

# The Conservation Action Trust vs Union Of India on 30 September, 2022

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

Item No.1:

Court No.1

BEFORE THE NATIONAL GREEN TRIBUNAL  
SOUTHERN ZONE, CHENNAI

(Through Video Conference)

Appeal No. 15 of 2020 (SZ)

IN THE MATTER OF

The Conservation of Action Trust  
5, Sahakar Bhavan, 1st Floor, LBS Road,  
Narayan Nagar, Ghatkoper (W),  
Mumbai - 400 086  
Rep. by its Executive Trustee  
Mr. Debi Goenka and Anr.

...Appellant(s)

Versus

The Union of India  
Ministry of Environment, Forest & Climate Change  
Through its Secretary  
Paryavaran Bhawan,  
CGO Complex, Lodhi Road,  
New Delhi - 110 003 and Ors.

...Respondent(s)

For Appellant(s): Mr. Ritwick Dutta along with  
Mr. G. Stanley Hebzon Singh.

For Respondent(s): Mr. G.M. Syed Nurullah Sherriff for R1.  
Mrs. H. Yasmeen Ali for R2.  
Mr. T. Sai Krishnan along with  
Ms. J. Dayana for R3.  
Mr. J. Ramachandra Rao, Addl. Adv. General  
along with Mr. Y. Ramaroa,  
Mr. B. Lakshminarasimhan and  
Mr. Y. Sai Sankalp for R4.

Judgment Pronounced on: 30th September 2022.

CORAM:

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

HON'BLE Dr. SATYAGOPAL KORLAPATI, EXPERT MEMBER

Page 1 of 53  
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, J.M. Sd/-

Dr. Satyagopal Korlapati, E.M. Appeal No.15/2020 (SZ) 30th September, 2022. Mn.

Item No.1:

Court No.1

BEFORE THE NATIONAL GREEN TRIBUNAL  
SOUTHERN ZONE, CHENNAI

(Through Video Conference)

IN THE MATTER OF

- 1) The Conservation of Action Trust  
5, Sahakar Bhavan, 1st Floor, LBS Road,  
Narayan Nagar, Ghatkoper (W),  
Mumbai - 400 086  
Rep. by its Executive Trustee  
Mr. Debi Goenka.
- 2) Samata  
Through its Executive Director  
R. Ravi  
Dabbanda Vill, Gandigundam PO,  
Mamidilova Panchayat  
Anandpuram Mandal  
Visakhapatnam - 531 173  
Andhra Pradesh.

...Appellant(s)

Versus

1) The Union of India

Ministry of Environment, Forest & Climate Change Through its Secretary Paryavaran Bhawan, CGO Complex, Lodhi Road, New Delhi - 110 003.

2) State of Telangana Department of Environment, Forests, Science & Technology Through its Secretary D Block, 2nd Floor, Secretariat Building Hyderabad, Telangana - 500 022.

3) Telangana State Pollution Control Board Represented by the Member Secretary Vidyut Soudha, Khairatabad Road Somajiguda, Hyderabad Telangana - 500 004.

4) M/s. Telangana State Power Development Corporation Limited Vidyut Soudha, Khairatabad Road Somajiguda, Hyderabad Telangana - 500 004.

...Respondent(s)

For Appellant(s): Mr. Ritwick Dutta along with  
Mr. G. Stanley Hebzon Singh.

For Respondent(s): Mr. G.M. Syed Nurullah Sherriff for R1.  
Mrs. H. Yasmeen Ali for R2.  
Mr. T. Sai Krishnan along with  
Ms. J. Dayana for R3.  
Mr. J. Ramachandra Rao, Addl. Adv. General  
along with Mr. Y. Ramaroa,  
Mr. B. Lakshminarasimhan and  
Mr. Y. Sai Sankalp for R4.

Judgment Reserved on: 22nd 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 has been filed challenging the Environmental Clearance (EC) granted by the 1st

respondent/Ministry of Environment, Forests & Climate Change (hereinafter referred to as "MoEF&CC") to the 4th respondent viz., M/s. Telangana State Power Development Corporation Limited for their 5 x 800 MW Super Critical Coal-based Yadadri Thermal Power Station (hereinafter referred to as "Yadadri TPS") vide their Proceedings Letter No.J-13012/18/2015-IA.I (T) dated 29.06.2017, evidenced by Annexure - A1.

2. The first appellant who is the public charitable trust registered under the Bombay Public Trusts Act, 1950 and the second appellant who is the registered organization that has been working on issues concerning environment, tribal and rural communities for the last few decades and the appellants organization have been instrumental in raising important issues before the Courts including the National Green Tribunal and the resolutions authorizing the appellants No.1 & 2 of their representative organization to represent before this Tribunal were produced as Annexure - 2 (Series).

3. It was alleged in the appeal memorandum that the Yadadri TPS proposes to add 5 super critical units of 800 MW each, with a total capacity of 4000 MW using blended coal (50% Indigenous and 50% Imported Coal) or 100% Imported coal, as an estimated coal requirement of 12.205 MTPA @ 85% PLF (blended coal)/11.02 MTPA @ 85% PLF (imported coal) for the purpose of collecting ash pond of 400 Acres have been proposed within the project site adjacent to the Krishna River and Tungapahad Vagu which is a tributary of the Krishna River passes through the proposed project site. The total extent of the land required for the project to be estimated 2800 Acres, of which, 2095.28 Acres of forest land falling under Veerapalem Reserved Forest and 704.12 Acres consists of patta land, Government land, Udafa patta land and D - Patta land in Veerappagudem and Veerlapalaem Village, Damercheral Mandal, Nalgonda District, Telangana State which is partly under cultivation. Nagarjuna Sagar Tiger Reserve (Amrabad Tiger Reserve) is situated at a distance of 14.03 Km South West and interstate boundary of Telangana and Andhra Pradesh at 0.8 Km South East. There are atleast four Schedule - I species in the project area viz., the Indian Peafowl, Indian Python, Monitor Lizard and Indian Softshell Turtle.

4. It was further alleged in the appeal memorandum that Tungapahad Vagu passes through the Krishna River is just 0.5 Km South of the proposed project site. The Musi River is 7.4 Km East from the proposed project site. The water requirement of the project is 10,000 m<sup>3</sup>/hr (or 2.4 lakhs m<sup>3</sup>/day

- 97.8 Cusec - 3.10 TMC per year) and is proposed to be met from the River Krishna. The Government of the Telangana, Irrigation and CAD Department vide their letter dated 30.01.2015 have allocated 208 Cusec of water (6.6 TMC/year) from the river Krishna which is more than double requirement of the proposed project. There were about 173 families and another 413 families which are likely to be affected or displaced on account of the establishment the project. The green belt is proposed to develop in 1,352 Acres which will include restoration of forest area of 1,049 Acres and development of greenbelt in non-forest area of 303 Acres. The cost of the project is estimated to be Rs.25,099.42 Crores. According to the revised EIA Report, the budget of Rs.5,597 Crores (capital) and Rs.430 Crores/Annum (recurring) has been earmarked for environmental protection measures. The 1st respondent had granted the requisite approval under the Forest (Conservation) Act, 1980 for

this project on 27.04.2015 (Stage - I) and 07.07.2015 (Stage - II) and the Environmental Clearance was issued for diversion of 1,892.35 Ha. (4676.1 Acres of 4334.01 Ha. or 10,709.57 Acres) for the establishment of coal-based Thermal Power Station of capacity 4400 MW at Veerlapalem Village and 2400 MW at Dilawarpur Village of Dameracherla Mandal in Nalgonda District, evidenced by Annexure - A3/ Stage - II approval granted. There were lot of discrepancies in the description of land of the project for which clearance was sought for. They required building of railway line from Vishnupuram Railway Station to the project site, for which, the environmental impact of this corridor has not been included in the EIA and nothing was mentioned as to whether the Indian Railway has agreed for the same. The environmental and ecological impact of the transmission lines that will be required to evacuate the power from this proposed project has also not been examined or assessed. There are lot of industries functioning and proposed industries within 15 Km radius of the proposed project which was detailed in the EIA Report which was reproduced in the appeal memorandum as follows:-

5. It was further alleged in the appeal memorandum that the project proponent had applied for ToR on 19.09.2015 and even at that time of filing this appeal, the Form - I application as required under the EIA Notification is not available on the 1st respondent's website. The EAC (Thermal) has considered the proposal in its 45th Meeting held on 29th -

30th October 2015, wherein it was observed that a tributary of the River Krishna (Tungapahad Vagu) passes through the project site. It was decided that a visit by a Sub Committee would be required to ascertain the situation on the ground and the relevant pages of the Minutes of the 45th Meeting of the Reconstituted EAC held on 29th - 30th October 2015 was produced as Annexure - A4. The Sub Committee visited the site on 05.12.2015 and the standard ToR was granted before the visit of the Sub Committee vide their letter No.J-13012/18/2015 - IA. I(T) dated 02.11.2015 and additional ToR was granted vide letter No.J-

13012/18/2015 - IA.I(T) dated 16.02.2016. The copies of the letter dated 02.11.2015 and relevant pages of the minutes of the 50th Meeting of the Re-constituted EAC held on 28th - 29th January 2016 containing the original ToRs and recommending additional ToRs were produced as Annexure - A5 to A7 respectively. The project proponent had hired M/s. Bhagavathi Ana Labs Private Limited as environmental consultants to carry out the EIA / EMP Studies and prepare a report accordingly. The public hearing was held on 31.05.2016 and the proposal for the project had come for consideration in the 59th Meeting of the Reconstituted EAC (Thermal) held on 14th - 15th 2016, wherein it was observed that all background documents had not been provided and the consideration of proposal was deferred. The project was further deferred in the 63rd EAC Meeting held on 29th - 30th August, 2016 at the request of the project proponent. Thereafter, during 63rd EAC meeting held on 29th - 30th August, 2016, it was found that there were major shortcomings in the preparation of the final EIA/EMP. The EAC received several complaints pertaining to irrelevant content and absence of crucial site and plant specific analysis pertaining to risk assessment, disaster management, FGD in plant layout, water withdrawal and availability, among other things. It was also observed that the EIA Report is nothing but plagiarism and cannot be accepted. The EAC had recommended that the EIA be revised in light of the same. The copy of the relevant extract of the

minutes of the 63rd EAC Meeting held on 29th - 30th August, 2016 was produced as Annexure - A8. The contract with M/s. Bhagavathi Ana Labs Pvt. Limited was terminated and new consultant viz., M/s. B.S. Envi Tech Private Limited was engaged for revising the EIA Report. The revised EIA Report was considered in the 1st Meeting of the Reconstituted EAC (Thermal Power) held on 28.12.2016, wherein the EAC recommended the proposal to be exempted from re-conducting a public hearing subject to certain conditions concerning baseline data and uploading of the Revised EIA/EMP on SPCB website for a period of three weeks, seeking public comments. The decision was communicated to the project proponent on 22.02.2017 and the relevant pages of the minutes of the 1st meeting of the Reconstituted EAC (Thermal Power) held on 28.02.2016 and letter dated 22.02.2017 were produced as Annexure A9 and A10 respectively. Pursuant to the same, the SPCB uploaded the revised EIA Report on 01.02.2017 for the public comments for three weeks and a notice was published in Namasthe Telangana (Telugu Daily) and The Hindu (English daily) to invite the public comments/suggestions on the same within three weeks. Only four public representations were received and the project proponent submitted the revised final EIA/EMP report on 03.04.2017. The EAC recommended the project to grant EC in their 5th Meeting of the Reconstituted EAC (Thermal Power) held on 26.04.2017, evidenced by Annexure - A11. Based on that the impugned Environmental Clearance was granted by the 1st respondent.

