

Hiteshbhai Uttambhai Dhodi vs Ministry Of Environment Forest And ... on 31 August, 2023

Item No.7

(Pune Bench)

BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE

(By Video Conferencing)

APPEAL NO.41 OF 2020 (WZ)

Hiteshbhai Uttambhai Dhodi & Ors.

.... Appellants

Versus

Ministry of Environment, Forest
And Climate Change & Ors.

.... Respondents

Date of hearing : 31.08.2023

CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER

Appellants : Ms. Shilpa Chohan, Advocate

Respondents : Mr. D.M. Gupte, Advocate for R-1
Ms. Manvi Damle, Advocate holding for
Mr. Maulik Nanavati, Advocate for R-2 and R-3
Mr. Saurabh Kulkarni, Advocate for R-4

ORDER

1. Heard the arguments of both sides.

2. From the side of the appellants, learned counsel Ms. Shilpa Chohan has appeared.

3. By our previous order dated 24.05.2023, the appellants were directed to clarify as to whether the persons, who had alienated the land to respondent No.4 - Project Proponent, belong to the Scheduled Tribe or not. In response to the said query, the learned counsel for the appellants has filed a list of documents dated 24.05.2023 today, wherewith Notification dated 31.12.1977, issued by the Govt. of India (Ministry of Law, Justice and Company Affairs), has been annexed and it has been argued that the said Notification clearly establishes that Umbergaon Taluka in Valsad district is notified as Scheduled Area.

4. We made a query from the learned counsel for the appellants after submission of this document as to what purpose would it serve in the case in hand, and is there any prohibition for granting Environmental Clearance (EC) for the project in question in an area which is falling in Scheduled Area, to which she responded that there is no such prohibition. Regarding the query, which was required to be answered as to whether the persons, who had alienated the land to respondent No.4 - Project Proponent, are Scheduled Tribes, no response is given in that regard.

5. The learned counsel for the appellants argued that in Form-1 submitted by respondent No.4 - Project Proponent, there is no mention made by it of the area in question being a Scheduled Area, which would amount to concealment of the fact or misrepresentation of the fact.

6. Our attention is also drawn to paragraph 6 of the Appeal Memo at pages 17 and 18. As per the averments made therein, the pre-feasibility report and in Form-2, submitted before respondent No.1 - MoEF&CC, there was no mention made of Umbergaon Taluka, being in Scheduled Area and the area of the project is recorded as 2,35,239 sq.mtrs. Subsequently, in a revised Form-1, the area of the project was shown as 94,499 sq.mtrs, which included 8 survey numbers while there were more than that.

7. Further it is argued that the layout, which was initially submitted before MoEF&CC, could not have been carried out on the reduced area of 94,499 sq.mtrs. in eight survey numbers. Thereafter, our attention is drawn to page 112 of the paper-book, which is part of Form-1 and serial No.22 thereof, relating to 'whether there is any Government Order/Policy relevant/relating to the site' and endorsement/remark thereto is "No". At page 177 of the paper-book, which is part of the same document, at serial No.9.4, information relating to 'have cumulative effects due to proximity to other existing or planned projects with similar effects', the endorsement given is "No". Thereafter, at point No.III sub-clause (11), the information was required as to "areas already subjected to pollution or environmental damage (those where existing legal environmental standards are exceeded)" and the answer/information given is "Not applicable".

8. Pointing out the above, which was necessary information to be furnished, which has not been done by the Project Proponent, which would amount to concealment of information or misrepresentation of the fact, it is submitted by the learned counsel for the appellants that the ToR could not be prepared properly in order to appreciate the facts. During arguments, it is highlighted that there were other industries in the vicinity of the proposed project. Therefore, it was very much required that the information should have been given regarding it in Form-2 so that proper ToR could be issued. It is again argued that the ToR contained only standard ToR and not additional ToR. In fact, additional ToRs were required to be issued in the present case keeping in view the fact that the area was highly polluted and the project being in red category.

9. Thereafter, our attention was drawn to various pages of the paper- book in detail, which we have noted and response thereto would be given in the final judgment that would be delivered in this appeal.

10. From the side of respondent No.4 - Project Proponent, learned counsel Mr. Saurabh Kulkarni has appeared and drawn our attention to the Minutes of Meeting of Public Hearing, which begin from page no.868 of the paper-book and the reply given by the Project Proponent is contained in page 891. He urged that various issues raised by the participants were assessed and responded to by the Project Proponent and were considered by the Authorities. It was also argued from the side of the Project Proponent that respondent No.4 had given information to the Principal Secretary, MoEF&CC regarding the project in question not falling in the Scheduled Area and after this having been considered during the Meeting of MoEF&CC, recommendation was made for grant of EC. Besides that, reliance has been placed by him on several case-law in order to establish that once the project has been considered by Expert Authorities at various stages, no interference should be there by this Tribunal.

11. From the side of respondent No.1 - MoEF&CC, learned counsel Mr. D.M. Gupte has appeared and says that the answering respondent has granted EC to the Project Proponent after considering the required information/documents. He further states that he has already filed affidavit-reply.

12. From the side of respondent No. 2 - State of Gujarat and respondent No. 3 - GPCB, learned counsel Ms. Manvi Damle, holding the brief of learned counsel Mr. Maulik Nanavati, has appeared and submits that no argument is required from their side.

13. Reserve for judgment.

Dinesh Kumar Singh, JM Dr. Vijay Kulkarni, EM August 31, 2023 APPEAL NO.41/2020(WZ) npj