1st respondent had made a request to the MoEF&CC for exempting the Kaiga Atomic Power Plant at Kaiga Villlage from the draft notification of 2014 vide letter dated 08.05.2014, produced as Exhibit - 10 by the 1st respondent mentioning about the present expansion project of Kaiga Atomic Power Plant Unit 5 & 6 for the enhanced capacity of 700MW each. The MoEF&CC had issued a further amendment to the direction issued under Section 5 of the Environment (Protection) Act, 1986 with respect to Western Ghats on 13.11.2013 mentioned above as F.No.1/9/2018-ESZ dated 03.12.2018 which reads as follows:-

41. They have clarified that for the purpose of directions issued under Section 5 of the Environment (Protection) Act, 1986 dated 13.11.2013, the ecologically sensitive area of Western Ghats would be 56,825 Sq. Km. So, they have not changed the total extent of eco-sensitive zone mentioned in the draft notification from 56,825 Sq. Kms and they have reiterated that the direction dated 13.11.2013 will be remaining in force as far as this area is concerned.

42. It may be mentioned here that on going through the file related to the Environmental Clearance (EC) maintained by the MoEF&CC that in the public hearing most of the persons have raised question of impact of this project on Western Ghats and also the restrictions made by the High Level Working Group of Prof. Madhav Gadgil and Dr. Kasturirangan's report and in the reply submitted by the project proponent, they only mentioned that the MoEF&CC has accorded ToR to the Kaiga Unit - 5 & 6 on 06.09.2016 considering the applicable notification. But quite unfortunately, a reading of the proceedings of the EAC dealing with this aspect did not mention about any of the notifications and reference has been made regarding

the draft notification, its effect and directions given by the MoEF&CC in the year 2013 and 2018 which was issued under Section 5 of the Environment (Protection) Act, 1986. Further, neither the EAC nor the MoEF&CC while according clearance to the project on the basis of the EIA report did not mention anything about those aspects as well and it was in a way admitted by the learned counsel appearing for the MoEF&CC as well as the learned counsel for the project proponent though they want to impress upon this Tribunal that the MoEF&CC was aware of this notification and since they have proceeded with the Environmental Clearance (EC) proposal that they can only presume that they were aware of the same and only after considering these aspects, the EC was granted but we fail to accept this argument, as unless it was specifically mentioned and given reasons as to why they were granting the Environmental Clearance (EC) despite the restrictions made in the notifications, it can only be presumed that the same was considered by the EAC and MoEF&CC at the time of appraisal and the issuing the EC.

43. In the counter filed by the 2nd respondent, it was mentioned that taking into account the Western Ghats region and Tiger Reserve in the vicinity, the Environmental Clearance (EC) was issued subject to obtaining National Board of Wildlife (NBWL) Clearance, which NPCIL informed that is under consideration. It was mentioned in the counter statement of the 2nd respondent that as submitted by the NPCIL, epidemiological study covering 20 Km radius around the Kaiga Sanctuary has been carried out during the year 2000 and another study covering 30 Km radius around the site has been carried out by Tata Memorial Centre, Mumbai and the final report is awaited and as part of the Environmental Clearance (EC) condition, it was mandated that periodical health survey of the public residing within 20 Km around the proposed plant site shall be undertaken and the activities under the expansion project will be initiated only after availability of positive report from Tata Memorial Centre, Mumabi with respect to recent health study. It is not known as to whether the final study has been completed and report has been submitted and what was the effect mentioned in that report.