6. The impugned Environmental Clearance was challenged on the following grounds:-

5.1 There were discrepancies between the FC and the impugned EC regarding the nature of project for which the FC was sought and the nature of project for which the EC was sought and there was no specific bifurcation of the land required for each project. They have given the breakup components of the land required in the FC application as follows:-

Component wise breakup Sl. Component Forest Land Non-forest No. (ha.) Land (ha.)

1. C-Station-Dilawarpur (3 x 800 MW) 954.27 o Plant at Dilawarpur

3. Township at Gangadevigattu 264.87 o Plant at Veerlapa

5. A-Station-Veerlapalem (2 x 600 MW) 475.11 o

6. B-Station-Veerlapalem (4 x 800 MW) 1272.35 o 5.2 Further, the siting criteria for the power projects issued by the MoEF&CC were not followed in this case. As per the general siting factors, in any particular selected site, the following factors must also be recognized, "No forest land shall be used for non-forest activity for the sustenance of the industry." The guidelines of Central Electricity Authority, Government of India for site selection of coal-

based thermal power stations, following things were mentioned "First priority is given to the site those are free from forest, habitation and irrigated/agricultural land. Second priority is given to those sites that are barren i.e. wasteland, intermixed with any other land type, which amounts to

20% of the total land identified for the purpose." The guidelines for site selection of coal-based thermal power station set by the MoEF&CC was as follows: "Location of thermal power stations are avoided within 25 Km of the outer periphery of the following: a) metropolitan cities, b) National Park and Wildlife Sanctuaries c) Ecologically sensitive areas like tropical forest, biosphere reserve, important lake and coastal areas rich in coral formation. Forest or prime agricultural lands are avoided for setting up of thermal power houses or ash disposal." Neither the EAC/FAC nor the MoEF&CC had considered these aspects and commented anything about the site selection for this project but against the guidelines it was issued. The Google Earth Image dated 18.02.2016 showing the location of 2,800 Acres, 5 x 800 MW Yadadri TPS on the 4676.1 Acres of land mentioned in the FC was produced as Annexure - A12. There was no explanation given as to why this area has been considered. This aspect was raised by one G. Mohan, State Secretary and N. Harinder, General Secretary, Human Rights Forum, Nalgonda, Telangana by sending representation and the same was replied by the project proponent as follows:-

Sl. No.	Query Raised	TSGENCO Response
22.	Why have you obtained Forest	Forest Clearance obtained

Clearance to the extent of about with a view to establish 4,800 Acres when the land 6800 MW Plant. Now, it is requirement for the project is proposed to establish 4000 only about 2,800 Acres? What is MW in first phase and 2800 the purpose of acquiring such MW in second phase as an huge amount of land? expansion project.

5.3 The work for this project was started even in August 2015 after the issuance of Stage - II, but long before the impugned EC granted. The copy of the newspaper report dated 17.08.2015 projecting this issue was produced as Annexure - A13. The office memorandum of the 1st respondent dated 27.06.2013, under which the project that has commenced construction prior to grant of EC, the work needs to be suspended till the EC is obtained. If the project had commenced preparation work without obtaining EC action should have been taken under the EIA Notification, 2006, Environment (Protection) Act, 1986, Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 but that was not done.

5.4 Even in the recommendation portion, the team which inspected had categorically stated about the less density of forest in that area and necessity for improving the forest cover and suggested to avoid diversion of forest land in those areas. But in spite of that they have selected this area. Further, the site selection process was also not proper as there is no proper alternate site suggested and reason for selecting this was also not correctly mentioned. A reading of the reasoning s given by them will go to show that they have selected two places as alternate site which cannot otherwise be recommended knowing that it will not be recommended and it is not fit and they have selected this land even long prior to the application for EC and the EIA Consultant has no role in preferring the site. Further, this land was identified by the Hon ble Chief Minister by aerial visit and that will not be sufficient for identifying the land as fit for this purpose. Further, since the Hon ble Chief Minister has involved in this matter for site selection and approved the site, there is no possibility of the state officials going against the directions of the Chief Minister and the decision itself was taken on „dictating terms of the Chief Minister and as such, there is no proper appraisal. The copy of the

relevant pages of the EIA Report regarding the site selection was produced as Annexure - A14.

5.5 The impact of the project on the sanctuary etc. were not correctly considered. The copy of the justification note provided for the site selection was produced as Annexure - A15. The site was selected against the siting criteria given by the Central Electricity Authority by their notification issued under Section 177 of the Electricity Act, 2003, where ecologically or other sensitive area within 5 Km should be avoided, coastal area must be about half a kilometre away from the HTL and flood plain for riverine system has to be avoided by providing 500 Meters distance. The Subcommittee appointed as per the decision of the 45th Meeting of the EAC held on 29th - 30th October 2015 also mentioned about the nature of the land, evidenced by Annexure - A16. These things have not been properly considered and the EIA Report was silent about all these aspects. So, there is no proper application of mind.

5.6 Further, the EIA Report submitted by M/s. Bhagavathi Ana Labs Private Limited was not accepted by the EAC and they wanted to have a revised report alleging that most of the datas given are not reliable and it was a copy-paste report and on that basis, they have terminated the services of M/s. Bhagavathi Ana Labs Private Limited and entrusted M/s. B.S Envi Tech Private Limited for that purpose and they have conducted the EIA study and prepared a draft EIA Report and that was submitted before the EAC seeking for exemption from public hearing giving certain reasons but the EAC did not exempt the public hearing as such but instead of conducting a re-public hearing, they have directed to publish the EIA Report in the public domain giving three weeks time for the public to make their representation and after receipt of the representation, the EIA consultant was directed to prepare the final EIA report. Thereafter, the final EIA report was prepared by M/s. B.S Envi Tech Private Limited for consideration. Even for that also, certain representations were received stating that even the present EIA report also did not reflect the real facts and there were plagiarism when preparing this report as well and such a representation was made by Dr. K. Babu Rao, Chief Scientist (Retrd.), Hyderabad but no response was made to the same. Further, dispensing with the public hearing and adopting another method of public hearing without conducting a physical public hearing near the project place is against the EIA Notification, 2006 and this practice was deprecated by the National Green Tribunal in *Samata Vs. Union of India & Ors.* reported in 2014 All India NGT Reporter 1 SZ Page 1.

5.7 They have not considered the impact of the Yadadri TPS on wildlife in view of the fact that the distance of Amrabad Tiger Reserve was about 10 Km as noticed by the Sub Committee, evidenced by Annexure - A17 / Report. In cases where the eco-sensitive zone was not declared, 10 Km from the boundary has to be taken as the eco-sensitive zone as observed by the Hon ble Apex Court in *Goa Foundation Vs. Union of India (W.P. No.460 of 2004)* dated 04.12.2006 and no such impact was considered in the EIA Report. Further, there are other protected areas like Tiger Reserve, Wildlife Sanctuary, National Park, etc. are situated and the impact of the project on those protected areas and also the movement of the wild animals especially tiger through this area has not been considered. The appellants had produced Annexure - A19 & A20 certain studies on this aspect of movement of tiger and Connectivity of Tiger Populations in the Human-Influenced Forest Mosaic of Central India for strengthening the proposition that a study is required for the purpose of considering the impact on tiger corridor that is likely to occur on account of the nearness of the tiger



reserves.

5.8 The baseline data collected were also not correct. There is no source of coal mentioned. The linkage was also not provided for consideration and this is against the EIA Notification and the office memorandum issued by the MoEF&CC in this regard. Further, most of the ToR conditions regarding the collection of baseline data viz., Condition No.42, 43, 44 were violated. Further, there was no fuel linkage or water linkage has been submitted, though the EAC on several occasions directed them to produce the coal linkage documents of the imported coal and the indigenous coal. But in spite of that they have not produced anything. The Office Memorandum insisting for the same dated 13.11.2019 is produced as Annexure - A21. Further, the details given regarding coal linkage with M/s. SCCL also did not suit the proposed Super Critical Power Station that is envisaged by the project proponent as the calorie value of the coal that is likely to be used will not suit the system and that will not control the fugitive emission and that will not be suitable for this type project as well, evidenced by Annexure

- A23.

5.9 The FGD system provided is not sufficient to catch the emission of  $\text{SO}_2$  and  $\text{NO}_x$  and reported that there was mercury level detectable from the coal analysis is also not correct. The various analysis report on presence of mercury in the coal used in Thermal Power Plants relied on by the appellant will go to show that the concentration of the mercury in Indian Coal is in the range of 0.01 to 1.1 PPM and 0.08 - 11.4 PPM. Further, when the coal analysis report submitted by the project proponent regarding the radio activity, the EAC has directed the project proponent to conduct a study again by some other agency and that report will have to be considered by the MoEF&CC while granting the EC. There was no opportunity available to the EAC to consider this report and to suggest as to whether any further mitigation measures will have to be taken or not.

5.10 Further, the ash ponds and its construction, disposal of ash etc. were not properly considered. Even the calculation of pollution load and mitigation measures provided were also not proper, as they have not identified the port, or railway terminal or transfer system by which they are going to transfer the coal to the project area and without that it is not possible to ascertain the actual Ambient Air Quality considering the pollution to be caused on account of such activities and the mitigation measures to be provided. Nothing was mentioned specifically about the ash utilization and maintenance of the ash pond etc. even in the revised EIA Report. But quite unfortunately, these things were not considered by the EAC or the MoEF&CC. The unrealistic prospective ash utilization by the existing Thermal Power Plants were considered by the CEA evidenced by Annexure - A24 which will go to show that there was no proper utilization and they are not in compliance with the office memorandum issued in this regard.

5.11 There was no hydrological study and mitigation action plan prepared on the basis of the ToR Condition No.22. Though they claim that the study was conducted by Hydro Geosurvey Consultants, Jodhpur, no such report has been produced along with the EIA Report and the EAC has no opportunity to look into the same as well. There was no proper condition imposed in the EC as regards the disposal of ash and gypsum generated and the required pollution control mechanism to

mitigate these aspects.

5.12 There was no provision made or conditions imposed to prevent the possible groundwater pollution and impact of the project on aquifers in the nearby water bodies. Nothing was mentioned about the protection of the Tungapahad Vagu, an estuary of Krishna River flowing in the project area.

5.13 According to the project proponent, the requirement is only 3.10 TMC water, whereas the department has given permission of 6 TMC, evidenced by Annexure - A25 and impact of this withdrawal on the neighbouring user states viz., Karnataka, Maharashtra and Telangana as per the Award given by the Krishna Water Dispute Tribunal constituted under the Interstate River Water Dispute Act, 1956 and impact on the riparian users of the river. These aspects have not been considered by the EAC or the MoEF&CC. The EAC has not considered the other Thermal Power Plants on the Krishna River Basin and the quantity of water that is being used by them and its impact on Krishna river by providing huge quantity of water for this project and they have only given evasive replies on this aspect as follows:-

What are the ecological impacts of drawing the water on aquatic life and vegetation?  
Why is no attempt made to study these aspects?

5.14 So, there is total non-application of mind on these aspects and the appellants also relied on the Annexure - A26 and A27/Portions of the EIA Report relied on by the project proponent on the question of utility of the ash ponds and diversion of water channels etc. 5.15 As regards the pollution that is likely to be caused to the Tungapahad Vagu, the query and answer given by them was as follows:-

5.16 That also will not give any indication as to the nature of precautionary methods taken by them for this purpose. The sludge management from the Flue Gas Desulphurization system was also not properly considered. The construction, design and maintenance of ash pond dykes and its possibility of breach and the mechanism to rectify the same etc. were not properly considered.

The impact of Flue Gas Desulphurization system also has not been considered and the reply given by them was as follows:-

5.17 The impact of the project on housing colony and township has not been properly dealt with. Further, the necessity for the new Thermal Power Plant depending upon the demand for electricity has not been properly considered especially when there are other power plants functioning in the State of Telangana which are sufficient for the purpose of meeting the need and even the electricity generated in those units were not properly utilized and the Telangana is a power surplus state and the energy and peak requirements were extracted as follows:-

5.18 Further, lot of other reusable energy generation system are being adopted for the purpose of reducing the exploitation of natural resources for production of electricity and this is being considered by the Central Government and if that is properly implemented, there will not be any necessity for a new power plant in the State of Telangana which has not been properly appreciated by the EAC or the issuing authority.

7. So, according to the appellant, the EC granted is vitiated and the same is liable to set aside for the reasons stated above.

8. The 1st respondent filed counter in the form of affidavit contending that the appeal is not maintainable and none of the grounds alleged in the appeal memorandum are sufficient to set aside the EC granted in favour of the 4th respondent. The allegations that the EAC and the issuing authority have not considered the various environmental aspects before recommending and issuing the EC in favour of the 4th respondent for the impugned project are not correct and hence denied. The Telangana State Power Generation Corporation Limited was granted EC with validity period of 7 years as per proceedings dated 29/06/2017. On the basis of the application submitted by the 4th respondent the EAC considered the project, conducted inspection of the site by a Sub Committee to ascertain the feasibility of the area and on that basis, originally ToR was issued as recommended by the EAC by the 1st respondent vide their Letter dated 16.02.2016 for conducting a detailed EIA study and carrying out public consultation. As per the EIA Report, the 4th respondent proposed to set up 5x800 MW Supercritical Coal based Yadadri Thermal Power Station, at Veerlapalem Village, Dameracherla Mandal, Nalgonda District, Telangana State. The coal requirement for the proposed power project based on station heat rate of 2109.4 kcal/kwh, Gross Calorific Value (GCV) of coal as 4550 kcal/kg and 85% as Plant Load Factor (PLF) was estimated to be as 13.81 Million Tons Per Annum (MTPA). The makeup and consumptive water requirement assessed to be as 9,755 m<sup>3</sup>/hr and is to be sourced from Krishna river. The proposed site was mostly reserved forest, semi-agricultural and partly revenue land with isolated pockets of habitation. The extent of total area for establishment of power station was 2800 acres, including 100 acres for colony and 1300 acres for greenbelt development. The Forest Clearance was granted by the Ministry vide letter dated 07/07/2015 for diversion of 1892.35 ha (4334.01 ha proposed originally) of forest land in favor of TSGENCO for the establishment of Coal Based Thermal Power Station of capacity 5x800 MW at Veerlapalem (V) and 2400 MW at Dilawarpur (V) of Damaracherla (M), in Nalgonda District in the State of Telangana. The project displaced about 174 families and for that TSGENCO had deposited an amount of Rs.285.81 Crores vide letter dated 04/01/2016 towards land compensation, R&R benefits for Project Displaced Families & Project Affected Families, infrastructure and unforeseen items, etc. The public hearing was held on 31/05/2016 in the premises of proposed site at Veerlapalem(V), Damaracherla(M), Nalgonda District as per Environment Impact Assessment Notification. The nearest railway station to the project site is

Vishnupuram which is 5 km away from the plant and that no railway track and National Highway is located within 500 m.

Originally, it was proposed to establish 6800 MW coal based TPP at Veerlapalem, Dameracherla, Nalgonda Dist. Accordingly 6.6 TMC of water has been allocated for the project from Krishna river by Telangana State Government. But it was decided to establish 4000 MW TPP in the above area in first phase and take up the balance 2800 MW in second phase. The water requirement for the 4000 MW is about 3.03 TMC per annum and that alone will only be drawn from Krishna River out of the allocated 6.6 TMC per annum. The transmission line falling within the wildlife areas corridor and forest area require clearances from concerned authorities. The proposal for grant of EC was deliberated by the Expert Appraisal Committee (EAC) for Thermal Sector in its 45th, 48th & 50th meetings held during 29th - 30th October, 2015, 18th December, 2015 and 29th January, 2016 respectively. The EAC comprising of domain experts of different fields, after detailed deliberations on the proposed project and taking note of the confirmations given by the Project Proponent, and clarification submitted to its queries, recommended for grant of EC for the project subject to compliance of certain terms and conditions for implementation of various environmental safeguards. After taking cognizance of environmental concerns and the mitigation measures proposed by the EAC, the EC for the project was granted by the Ministry on 29/06/2017. The allegations that the EAC has not applied its mind etc. are incorrect. In fact, this was discussed in several meetings and certain clarification were sought for and only thereafter, they have recommended the project and it is only on that basis, incorporating the recommendations, the EC was granted. The total land requirement for the proposed project is 2800 acres which is within CEA norms of 0.7 Acres/MW. Out of total land requirement, 2095.28 acres is the forestland falling under Veerapalem Forest Block. Remaining 704.12 acres consists of Patta land, Government Land, Udafa Patta Land and D-patta land in Veerappagudem and Veerapalem villages, Damercharla Mandal, Nalgonda District. Telangana State which is partly under cultivation. The Stage-II Forest Clearance has been accorded for diversion of forest land vide Ministry's letter dated 07/07/2015. The proposed site is located near Veerlapalem village, Dameracherla Mandal, Nalgonda District and comprises of 75% of reserve forest land and remaining land is mostly non-agricultural, uninhabited, partly agricultural, revenue land with isolated pockets of habitation. The total extent of land for establishment of proposed power project is 2800 acres (Forest land is 2095.28 acres, Patta Land, Government Land, Udafa patta Land and D-Patta Land etc. is 704.12 acres). As per the EIA Report, three sites had been evaluated based on environmental sensitivity, R&R issues, road and rail connectivity, proximity to source of water. Finally, the proposed location at Veerlapalem village was selected after due deliberations on alternate sites. In terms of R&R Studies as per the EIA report, the District Collector, Nalgonda had raised a demand note vide his letter dated 02/12/2015 for deposit of an amount of Rs.285.81 Crores towards LA compensation, R&R benefits for Project Displaced Families & Project Affected Families, infrastructure and unforeseen items, etc., which is worked out as per LA and R&R Act, 2013 and that amount was deposited by the 4th respondent on 04/01/2016. In terms of agricultural land as per the EIA report, since 275 m stacks are planned for the proposed power project and adequate control measures are planned, the pollutants like particulate matter, SO<sub>2</sub> and NO<sub>x</sub> will be minimum and shall not have any significant impact on the surrounding residential and rural areas and also will not cause any significant impact or damage to the existing vegetation present near the plant. However, the proposed development of about 50 to 100 m wide