44. It is seen from the written submission submitted by the 1st respondent that NPCIL obtained Wildlife Clearance for Kaiga Unit - 5 & 6 vide order dated 17.09.2019 from the National Board of Wildlife and this was based on the Wildlife Clearance recommendations of the Department of Forest, Ecology & Environment, State of Karnataka dated 08.03.2019 which was submitted to EAC, MoEF&CC as part of their appraisal. But it is not known as to whether the National Board Wildlife have issued any clearance as even as per the documents produced by the 1st respondent, they have only produced the Wildlife Clearance of the Department of Forest, Ecology and Environment, State of Karnataka dated 08.03.2019 and the Environmental Clearance (EC) was granted on 05.08.2019. The project proponent had not produced the Wildlife Clearance obtained from the National Board of Wildlife before this Tribunal which the MoEF&CC or EAC has opportunity to verify which is clear from the counter statement filed by the 2nd respondent. It is true that they have provided the Wildlife

Conservation Plan as Annexure - A14 along with the Volume - II of the EIA Report submitted. It is not known as to whether this plan has been approved by the National Board of Wildlife which is required as per the provision of the Wildlife (Protection) Act, 1972.

45. So under such circumstances, we feel that the MoEF&CC has to revisit the question of impact of the project on the Western Ghats afresh after obtaining necessary study report by issuing further ToR as to what is the nature of further studies to be conducted and also they will have to consider the final report (if any) submitted by the Tata Memorial Centre, Mumbai regarding the impact study conducted by them on the health aspect and they will have to consider as to whether further conditions (if any) to be imposed or the project can be allowed to continue or not.

46. As regards the other contentions regarding the public consultation etc. are concerned, we feel that there is no substance in it that it was conducted in project affected area and several persons have attended the meeting and some persons have sent written objection raising their views and those things were considered by the project proponent while submitting the answer to the queries raised in the public hearing and that was produced along with the EIA Report. So, it cannot be said that the public has no access to the public meeting.

Further, it is seen from the minutes of the meeting that there was agitation going on outside against the project and that may be the reason why it was conducted in a particular place which is also within the project area as envisaged under Rule (7) of the EIA Notification, 2006, what is the nature of miscarriage of justice caused on account of the same has been relied and the documents laid down by the counsel on these aspects are not applicable to the facts of this case as well.

47. As regards the inter-linked project for drawing of further transmission lines and necessity for further forest land or afforestation of further forest area are concerned, the project proponent had specifically mentioned that on the basis of the recommendations of the competent authority, certain modifications or upgradation have been made in the existing system to cater the need for transmission of the excess power that is likely to be generated on account of the expansion of the project and on account of the same, there is no necessity for additional forest land and further transmissions line for this purpose and as such, we do not think that there is any necessity to set aside the Environmental Clearance (EC) on that ground.

48. As regard the water availability is concerned, they only relied on the permissions granted by the State of Karnataka to the project proponent for drawal of water from the Kali River and Kali Reservoir, but it is not known as to whether any hydrological impact study was conducted by the State of Karnataka or any independent study was conducted by the project proponent on this aspect as required to be conducted regarding the impact of drawal of water from the water bodies on that area.



49. So under such circumstances, we feel that it is necessary to keep the Environmental Clearance (EC) in suspension and direct the MoEF&CC to have a revisit on certain aspects atleast and then proceed with the matter.

50. In view of the detailed discussions and observations made above, we feel that the appeal can be disposed of with the following directions:-

a. The Environmental Clearance (EC) granted to the 1st respondent/NPCIL for the expansion project of Kaiga Unit - 5 & 6 by enhancing from 235 MW to 700 MW each by the 2nd respondent/MoEF&CC vide their Proceedings F.No.J-

14011/1/2016-IA-1(N) dated 05.08.2019 is hereby suspended till the MoEF&CC consider the following aspects and passing appropriate orders in this regard:-

i. The MoEF&CC is directed to issue additional ToR to the project proponent regarding the question as to whether the project area will fall within the eco-sensitive zone identified in the draft notification viz., 56,825 Sq. Km. especially in respect of 20,668 Sq. Km. of Karnataka State and also how far it will have impact on the Kaiga Village where the project is to be implemented in case if it falls in eco-sensitive zone.

ii. The project proponent is directed to conduct a study regarding the mitigations measures to be taken to address the issue and file a report to the MoEF&CC and on receipt of the same, the MoEF&CC is directed place it before the EAC for further consideration.