greenbelt all along the boundary of the project site is expected to contribute positive impact towards improved soil stabilization, prevention of top soil erosion, increased vegetative cover, density and diversity of flora, etc. It will also improve the aesthetic look of the surrounding area. Primarily the land required for setting up of Thermal Power Plant was agricultural land and there are not many large trees. The floral significance at the proposed plant site was negligible and impact of construction on flora would be negligible. As per the EIA Report, TSGENCO will encourage the use of water treated fly ash as a soil ameliorator and as a source of micro-nutrients and secondary nutrients for improving agricultural productivity. The public hearing was held on 31.05.2016 in the premises of proposed site at Veerlapalem(V), Damaracherla(M), Nalgonda District as per Environment Impact Assessment Notification dated 14th September 2006 and as per TOR conditions issued by MoEF&CC. The press notification indicating date and venue of the public hearing was issued by Regional Office, Telangana Pollution Control Board (TSPCB), on 30/04/2016 in prominent newspapers Viz. Namaste Telangana, Telugu Daily Newspaper and the Hindu, English daily Newspaper with project details inviting suggestions, views, comments and objections from the public regarding the above mentioned project. As per the EIA report, there are no National Park, Sanctuary, Elephant/ Tiger Reserve, migratory routes/wildlife corridor, within 10 km of the project site. One complete season baseline data was collected during winter season of 2015-16, i.e., from 6th December, 2015 to 5th March, 2016 and incorporated in the EIA report in line with the condition of standard TOR issued on 2nd November, 2015 by MoEF&CC for the proposed project. The work was entrusted to M/s Bhagavathi Ana labs Ltd., Hyderabad who are accredited consultants certified by NABET. Additional baseline data was collected for one month during October, 2016 by M/s B.S. Envi-Tech (P) Ltd. The proposed project site was selected after careful examination of ecologically sensitivities and the proposed plant site was found to be have least impact on the environment. There are some streamlets flowing through the plant area which meet Tungapahad Vagu. As per the report, these streamlets which originate due to rainfall within the plant area will stop flowing as storm water drainage system will be designed before constructing the plant and it will be allowed to meet the Tungapahad Vagu as and where feasible. As per the EIA Report, it is depicted that a major stream enters the plant area from north western side and meets Tungapahad Vagu which passes through the plant area. The flow of Tungapahad Vagu will not be disturbed and the four streams of 1st order and major stream meet Tungapahad Vagu will be maintained by giving necessary diversion so as to reach the Tungapahad Vagu on the western- central part. With the proposed two diversions, the surface drainage will not be affected and the surface drainage will join the natural drainage without affecting the surface water regime due to the plant. The detailed hydro geological study of the area was carried out by M/s Vimta Labs Ltd. After conducting the comprehensive hydro geological assessment studies of the plant area and its buffer zone, it was concluded that area had adequate ground water resources of which hardly 30% was being exploited for irrigation and there was surplus which could be exploited in future. The fly ash management has been properly considered in the EIA Report. They have more or less reiterated the steps taken for mitigating the possible pollution on account of the proposed project and they have satisfied with the mitigation measures suggested in the EIA Report and it is thereafter that they have recommended the project with stipulation that all mitigations provided in the EIA Report has to be strictly complied with by the project proponent. Since they proposed to adopt ZLD system, there is no possibility of any effluent being discharged into the natural stream and pollution being caused to the water bodies. All necessary conditions required for the purpose of mitigating the possible pollution that is likely to be

caused to air, water and soil has been considered and necessary conditions have been imposed in the EC. So, they prayed for accepting their contentions and dismissal of the appeal.

9. The 3rd respondent filed counter contending that as far as the 3rd is concerned, they had facilitated the conduct of the public hearing as provided under the EIA Notification. The 4th respondent had submitted the draft EIA to the Regional Office of this Board, Nalgonda on 29/04/2016 with a request to conduct the Public Hearing. The District Collector, Nalgonda fixed the date of public hearing on 31/05/2016 at 10 AM near the proposed site. The press notification regarding the Public Hearing was issued in Namaste Telangana (Telugu daily) and The Hindu (English daily) newspapers on 30/04/2016 duly giving 30 days time to the public to submit their opinions, objections, suggestions etc. in writing. The Executive summaries both in Telugu and English and the draft EIA reports were displayed for access to the public at designated offices. The Public Hearing was conducted on 31/05/2016 at 10 AM and the minutes of the same were communicated to the 1st respondent, evidenced by Annexure -1. During the Public Hearing held on 31/05/2016, the representative of the 4th respondent had stated that Rs.2,410 crores was envisaged towards implementation of pollution control measures. However, in the revised final REIA report, it was mentioned that the 4th respondent has allocated a sum of Rs.5,597 crores towards implementation of pollution control measures. The CFE application for proposed Thermal Power Plant of was received through online under TSI PASS was processed and the CFE was issued on 25/07/2017, evidenced by Annexure-2. They have conducted the public hearing in accordance with the provision of the EIA Notification and minutes of the public hearing along with annexure attached to the same were sent to the MoEF&CC as required under the EIA Notification and they have not committed any violation. So, they prayed for accepting their contentions and passing appropriate orders.

10. The 4th respondent filed counter affidavit contending the appeal is not maintainable and the grounds alleged in the appeal memorandum are not correct and it is devoid on merit and as such, they are not sufficient to set aside the EC granted which according to them is legal. They denied most of the allegations made in the appeal memorandum and given their explanation in the counter affidavit. Initially, they proposed to establish 5200 MW Coal based thermal power station at Veerlapalem (V), Dameracherla (M), Nalgonda Dist. Accordingly, the Govt. of Telangana, I & CAD department has accorded the permission for drawl of 208 Cuses (6.60 TMC throughout the year) from the river Krishna vide G.O. Ms. No. 13, dated. 30.01.2015. For operation and maintenance of 4000 MW coal based thermal power station, the maximum requirement of water is 3.714 TMC @ 3.00 cu.m. per hour as per new standards fixed by MoEF & CC, GoI vide Gazette notification dated. 16.10.2017 and they will utilize only 3.714 TMC of water per year from the above allocation of 6.60 TMC per annum. The surplus water allocation will be utilized for expansion projects by obtaining necessary statutory approvals. According to Revised EIA Report, a budget of Rs. 5597 crores (capital) and Rs 430 Crores/ annum (recurring) has been earmarked. In the record of the Public Hearing notes, this figure was shown as Rs. 2410 Crore wherein the FGD system was not considered. This has been done to comply with the new emission norms. Additionally, the Flue gas Desulphurisation (FGD) system, Nox Control equipment and High efficiency ESP are part of this additional control equipment. The MoEF& CC, GoI had accorded Stage - II clearance for diversion of 1892.35 Ha of forest land under Veerlapalem forest block, Dameracherla (M), Nalgonda Dist in

favour of the 4th respondent for establishing 6800 MW coal based thermal power plant vide letter F. No. 8-07/2015-FC, dated 07.07.2015. No forest land was diverted for establishing 2400 MW coal based thermal power plant under Dilawarpur forest block, as the diverted forest land to an extent of 1892.35 Ha under Veerlapalem forest block is sufficient for establishing total 6800 MW thermal power plant (4400 MW + 2400 MW). The 4th respondent had handed over an equivalent Non-forest land to an extent of Ac. 1892.35 Ha (Ac. 4676.00) under old Nalgonda District to the Forest department for raising compensatory afforestation by the Forest department. An amount of Rs. 80.13053 Crores was deposited with Forest department on 02.05.2015 for the above purpose. The MoEF&CC, GoI had diverted 1892.35 Ha of forest land for establishing 6800 MW thermal power plant (4400 MW + 2400 MW) but not for 4400 MW. The consultant empanelled by the Railways has to be nominated. They shall prepare the Feasibility Study Report (FSR). A conceptual plan has to be prepared which is presented to the Railways. An In-Principle clearance or Rail Traffic Clearance has to be obtained. A DPR shall be prepared and Engineering Scale Plans are to be submitted for approval of the Railways. The construction of the same will be started after receiving the above approvals. Currently, they have completed the following activities pertaining to the Railway line. "1. They have appointed the consultants i.e. M/s. RITES Limited, Secunderabad for preparation of Feasibility Study for the proposed Railway siding from Vishnupuram to project site including marshalling yard vide P.O. No. CC-0055/CE/Civil/TH/SE/TCD-I/YTPS/F. RITES Dameracherla/D. No. 254/2015, dated. 22.08.2015. Subsequently, M/s. RITES Limited, Secunderabad have furnished the Feasibility study report including conceptual plan to M/s. South Central Railways on 05.01.2018. M/s. South Central Railways have accorded the In-Principle approval to the Feasibility Study report on 25.09.2019, vide Lr. No. T.143/GNT/496, dated 25.09.2019 after various reviews. DPR was submitted to South Central Railways by M/s. RITES Limited, Secunderabad on 10.01.2020 and the approval to the DPR from the SC Railways is awaited. ii) Only after finalizing the railway line alignment and approval of M/s. South Central Railways, the land acquisition for laying the connecting railway line for a length of 10.66 km from Vishnupuram Railway Station to project site will be taken up. Now as the alignment of railway line is finalized and M/s. South Central Railways has also communicated its In- principle approval vide letter dated. 25.09.2019, the requisition was filed with the District Collector for acquisition of required land. iii) Indian Railways will not build the required connecting railway line. TSGENCO has to take up the same after obtaining the necessary approvals of the Railways." The environmental and ecological impact of the transmission lines have not been included in the scope of the EIA or the standard TOR. However, all statutory clearances will be obtained by the Agency appointed by TSGENCO/ TSTRANSCO for the transmission lines. The forest land that has been allotted is a highly degraded forest land. As per the report given by the Additional PCCF, MoEF & CC, Regional Office, Chennai vide Lr. No. 13.3 (9)/INS/ ROSEZ/ 2014/26, dated. 20.02.2015, there are no endangered/ rare/unique species of Flora and Fauna present in the above forest. Also there is no protected archaeological/heritage/ defence or any other important monuments in the area. The area is not having wildlife sanctuary or national park. Nearest protected area is Amrabad Tiger reserve at about 10 km distance from the above diverted forest land. There were about 1200 encroachers and also 1194 pattedars provided with ROFR, UDFAFA, Assignment, D-Form patta in the above diverted forest land, which clearly shows that the above land is completely degraded forest land. Further, the Sub Committee of EAC (T&C), MoEF&CC, GoI, New Delhi has visited the proposed project site on 05.12.2015 and inspected the entire proposed project area and after thorough inspection &

satisfying with the site conditions, recommended for issue of ToR to TSGENCO for setting up of 5 X 800 MW coal fired Super critical thermal power plant at Veerlapelm (V), Dameracherla (M), Nalgonda duly including their recommendation in the TOR besides other generic ToR vide their report, evidenced by Annexure -1. The impacts of Yadadri Thermal Power plant on all the aspects i.e. river Krishna, Tungapahad vagu, Wildlife, Transportation and storage of coal, railway lines, etc were already discussed in the Revised EIA report. The EAC was satisfied with the information provided in the Revised EIA report by TSGENCO and recommended the Environmental clearance for the project proponent and recommended for EC. In view of the fact that the EIA/EMP report prepared by M/s. Bhagavathi Ana Labs Pvt. Ltd, Hyderabad was not satisfactory as pointed out by EAC, MoEF&CC during the 63rd EAC meeting held on 29th - 30th August, 2016. They have changed the consultants and appointed M/s. B.S. Envi-Tech Pvt. Ltd, Hyderabad for revising the EIA/EMP report based on the comments and observations given by the EAC. Accordingly, revised EIA/EMP report was prepared by M/s. B.S. Envi-Tech Pvt. Ltd, Hyderabad and the same was uploaded in the TSPCB website on 01.02.2017 for seeking the comments of the public within 3 weeks. This was after complying to the MoEF&CC minutes of the 63rd EAC meeting, final revised EIA/EMP report was prepared and it was presented before the EAC and taken up on 5th EAC meeting held on 26.04.2017 and in that meeting, they have recommended for grant of environmental clearance for the above project. The Additional TOR was issued including the shifting of Ash Pond area and non-disturbance of Tungapahad stream etc. and those things were properly considered in the EIA Report. The allegation that the siting criteria has not been considered is not correct. The Sub Committee of the EAC and MoEF&CC had inspected the area and only after satisfaction, they issued the additional ToR for the project. Even in the earlier proceedings, the siting criteria was directed to be revised and revisited by the MoEF&CC in line with the current scenarios since the guidelines were promulgated "wayback" in 1987, considering the new scientific methodologies available in dealing with the case of M/s. Nagarjuna Construction Company Ltd., Srikakulam in the year 2012. They further mentioned that whenever they are going for any expansion of the plant capacity, they will approach the MoEF&CC and obtain necessary clearance as per the statutory guidelines. They denied the allegation that they have proceed with the construction etc. are not correct. The BHEL was awarded the site levelling and grading works to the following agencies vide LOIs noted against each and they have commenced the works on 13.05.2018 which were produced as Annexure -2&3 and detailed in the table below:-

S. No.	Name of the Agency	LOI issued by BHEL	M/s. Date of Commencement of work
1	M/s. RK Infracorp Pvt. Limited, Hyderabad	Lr. No. BHEL:PSSR: SCT:1699-Package 1/2018/363 dated 18.04.2018	13.05.2018
2	M/s. Sri Raja Rajeswari Constructions India Pvt. Limited, Hyderabad	Lr. No. BHEL:PSSR: SCT:1699-Package 2/2018/395 dated 24.04.2018	13.05.2018



11. They also properly considered the alternate site and this was considered as one by the Government as well as the EIA consultant and it was approved by the EAC and MoEF&CC as well. There will be no impact on Tiger Reserve since the Project is implementing the FGD and Nox control unit which will control the outlet emission to exceptionally low values (i.e 98% of the emission is controlled). The impact on the ambient air quality has been evaluated and presented in the Revised EIA. The site visit report specifically mentions that the Amrabad Tiger Reserve at about 10 km whereas the EC mentions that the Yadadri TPS is at a distance of 14.03 km from the Nagarjuna Sagar Tiger Reserve based as per the Survey of India Toposheet. The exact aerial distance was furnished in the Revised EIA report. There was no discrepancy in this regard. The PCCF & Chief Wildlife Warden, Govt. of Telangana has categorically stated the following: "1. The Amarabad Tiger Reserve does not fall within the 10km of the boundary of the proposed Yadadri Thermal Power Station at Veerlapalem village 2. No Wild animal migratory path or Wild animal corridor is located within 10 kms of the boundary of the proposed Yadadri Themal Power Station (Annexure 2A of the revised EIA report". The revised EIA showcased the Landuse pattern of the site using latest satellite imagery. The site is Reserved forest land but it is degraded. The change in land use have been clearly mentioned along with proposed development of greenbelt and they have no intention for diversion of Tungapahad vagu, strengthening the banks of the vagu etc as per the recommendations of the sub- committee report. They have also given the garland drain for the purpose of the surface runoff during rain and provision will be made to join the Vagu which ultimately reaches the Godavari River. All the environmental impact on forest etc. were considered by the Forest Department and MoEF&CC before granting the Stage - II approval. The second physical public hearing was exempted and that was substituted by uploading the revised EIA and getting necessary inputs and that was also considered while preparing the final EIA by M/s. B.S. Envi Tech Private Limited. They have given the coal analysis which is intended to be used for the power project as follows:-

Description	Unit	Indian Coal	Imported Coal	Blended Coal (based on Indian SCCL data)	on MSTC s Coal	and 50% Imported Coal
Proximate Analysis	Fixed Carbon	33.0	42.94	37.97	Volatile Matter	27.00 28.92 27.96
% Moisture	10.00	13.14	11.57	Ash	30.00	15.00 22.50
Calorific Value	Kcal/kg	4530	5700	5115	Total Ultimate Analysis	Carbon 49.41 57.75 53.58
Hydrogen	2.83	3.53	3.18	Sulphur	0.42	0.80 0.61
Nitrogen %	0.85	1.08	0.097	Oxygen (difference)	6.49	8.70
Moisture	10.00	13.14	11.57	Ash	30.00	15.00 22.50

12. This was evidenced by Annexure - 2 (C) and 2 (D) respectively in the EIA Report. The coal analysis considered by BHEL for design of Power Plant and Radio activity and heavy metal content of coal are already mentioned. The MOU with M/s SCCL for supply of Indigenous coal and the commitment letter for supply of coal as per the MOU was enclosed in revised EIA as Annexure - 2E (I) and Annexure - 2E (II). Also, MoU entered with M/s. MSTC for supply of imported coal is revised as directed by the EAC during the 63rd meeting is enclosed as Annexure - 2E (III) with the revised EIA report and they were produced as Annexures 7, 8 and 9 respectively along with the counter. The coal transportation aspects were also considered. The Indigenous coal will be transported using the Rail network and imported coal will be received by ships at Krishnapatnam/Kakinada/Visakhapatnam ports. From the Ports, coal will be transported by Indian Railways to the plant site. The Ministry of Coal (MoC) Govt. of India has taken a decision in 2015

that, fresh applications for grant of coal linkages shall be kept in abeyance, till a new policy is formulated for grant of coal linkages. As such, the Ministry of Coal allocation for valid linkage for the project is not available during submission of EIA. However, they entered into Memorandum of Understanding (MOU) with M/s. Singareni Collieries Company Limited (A Government Company) for supply of 7.0 Million Tonnes of coal per annum to YTPS as mentioned in the EIA Report and also submitted to the EAC for their consideration. The all environmental issues regarding the coal-based Thermal Power Plant and the machineries to be installed is being undertaken by M/s. BHEL who is a reputed agency for detailing with these aspects. Consequent to the Directives of Ministry of Coal (MOC), Govt. of India (GoI) vide notification dt:30.12.2011, the coal gradation has been shifted from UHV ('A' to 'G' grades) to GCV system (G1 grade to G17 grade) w.e.f. 01.01.2012 as tabulated below:

GCV GRADE	GCV RANGE (Kcal/Kg)
G1	Above 7000
G2	6701-7000
G3	6401-6700
G4	6101-6400
G5	5801-6100
G6	5501-5800
G7	5201-5500
G8	4901-5200
G9	4601-4900
G10	4301-4600
G11	4001-4300
G12	3701-4000
G13	3401-3700
G14	3101-3400
G15	2801-3100
G16	2501-2800
G17	2201-2500

13. The project proponent is proposed for utilization of higher grade G9 coal of GCV 4601 Kcal/kg to 4900 Kcal/Kg with ash content less than 34% in compliance with the MoEF Notification dt:07.10.2008 for YTPS to achieve super critical boiler efficiencies. As per the report of M/s. Vimta Labs Limited, Mercury content in the coal samples of SCCL mines is less than 0.1 mg/Kg. Mercury and trace elements will be present in the coal, based on the geological formations. A recent study of TERI has highlighted the following which is significant in the present project, evidenced by Annexure-11 which reads as follows:-

"The mercury content in Indian coal ranges between 0.01 ppm to 1.1 ppm (Rai, Raman, Choudhary 2013). As mercury boils at low temperatures, thermal power plant emits 90% of its mercury into air and 10% to land. Mercury abatement from the emission can be achieved as co-benefit of reduction of Nox, Sox and dust. A higher degree of focus as of now, therefore is towards the reduction of Sox and Nox emissions which will automatically reduce mercury emission."

14. As per the condition stipulated in the EC granted for the above project, the analysis of mercury in the coal has been redone through IICT, Hyderabad. Regular sampling and analysis will be carried out during the operation phase. The amount of mercury available and impacts etc. have been considered and necessary pollution control mechanism and mitigation mechanism have been provided and the nature of pollutants available using coal-based Thermal Power Plants and the existing control technologies were extracted as follows:-

Widely available control technologies that reduce mercury and other air toxics  
Pollutant Addressed Existing Control Technologies to Address Toxic pollutants  
Mercury Selective Catalytic Reduction (SCR) with Flue-Gas Desulfurization (FGD),  
Activated Carbon Injection (ACI), ACI with Fabric Filter (FF) or Electrostatic  
Precipitators (ESP) Non Mercury metals FF, ESP Dioxins & Furans Work Practice  
Standard (inspection, adjustment, and/or maintenance and repairs to ensure optimal  
combustion) Acid gases FGD, Dry Sorbent Injection (DSI), DSI with FF or ESP  
Sulphur dioxide FGD, DSI

15. All necessary studies have been conducted including the particulate matter that is likely to be emitted on account of the fly ash generation and its management etc.. The details of gypsum handling were given in Page 213 of the revised EIA/EMP Report, where it has been clearly mentioned that gypsum will be dewatered and the cake generated will be sent to a gypsum storage shed through a belt conveyor. Necessary MoU has been entered into with the companies which are agreed to supply imported coal. The railways are already implementing the doubling of the track to cater to the cement industries in the area. They have given the details of the nature of precautionary studies conducted by the consultant agency and its sufficiency and consideration by the authorities relying on the necessary pages of the EIA Report. So, they denied the allegations that no proper studies have been conducted and studies are not sufficient to meet the situation and they prayed for dismissal of the appeal. They have strictly complied with the directions issued by the Hon ble Apex Court vide Judgment dated 31.01.2014 regarding the health impact and the studies to be undertaken and remedial measures to be taken and they will strictly implement the same. The various High Courts have considered the question regarding the economic development, sustainable development the protection of environment and in all these decisions, it was stated that the balance will have to be strike between the same. So, they prayed for accepting their contentions and dismissal of the appeal.