iii. The project proponent is also directed to produce the report in respect of hydrological impact assessment before granting the consent for usage of water, if such study has not been conducted, then they are directed to conduct a detailed study on the question of availability of water, impact of drawal of so much water on the water body viz., Kali River and Kali Reservoir and impact on the riparian owners in the downstream of the river on account of the same and what is the nature of mitigation measures to be taken to resolve all these issues.

iv. The MoEF&CC is also directed to issue necessary directions to conduct further study (if any) required on the basis of the possible impact of the project on environment eco- sensitive zone of Western Ghats and the impact on water bodies in that area and the health impact of the people due to atomic radiation from these units and ought to have a study of mitigation process to be conducted so as to protect the environment as well as the life of the people in that area over and above the directions issued by this Tribunal in this regard.

b. On receipt of the additional ToR on the above lines, the project proponent is directed to conduct further study on this aspect and submit an additional EIA Report and EMP to the MoEF&CC within a period of 6 (Six) months from the date of receipt

of the additional ToR after collecting the necessary datas. c. After completing the study, the 1st respondent is directed to submit a report along with the final report (if any) submitted by the Tata Memorial Centre, Mumbai on health issues as observed by the MoEF&CC in the counter statement filed before this Tribunal and the final Wildlife Clearance (if any) issued by the National Board of Wildlife, Dehradun/MoEF&CC and other materials which they feel necessary for the purpose of justifying the grant of Environmental Clearance (EC) for their expansion project.

d. On receipt of the additional EIA Report as mentioned above, the MoEF&CC is directed to refer the matter to the EAC for further appraisal and the EAC is directed to consider the further EIA Report and EMP and the documents referred to therein along with the documents directed to be referred to by the Tribunal to be produced by the project proponent/1st respondent and also grievance raised by the public in the public hearing conducted and discussed all those aspects and give their reasons for recommending the project, if they so desire after explaining the restrictions made in the notification and the directions issued by the MoEF&CC in respect of certain projects in the eco-sensitive area identified in the Dr. Kasturirangan Report on the basis of the report of the High Level Working Group and impose further conditions (if any) required to be carried out by the project proponent taking into account eco-sensitive area of the Western Ghats and the environment and life of the people in that area on account of the impact likely to be caused on the health of the people and take appropriate decision and forward the same to the MoEF&CC within a period of 3 months from the date of receipt of such request from the MoEF&CC in respect of proposal of the 1st respondent project of expansion.

e. On receipt of the decision/recommendation of the project from the EAC, then the MoEF&CC is directed to take appropriate decision on this aspect and issue necessary directions or recommendations/additional condition for the expansion project by giving its reasons and if they want to issue Environmental Clearance (EC), then impose further conditions (if any) required to mitigate the circumstances on the basis of the recommendations made by the EAC and this must be completed within 1 month from the date of receipt of the recommendation /decision from the EAC.

f. Till then the project proponent is directed not to commence the commissioning of the project but they can proceed with the construction of the project subject to the further directions (if any) to be issued by the MoEF&CC in this regard and at their risk.

g. The other grounds raised by the appellant challenging the Environmental Clearance (EC) are hereby rejected.

51. The points are answered accordingly.

52. In the result, appeal is allowed in part and disposed with the following directions:-

a. The Environmental Clearance (EC) granted to the 1st respondent/NPCIL for the expansion project of Kaiga Unit - 5 & 6 by enhancing from 235 MW to 700 MW each by the 2 nd respondent/MoEF&CC vide their Proceedings F.No.J-

14011/1/2016-IA-1(N) dated 05.08.2019 is hereby suspended till the MoEF&CC consider the following aspects and passing appropriate orders in this regard:-

i. The MoEF&CC is directed to issue additional ToR to the project proponent regarding the question as to whether the project area will fall within the eco-sensitive zone identified in the draft notification viz., 56,825 Sq. Km. especially in respect of 20,668 Sq. Km. of Karnataka State and also how far it will have impact on the Kaiga Village where the project is to be implemented in case if it falls in eco-sensitive zone.