16. The appellant filed rejoinder to the reply submitted by the respondents Nos.1 & 4. They reiterated the various studies/articles relied on by them and produced along with the rejoinder. They also relied on the decision of this Tribunal and the Hon ble Supreme Court in Appeal No.50 of 2012 (T. Muruganandam & Ors. Vs. MoEF&CC & Ors.) dated 10.11.2014, Appeal No.03 of 2011 (Sarpanch, Gram Panchayat Tiroda Vs. The MoEF&CC) dated 12.09.201, Alaknanda Hydro Power Company Limited Vs. Anuj Joshi & Ors. (2014) 1 SCC 769, Vimal Bhai & Anr. Vs. Union of India & Ors. 2012 SCC Online NGT 77, and Prafulla Samantara Vs. Union of India & Ors. 2014 SCC Online NGT 892 in respect of use of forest land for non-forest purposes, importance of public hearing, cumulative impact assessment, application of mind on appraisal process and also relying on various studies in this regard.

17. The appellant also filed additional affidavit reiterating the impact of diversion of river and streams relying on the reports of the Forest Department produced as Annexure - A34 to A38 along with the affidavit.

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

19. The learned counsel appearing for the appellants argued that though as per the guidelines issued by the Central Electricity Authority in respect of site selection for the project, wherein it was specifically mentioned that the forest area will have to be avoided. The MoEF&CC while granting the Forest Clearance for this project also did not consider these aspects. There was no option given to the EIA Consultant for site selection process with alternate sites, but they have shown certain sites which are not per se impermissible for this project as alternate site and this site has already been fixed on the basis of the inspection made by the Hon ble Chief Minister of State of Telangana and the further proceedings were initiated for diversion of the land for seeking FC by the subordinate officials and as such, the subordinate officials will not be able to consider the project and its impact on forest independently and they are bound by the directions issued by the higher officials. Further, the EAC had observed that the report submitted by M/s. Bhagavathi Ana Labs Private Limited is not acceptable and rejected the same and it is on that basis, they have changed the consultant and appointed M/s. B.S. Envi-Tech Private Limited for this purpose and after preparation of the report on the basis of the directions given by the EAC, they sought for exemption from public hearing, but the EAC felt that the public hearing as such cannot be exempted. They have taken a shortcut method of publishing the same in the official portal giving three weeks time and calling for representations/objections and only three representations were received, whereas originally 3,500 persons have participated in the public hearing. The reasons given by the EAC for selecting an alternate method of public hearing is not envisaged under the EIA Notification, 2006. The real EIA Report was not before the public for the purpose of hearing their view regarding the insufficiency (if any) in the report. Further, the impacts of the project on forest ecology, ecologically sensitive Amrabad Tiger Reserve were not properly considered.

20. The learned counsel also relied on the „Doctrine of Public Trust to be applied while considering the environmental issues in the process of diversion of forest land for non-forest purposes, as that has not been considered by the authorities and they were ignored as well. The EAC also recommended the project not satisfying with the radioactivity analysis conducted by the agency adopted by the project proponent, but they directed to conduct the same through some other agency and there was a difference in the radioactivity level and there was no opportunity for the EAC to consider the same before recommending the project and there was no appraisal of that report as well. There are various short comings in the EIA Report which were not properly appraised.

21. The learned counsel for the appellants relied on the decision of the Hon ble Apex Court in Hanuman Laxman Aroskar Vs. Union of India & Ors. 2019 SCC Online SC 441. He had also relied on the various decisions referred to above in the appeal memorandum as well as in the rejoinder filed. So, the learned counsel prayed for setting aside the EC.

22. On the other hand, the learned Additional Advocate General along with the Special Government Pleader for the State of Telangana appearing for the 4th respondent argued that all necessary studies have been conducted. Each and every aspect has been properly considered by the MoEF&CC on two different occasions, one granting the FC and other considering the EC and only after conducting proper evaluation, the decision has been taken to recommend the project and to issue the EC. Further, there is no necessity to set aside the EC for conducting further studies (if any) to be directed by this Tribunal and they will abide by the directions and conduct further studies (if any) required and they will carry out the same in its letter and spirit. So, they prayed for dismissal of the appeal.

23. The learned counsel appearing for the MoEF&CC argued that there was proper application of mind and that was the reason why they did not accept the earlier EIA Report and what was exempted is only a physical public hearing but adopted the public consultation process by publishing the same in the official portal giving three weeks time for the public to submit their views and only three persons have submitted their objections and those were considered while preparing the final EIA Report. Further, the appellants are not affected parties and the real affected parties have not projected any issue regarding the establishment of the Thermal Power Plant. The necessary pollution control mechanism have been provided and considered and whatever studies required to be done were directed to be done, the nature of forest that is intended for diversion was also considered before granting the FC as well as the EC for this project. According to them, there is no necessity to interfere with the decision making process undertaken by the statutory authorities.

24. The learned counsel appearing for the State Pollution Control Board argued that their role is only conducting the public hearing and that has been properly done and after the EC granted, the project proponent applied for consent and Consent to Establish was granted, and after establishment process is over, when they apply for Consent to Operate, that will be considered and appropriate orders will be passed in accordance with law.

25. The learned counsel appearing for the State of Telangana argued that all necessary studies have been conducted and the project was independently appraised by the MoEF&CC and the EC was granted after considering the need for power to the newly formed Telangana State.

26. 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, including the EC file produced by the MoEF&CC.

27. The points that arose for consideration are:

a. Whether the EC granted is liable to be set aside for any of the reasons stated in the appeal memorandum and the points projected at the time of hearing by the learned counsel for the appellants?

b. If the Tribunal feels that the EC need not be set aside but applying the „Precautionary Principle , whether any further directions to be issued regarding the

nature of studies to be conducted and further steps to be taken by the project proponent before commissioning the project to protect the environment and health of the people in the locality? c. Relief and costs.

**POINTS:-**

28. Grievance of the appellants in the appeal against the project was that large extent of reserved forest was diverted for non-forest purpose which is a polluting industry and no proper application of mind was made by the authorities before granting permission for converting the forest land for non-forest purpose. No proper public hearing was conducted, after rejecting the earlier EIA Report submitted by the consultant appointed by the project proponent and moreover, no public hearing was conducted after submission of the EIA Report by the new consulting agency appointed by the project proponent, though an alternate method of public hearing was adopted by publishing the same in the public domain calling for objections which is contrary to the procedure provided under the EIA Notification, 2006 as amended from time to time.

29. These allegations were denied by the respondents.

30. It is an admitted fact that huge extent of land viz., 2,095.28 Acres of forest land in this village has been diverted for this project. It will be seen from the Annexure - A4/Minutes of the 45th Reconstituted EAC (Thermal Power) Meeting held on 29th - 30th October, 2015 that this project proposal was considered as Agenda 2.6 and after considering the report submitted by M/s. Bhagavathi Ana Labs Private Limited, Hyderabad, the EAC had noted that "a tributary/channel of Krishna River is passing across the proposed site and the committee had detailed discussions with the project proponent regarding shifting of the proposed site/revising the layout so that the said channel is not affected". Further, they appointed a Sub Committee to go into the question and the decision making was deferred to a future date even for issuance of the ToR. But subsequently they have issued the ToR and after inspection, they have made certain observations and in the 50th Reconstitute EAC (Thermal Power) Meeting held on 29th - 30th January, 2016, they have issued the general ToR and as per the 63rd Meeting of the EAC (Thermal Power) held on 29th - 30th August, 2016, they have considered the report submitted by M/s. Bhagavathi Ana Labs Private Limited and found that they have done some plagiarism in preparing the report and they felt that it is not proper to accept the same. They have made the following observations and recommendations:-

31. It is on that basis, earlier consultant was changed and new consultant was appointed to conduct a study and accordingly, the revised EIA Report was submitted. It was further considered in the 1st Meeting of the Reconstitute EAC (Thermal Power) held on 28th December, 2016 and they have taken the following decisions, whereby they have decided to avoid physical public hearing, but suggested for an alternate method of public hearing as follows:-

"(2.7.4) Committee after detailed deliberations, exempted M/s TSGENCO Ltd. for re conducting the Public Hearing subject to the following conditions:

a. New EIA consultant B.S. Envi-Tech Pvt. Ltd. should own the baseline data collected. by the earlier consultant and revise the final EIA as per EAC observations. In this regard, a written commitment should be submitted to the Ministry.

b. Revised EIA / EMP shall be submitted to Telangana State Pollution Control Board for uploading the revised EIA / EMP on their website for seeking public comments. Notice shall be published in two newspapers preferably one in vernacular language of the locality concerned and another one in English newspapers to seek the public comments / suggestions within 3 weeks from the date of notice. c. PP should address all the public comments received within 3 weeks, incorporate the issues & action plan in the revised EIA and submit the final EIA / EMP to the Ministry for further consideration."

32. It is on that basis, the revised EIA Report was published and objections were called for, three representations were received and then, the final EIA Report was prepared for consideration. It may be mentioned here that though earlier, the EIA Report was not considered by the EAC for the purpose of further appreciation of the project for grant of EC but then, they have held that the public hearing earlier conducted was valid after making due publication. The public concern about the project etc. were considered and that was addressed by the present consultant appointed for the conducting the EIA Study. So, there is no provision made in the EIA Notification, 2006 to conduct any further public hearing on the basis of the revised EIA Report. The earlier report was not accepted by the EAC on technical reasons of furnishing not proper datas as required.

33. Further, though there was an allegation made by the learned counsel appearing for the appellant that the EIA Report was not available to the people so to make their comments etc. cannot be accepted, as they were denied and there was no document produced by the appellant to prove this aspect as well. Further, they have no case that the period mentioned for calling for objections were not complied with and the EIA Report was not uploaded and it is not available in the official portal etc. Further, certain representations were received on the basis of the publication made through portal and that was considered and on that basis, further report was prepared. There is no dispute regarding the importance of public hearing and its appraisal by the EAC, as observed by the Hon ble Apex Court in various decisions, including Hanuman Laxman Aroskar s case which was relied on by the learned counsel for the appellant. But those are all cases where the public hearing was not conducted properly and necessary details were suppressed before the EAC even at the time when the ToR was issued and those things were not reflected in the EIA Report which was placed before the public hearing and were ignorant about the impact as such, but that was not the case in this case. The entire project was explained by the project proponent in the public hearing and most of the objections were regarding payment of compensation, impact of the project on wildlife and the forest area and nothing more.

34. So under such circumstances, it cannot be said that the public was denied the opportunity of going through the revised EIA Report prepared by the new consultant, thereby the entire process is vitiated and it cannot be accepted and on that ground, we don t think that the EC need to be set aside.

35. As regards the forest area is concerned, it is true that guidelines were issued by the various authorities for siting criteria. It will be seen from the guidelines of siting for Thermal Power Projects of the MoEF&CC that in selection of any particular site, the following factors must also be recognized: "No forest land shall be used for non-forest activity for the sustenance of the industry". As regards the guidelines issued by the Central Electricity Authority, Government of India for selection of coal based thermal power stations is concerned, first priority is given to the sites those are free from forest, habitation and irrigated/agricultural land. Second priority is given to those sites that are barren i.e., wasteland, intermixed with any other land type, which amounts to 20% of the total land identified for the purpose. The guidelines for site selection of coal based thermal power stations set by the MoEF&CC also says that locations of thermal power stations are avoided within 25 Km of the outer periphery of the metropolitan cities, national park and wildlife sanctuaries, ecologically sensitive areas like tropical forest, biosphere reserve, important lake and coastal areas rich in coral formation and forest or prime agricultural lands are avoided for setting up of thermal power houses or ash disposal. But in this case, the State of Telangana had decided to setup a Coal-based Thermal Power Plant in this location and for that purpose, the Hon ble Chief Minister has conducted certain site inspection by aerial visit and decided to proceed with the project in this area. It is on that basis, the process for obtaining FC was made. Based on the recommendations made, the MoEF&CC had granted Stage - I Clearance and thereafter, after complying with the conditions imposed, Stage - II Clearance was also granted and subsequently, the FC was granted under Section 2 of the Forest (Conservation) Act, 1980 by the State of Telangana.

36. Though there was an attempt made by the learned counsel appearing for the appellant that applying the principle of „Doctrine of Acting under Dictation by the higher authorities, we don t think that the decision relied on by the learned counsel on this aspect applying the principle of administrative law is not applicable to the facts of this case. Because, it is not a State authority who is granting the clearance, but it is a Central Authority viz., the MoEF&CC is the final authority to approve the clearance process, based on which the final clearance will have to be issued by the State Government under Section 2 of the Forest (Conservation) Act, 1980.

37. Further, the FC granted was not independently challenged and they are not entitled to challenge the same indirectly while challenging the EC. However, the EAC is expected to go through that aspect regarding the selection process for the site and they must satisfy that the site is fit for this purpose irrespective of the fact that the FC was granted or not and there is no dispute regarding this aspect. In this case, the EAC had appointed a Sub Committee to have a site inspection and it is on that basis, site inspection was conducted on 05.12.2015 by the Sub Committee comprising of Prof. C.R. Babu, Mr. T.K. Dhar, Mr. A.K. Bansal, Mr. B.B. Barman and Dr. M. Ramesh and they have considered the various aspects and thereafter, they have given the summary and recommendations in Point No.3 of the report which reads as follows:-

"3.0 Summary and Recommendations Based on the observations made during Site Visit, discussions held with all the Sub-Committee recommends the following stakeholders including Project Proponent, and critical evaluation of documents submitted, the Sub Committee recommends the following



(i) The Tungapadu Vagu is a perennial natural rival and is the lifeline for the local communities by providing water not only for irrigation, and recharging groundwater but also for draining the area into Krishna River.

a) The Tungapadu Vagu should not be diverted hat it should be preserved and protected, and enhanced its flows.

b) The PP should leave a minimum of 100 m buffer on either side of its banks and this buffer should be developed into native forest.

c) No effluent should be discharged into the rivulet or Krishna River.

d) In areas where the banks are breached, the breaches should be plugged and strengthened.

e) In areas where the riverbed is silted / partially blocked due to landslides, the blocks and silt should be removed in a way that the original gradient is maintained.

f) No water from the stream is extracted.

g) To sustain the downstream ecology of the Tungapadu Vagu, the Irrigation Department should release minimum ecological flows from the reservoirs constructed in the upstream.

(ii) The Project area is above the high flood line as evident from the level of flood plains with respect to the project site and level of water course, and as such the project site, which is a plateau, is not prone to floods. In fact, the plateau is cut deeply by the rivulet and forms a deep gorge.

(iii) The plateaus and their slopes within the project area, which are not used for the project purpose, are highly degraded. There should be restored to their original natural forest ecosystem and should be used for the conservation of rare and endemic plants and animals found in the plateaus of the project area. These forests not only serve as green belt to mitigate fugitive emissions, CO<sub>2</sub> and other pollutants, but also serve as a conservation area.

(iv) The reserve forest that demarcates the project boundary on the south is also highly degraded. This intact patch should be restored to its original forest ecosystem and should be connected to the forest ecosystem of the project area and other reserve forest in the area. This would not only serve as buffer for the project but also acts as a corridor for wildlife and enhance stream flow. For this purpose the PP should provide grants to the State Forest Department and work should start within a reasonable time of 1-2 years after preparing a detailed site specific action plan.

(v) The tribal communities of the area and local MLA welcomed the project. However, they expressed higher compensation for land acquired, the best R & R package available and implementation of social welfare schemes and healthcare system for local communities. The PP should create a permanent corpus fund for tribal welfare and also provide adequate compensation for the land losers irrespective of their status besides best possible R & R package and extending social welfare schemes and healthcare system for local communities.

(vi) Cumulative impact assessment of air, water, soil and socio-economics should be carried out in view of a number of cement plants already established / operating in the vicinity of the proposed plant.

(vi) As agreed by the PP, the area for ash pond shall be minimized by shifting it towards North. Further, a minimum distance of 500 m buffer shall be maintained between the proposed ash pond and Tungapadu Vagu. The buffer shall be developed into thick green belt/natural forest.

(vii) Issue of ToR to TSGENCO for setting up of 5x800 MW coal-fired supercritical TPP at Veerlapalem village of Dameracherla Mandal in Nalgonda District of Telangana State may be considered by including the above recommendations as ToRs besides other generic ToRs."

38. So, it is clear from this, the EAC has not mechanically accepted the FC, but they have made a site inspection and it is on that basis, they have made certain recommendations for the purpose of maintaining the ecological sensitiveness of the forest area and approving the site selection process for this project. That shows the proper application of mind of the EAC, as they have not mechanically accepted the same.

39. Further, the Telangana State being a new state formed, they may require power generation for their development process, for which, they will have to develop further power plants. So, the principle of „Sustainable Development“ will have to be considered, as without economic growth, needs of the people cannot be considered. But at the same time, environment protection cannot be given a go by as well. So, all these aspects have been considered by the EAC and also observed that in the exceptional circumstances, they are accepting this area for the project as the forest area is a degraded forest. Though we are not happy with the manner in which the MoEF&CC, Government of India had granted the approval for grant of FC for the project and the State of Telangana had selected a reserved forest for this project, in future, we direct the MoEF&CC to desist from ordering conversion/diversion of forest land for non-forest purpose for industrial purposes especially those are having more potential for pollution being caused in the area and that is likely to have impact on forest. They should not mechanically grant the permissions even as exceptional circumstances and they must desist from converting the forest land for non-forest purposes for such commercial projects in future. The State Government is also excepted to show their indulgence in selecting the project areas which are not involved in reserved forest or other forest for the purpose of such industries and they must sought for other areas though they will have to pay more compensation for

that purpose, especially when the global warming is increasing and the entire international communities are very much concerned about the global warming which will have more impact on climate change.

40. We feel that the MoEF&CC, Government of India and respective State Governments will look into these issues in future very seriously while considering the proposal for conversion of forest land for non-forest purposes especially for industries like Thermal Power Plant and other „Red Category industries which are likely to have impact on forest as such. However, considering the exceptional circumstances mentioned above, we are not interfering with the site selection process adopted by the State Government for housing this project in this area, considering the fact that being a new State, it may require more power and project proponent had already invested some public money in making some constructions.

41. As regards the coal linkage is concerned, there is some force in the submission made by the learned counsel for the appellant that there was no specific coal linkage has been provided except producing certain Memo of Understandings (MoUs) with the agencies which are dealing with the imported coal and also indigenous coal (Indian coal). According to them, their proposal is to have a Super Critical Thermal Power Plant using blended coal viz., Imported Coal and Indigenous Coal in a particular ratio and M/s. BHEL is also developing the machineries and the pollution control mechanism that will have to be adopted including the FGD System to control So<sub>2</sub> and No<sub>x</sub> in an effective manner. Further, the EAC also specifically mentioned in some of the meetings that they will have to produce the specific coal linkage for the purpose of appraisal and it is also settled law that the impact of the coal will depend on the nature of coal that is being used on the Ambient Air Quality. But in this case, the EIA Report will go to show that they have relied on the report of M/s. Vimta Labs Limited for the purpose of coming to the conclusion that there is no possibility of mercury level which will have any impact on environment. But this was not accepted by the EAC while recommending the project and they wanted further study to be conducted by another agency viz., IICT, Hyderabad and that was done by them and there was a wide variation of mercury content found by M/s. Vimta Labs Limited and IICT, Hyderabad. But this was not submitted to the EAC for further consideration. But on the other hand, the MoEF&CC had issued the EC directing them to comply with the mercury content and other metal contents as per the notification issued by the MoEF&CC in this regard. Unless, this has been evaluated by the EAC, it cannot be possible to come to a conclusion as to whether any further study will have to be conducted on this aspect.

42. Further, this aspect has been considered by the Tribunal Appeal No.46 of 2016 (SZ) (Uma Maheshwar Dahagama Vs. Union of India & Ors.) by Judgment dated 27.05.2021 and this Tribunal directed them to conduct a further study on this aspect and suspended the EC for this purpose and that was challenged before the Hon ble Supreme Court as Civil Appeal No. 1846 of 2021 by Telangana NTPC and the Hon ble Supreme Court has upheld the direction but permitted the project proponent to proceed with the construction subject to the outcome of the studies and further decision to be taken by the EAC and the issuing authority. Further, the subsequent documents produced by the respondents will also only go to show that there are only MoU that is being entered into and specific coal linkage has been so far obtained. They are only getting assurance from M/s. SCCL for supply of necessary coal required for this purpose. Further, there is nothing on record to

show that they have entered into any coal linkage in respect of imported coal and no steps have been taken for conducting any study of radio activity in respect of the imported coal as well. But during the course of the argument, it was argued that they are now going for 100% indigenous coal in view of the import restrictions made by the Government of India in this regard to promote the use of Indian coal by the Thermal Power Projects. If that be the case, the entire study by the EIA Consultant on the Ambient Air Quality will have to be revisited and further, the FGD system and other pollution control mechanism that is required for this purpose also will have to be revisited and that will have to be reappraised by the Expert Appraisal Committee. Further, from the site inspection conducted by the EAC, they came to the conclusion that the Amrabad Tiger Reserve is above 10 Km from the project site. They have not given the exact distance. Neither the report submitted by the PCCF & Chief Wildlife Warden nor the EIA Report is giving the exact distance between the boundary of the project area and the Amrabad Tiger Reserve. Unless, the exact distance is identified, it may not be possible to come to the conclusion that as to whether the default eco-sensitive zone of 10 Km will have to be taken for the purpose of directing the project proponent for obtaining clearance from the NBWL as required under the Office Memorandum issued by the MoEF&CC, Government of India in this regard.