ii. The project proponent is directed to conduct a study regarding the mitigations measures to be taken to address the issue and file a report to the MoEF&CC and on receipt of the same, the MoEF&CC is directed place it before the EAC for further consideration.

iii. The project proponent is also directed to produce the report in respect of hydrological impact assessment before granting the consent for usage of water, if such study has not been conducted, then they are directed to conduct a detailed study on the question of availability of water, impact of drawal of so much water on the water body viz., Kali River and Kali Reservoir and impact on the riparian owners in the downstream of the river on account of the same and what is the nature of mitigation measures to be taken to resolve all these issues.

iv. The MoEF&CC is also directed to issue necessary directions to conduct further study (if any) required on the basis of the possible impact of the project on environment eco- sensitive zone of Western Ghats and the impact on water bodies in that area and the health impact of the people due to atomic radiation from these units and ought to have a study of mitigation process to be conducted so as to protect the environment as well as the life of the people in that area over and above the directions issued by this Tribunal in this regard.

b. On receipt of the additional ToR on the above lines, the project proponent is directed to conduct further study on this aspect and submit an additional EIA Report and EMP to the MoEF&CC within a period of 6 (Six) months from the date of receipt of the additional ToR after collecting the necessary datas. c. After completing the study, the 1st respondent is directed to submit a report along with the final report (if any) submitted by the Tata Memorial Centre, Mumbai on health issues as observed by the MoEF&CC in the counter statement filed before this Tribunal and the final Wildlife Clearance (if any) issued by the National Board of Wildlife, Dehradun/MoEF&CC and other materials which they feel necessary for the purpose of justifying the grant of Environmental Clearance (EC) for their expansion project.

d. On receipt of the additional EIA Report as mentioned above, the MoEF&CC is directed to refer the matter to the EAC for further appraisal and the EAC is directed to consider the further EIA Report and EMP and the documents referred to therein along with the documents directed to be referred to by the Tribunal to be produced by the project proponent/1st respondent and also grievance raised by the public in the public hearing conducted and discussed all those aspects and give their reasons for recommending the project, if they so desire after explaining the restrictions made in the notification and the directions issued by the MoEF&CC in respect of certain projects in the eco-sensitive area identified in the Dr. Kasturirangan Report on the basis of the report of the High Level Working Group and impose further conditions (if any) required to be carried out by the project proponent taking into account eco-sensitive area of the Western Ghats and the environment and life of the people in that area on account of the impact likely to be caused on the health of the people and take appropriate decision and forward the same to the MoEF&CC within a period of 3 months from the date of receipt of such request from the MoEF&CC in respect of proposal of the 1st respondent project of expansion.

e. On receipt of the decision/recommendation of the project from the EAC, then the MoEF&CC is directed to take appropriate decision on this aspect and issue necessary directions or recommendations/additional condition for the expansion project by giving its reasons and if they want to issue Environmental Clearance (EC), then impose further conditions (if any) required to mitigate the circumstances on the basis of the recommendations made by the EAC and this must be completed within 1 month from the date of receipt of the recommendation /decision from the EAC.

f. Till then the project proponent is directed not to commence the commissioning of the project but they can proceed with the construction of the project subject to the further directions (if any) to be issued by the MoEF&CC in this regard and at their risk.

g. The other grounds raised by the appellant challenging the Environmental Clearance (EC) are hereby rejected. h. Considering the circumstances, parties are directed to bear their respective costs in the appeal.

i. The Registry is directed to communicate this order to the MoEF&CC for their information and compliance of directions. j. The MoEF&CC is directed to take back the file (relating to the issuance of EC) produced before the Tribunal at the earliest.

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

Sd/-

Justice K. Ramakrishnan, JM Sd/-

Dr. Satyagopal Korlapati, EM Appeal No.14/2019 (SZ), I.A. No.19/2020 (SZ) 30th September 2022.  
Mn.