43. So under such circumstances, the exact location of the project area and the distance between the tiger reserve has to be ascertained so as to ascertain as to whether any further clearance from NBWL has to be obtained or not. Further, the AAQ test also will have to be considered taking into account the existing industries within 25 Km area, as has been observed by the Tribunal in Appeal No.46 of 2016 (SZ) (Uma Maheshwar Dahagama Vs. Union of India & Ors.) by Judgment dated 27.05.2021 relying on the earlier decisions of the National Green Tribunal in this regard which was confirmed by the Hon ble Apex Court in Civil Appeal No. 1846 of 2021.

44. So under such circumstances, we feel that in order to proceed with the project, there are certain other aspects also will have to be considered applying the „Precautionary Principle and without considering the same, it is not possible to come to the conclusion that the appraisal made was correct. But for that purpose, we do not think that there is no necessity to set aside the EC but it need only be suspended for the limited purpose of restricting the commissioning the project but permitting the project proponent to proceed with the construction and other aspects, but installation of machineries etc. on the basis of the further studies to be conducted will be sufficient.

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

- a. We direct the MoEF&CC and the Government of India/State Government that in future while considering the diversion of forest land for non-forest purpose, they must be very strict in complying with the guidelines of siting and the nature of projects for which this can be granted etc. and while considering those aspects, they will have to avoid conversion of the forest land for non-forest purpose especially for projects like Thermal Power Plants, Atomic Power Plants and other Red Category industries which are declared to be industries likely to cause high level of pollution and it is likely to affect the forest cover and considering the fact that damage to forest

cover can have great impact on global warming and climate change. It should also be noted that the commitment of India, being a member of the international conventions on climate change have committed to increase the green cover to minimize the impact of green house gases which are likely to have impact on global warming which will be affected by such conversions. b. The EC granted to the 4th respondent is suspended till the further appraisal is done on the basis of the following directions to be issued by the Tribunal only to the limited extent of preventing the project proponent from commissioning the project and installing the machineries but they can proceed with the construction aspects and that will be subject to the further orders to be passed by the MoEF&CC on the basis of the studies directed to be conducted. c. The MoEF&CC is directed to issue additional ToR to the project proponent for the purpose of conducting further studies on the following aspects:-

a. They will have to specify the coal linkage for conducting the study on radio activity impact and they will have to conduct the study on those aspects as directed by this Tribunal in Appeal No.46 of 2016 (SZ) (Uma Maheshwar Dahagama Vs. Union of India & Ors.) by Judgment dated 27.05.2021 confirmed by the Hon ble Apex Court in Civil Appeal No. 1846 of 2021.

b. If the project proponent intends to switch over to 100% indigenous coal, then they will have to conduct further study on this aspect and that can be done only by filing an application before the MoEF&CC for this purpose and if any further ToR is required that also must be issued by the MoEF&CC and the public hearing will have to be conducted and all other procedure to be followed as directed by the Hon ble Apex Court in Key Stone Realtors Private Limited Vs. Anil V Tharthare & Ors. (Civil Appeal No. 2435 of 2019) as mere amendment of the EC already granted will not be sufficient and this Tribunal also ignored the Office Memorandum issued by the MoEF&CC, Government of India in this regard while considering this issue in Appeal No.46 of 2016 (SZ) (Uma Maheshwar Dahagama Vs. Union of India & Ors.) by Judgment dated 27.05.2021 confirmed by the Hon ble Apex Court in Civil Appeal No. 1846 of 2021.

d. While considering these aspects, the MoEF&CC is also directed to issue a direction to the project proponent to conduct additional studies (if any) to be conducted regarding the sufficiency of the ash ponds provided and design and maintenance system that has to be provided and the mitigation measures to be taken a fresh in this regard in view of the discussion and findings made by this Tribunal on these aspects as well.

e. The project proponent is also directed to conduct the Ambient Air Quality Modelling and cumulative impact assessment as directed by this Tribunal in Appeal No.46 of 2016 (SZ) (Uma Maheshwar Dahagama Vs. Union of India & Ors.) taking into account the impact of the same taking 25 Km radius as protected area is also available in that area and other industries and villages are also available in that area

to assess the actual impact of the same and mitigation measures to be taken in this regard.

f. The project proponent is also directed in co-ordination with the PCCF & Chief Wildlife Warden, State of Telangana to ascertain the exact distance between the project area and the boundary of the Amrabad Tiger Reserve and if the distance is within 10 Km of default eco-sensitive zone, then they must be directed to obtain necessary Wildlife Clearance from the NBWL as required under the Wildlife (Protection) Act, 1972 and also Office Memorandums issued by the MoEF&CC in this regard.

g. After obtaining the Wildlife Clearance and after getting the concerned reports as directed, then the EAC is directed to reappraise the project and take independent decision regarding the recommendation or otherwise and intimate the same to the MoEF&CC and on that basis, the MoEF&CC is directed to take appropriate decision in this regard either by imposing additional conditions or other decisions to be taken on the basis of the recommendations made by the EAC and pass appropriate orders in this regard.

h. The entire exercise must be completed by the project proponent and the EAC and the issuing authority within a period of 9 (Nine) months.

46. The points are answered accordingly.

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

(I) We direct the MoEF&CC and the Government of India/State Government that in future while considering the diversion of forest land for non-forest purpose, they must be very strict in complying with the guidelines of siting and the nature of projects for which this can be granted etc. and while considering those aspects, they will have to avoid conversion of the forest land for non-forest purpose especially for projects like Thermal Power Plants, Atomic Power Plants and other Red Category industries which are declared to be industries likely to cause high level of pollution and it is likely to affect the forest cover and considering the fact that damage to forest cover can have great impact on global warming and climate change. It should also be noted that the commitment of India, being a member of the international conventions on climate change have committed to increase the green cover to minimize the impact of green house gases which are likely to have impact on global warming which will be affected by such conversions.

(II) The EC granted to the 4th respondent is suspended till the further appraisal is done on the basis of the following directions to be issued by the Tribunal only to the limited extent of preventing the project proponent from commissioning the project and installing the machineries but they can proceed with the construction aspects and that will be subject to the further orders to be passed by the MoEF&CC on the basis of the studies directed to be conducted.

(III) The MoEF&CC is directed to issue additional ToR to the project proponent for the purpose of conducting further studies on the following aspects:-

a. They will have to specify the coal linkage for conducting the study on radio activity impact and they will have to conduct the study on those aspects as directed by this Tribunal in Appeal No.46 of 2016 (SZ) (Uma Maheshwar Dahagama Vs. Union of India & Ors.) by Judgment dated 27.05.2021 confirmed by the Hon ble Apex Court in Civil Appeal No. 1846 of 2021.

b. If the project proponent intends to switch over to 100% indigenous coal, then they will have to conduct further study on this aspect and that can be done only by filing an application before the MoEF&CC for this purpose and if any further ToR is required that also must be issued by the MoEF&CC and the public hearing will have to be conducted and all other procedure to be followed as directed by the Hon ble Apex Court in Key Stone Realtors Private Limited Vs. Anil V Tharthare & Ors. (Civil Appeal No. 2435 of 2019) as mere amendment of the EC already granted will not be sufficient and this Tribunal also ignored the Office Memorandum issued by the MoEF&CC, Government of India in this regard while considering this issue in Appeal No.46 of 2016 (SZ) (Uma Maheshwar Dahagama Vs. Union of India & Ors.) by Judgment dated 27.05.2021 confirmed by the Hon ble Apex Court in Civil Appeal No. 1846 of 2021.

(IV) While considering these aspects, the MoEF&CC is also directed to issue a direction to the project proponent to conduct additional studies (if any) to be conducted regarding the sufficiency of the ash ponds provided and design and maintenance system that has to be provided and the mitigation measures to be taken a fresh in this regard in view of the discussion and findings made by this Tribunal on these aspects as well.

(V) The project proponent is also directed to conduct the Ambient Air Quality Modelling and cumulative impact assessment as directed by this Tribunal in Appeal No.46 of 2016 (SZ) (Uma Maheshwar Dahagama Vs. Union of India & Ors.) taking into account the impact of the same taking 25 Km radius as protected area is also available in that area and other industries and villages are also available in that area to assess the actual impact of the same and mitigation measures to be taken in this regard.

(VI) The project proponent is also directed in co-ordination with the PCCF & Chief Wildlife Warden, State of Telangana to ascertain the exact distance between the project area and the boundary of the Amrabad Tiger Reserve and if the distance is within 10 Km of default eco-sensitive zone, then they must be directed to obtain necessary Wildlife Clearance from the NBWL as required under the Wildlife (Protection) Act, 1972 and also Office Memorandums issued by the MoEF&CC in this regard.

(VII) After obtaining the Wildlife Clearance and after getting the concerned reports as directed, then the EAC is directed to reappraise the project and take independent decision regarding the recommendation or otherwise and intimate the same to the MoEF&CC and on that basis, the MoEF&CC is directed to take appropriate decision in this regard either by imposing additional conditions or other decisions to be taken on the basis of the recommendations made by the EAC and pass appropriate orders in this regard.

(VIII) The entire exercise must be completed by the project proponent and the EAC and the issuing authority within a period of 9 (Nine) months.

(IX) Considering the circumstances, parties are directed to bear their respective cost in the appeal.

(X) Till further directions are issued from the MoEF&CC, the project proponent is directed not to commission the project but they can proceed with the project of construction of infrastructure and they must also not to install the machineries, as this may also involve a revisit on the basis of the further recommendations/conditions if any to be issued by the EAC and the issuing authority viz., MoEF&CC and that will be subject to the directions of the MoEF&CC and at their risk.

(XI) The Registry is directed to communicate this order to the MoEF&CC and other official respondents for their information and compliance of directions.

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

Sd/-

Justice K. Ramakrishnan, J.M. Sd/-

Dr. Satyagopal Korlapati, E.M. Appeal No.15/2020 (SZ) 30th September, 2022. Mn.