

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2011 OF 2019

TULARAM GOGOI

APPELLANT(s)

VERSUS

UNION OF INDIA & ORS.

RESPONDENT(s)

WITH

CIVIL APPEAL NO. _____ OF 2019
(D.No.46429 of 2018)

O R D E R

Admit.

By its judgment and order dated 16 October 2017, the National Green Tribunal¹ directed the Ministry of Environment, Forests and Climate Change² to constitute a Committee of three experts whose remit shall be the same as was made to the Project Oversight Committee in the OM dated 13 January 2005. The Committee was directed by the Tribunal to examine the reports of various committees and to submit its own report with recommendations to the MOEF&CC. Upon receipt of the report, MOEF&CC has been directed to refer the report and recommendations of the Committee for Stage IV appraisal by the Expert Appraisal Committee under the EIA Notification 2006.

After the above decision of the Tribunal, an Expert Committee of three members was constituted on 27 November

1 "Tribunal"

2 "MOEF&CC"

2017 consisting of (i) Dr. Prabhas Pande (Engineering Geology); (ii) Dr. I.D. Gupta (Seismology); and (iii) Shri P.M. Scott (Hydrology). The Expert Committee has held meetings on 21/22 December 2017, 16 January 2018, 12 December 2018, 8 January 2019 and 6/7 February 2019. The Committee has also visited the site at Lower Subansiri on 9/10 January 2019.

Two Miscellaneous Applications were filed before the Tribunal seeking to question the independence of the members of the Committee. The first set was M.A. No.140/2018, M.A. No.178/2018, M.A. No.295/2018, M.A. No.285/2018 & M.A. No.286/2018 in OA 346 of 2013 [Aabhijeet Sharma]. The Miscellaneous Application was dismissed on 19 November 2018. Execution Application 1 of 2018 was filed by the appellant and was dismissed on 14 December 2018, following the earlier order.

The grievance of Ms. Anitha Shenoy, learned counsel appearing on behalf of the appellant, on the issue of bias, is that the members of the Expert Committee had in the past worked for or were associated with organizations which had a recommendatory role and furnished views in regard to the Subansiri Lower Project. The grounds of challenge, as they are set out in the Memo of the Civil Appeal, are extracted below:

"a) Dr. I.D. Gupta's LinkedIn profile (<https://in.linkedin.com/in/dr-i-d-gupta-aa6b2315>) states that he is currently a Visiting Professor in IIT Roorkee. Since 1979 he has been working with the Central Water and Power Research

Station ("CWPRS"), Khadakvasla, Pune in various capacities including as the Director from July 2009 to September 2013.

b) The CWPRS has been involved in the process of design of the Subansiri Lower from the inception at various stages. CWPRS in general and Dr. I.D. Gupta were also involved in various processes reviewing the Subansiri Lower project in recent times. Dr. I.D. Gupta gave his views on the seismic design parameters of the Subansiri Lower project in April 2012 which was included in the report of Technical Expert Committee (Thatte - Reddy Committee).

c) The CWPRS was also part of the Dam Design Review Panel set-up subsequent to the report of the Thatte-Reddy committee. Dr. I.D. Gupta, as Director, CWPRS was a part of the "National Committee on Seismic Design Parameters (NCSDP)" which specifically re-examined Seismic Design Parameters as per recommendations of Thatte-Reddy committee/DDRP. It was NCSDP observation that further revisions in the approved seismic design parameters is not required with regard to Subansiri Lower project.

d) Dr. I.D. Gupta has specifically expressed his disagreement with the Assam Expert Group on a number of occasions with respect to Subansiri Lower project, in favour of NHPC. For example meeting held in Guwahati on 6th December 2013 and meeting held in New Delhi on 11th December 2014. Although this is not necessarily reflected in the minutes of the meetings, such information has been shared with the Applicant by the members of the Assam Expert Group.

e) Similarly, a perusal of the information available on Mr. P.M. Scott shows he is currently the Chief Engineer, Brahmaputra and Barak Basin, Central Water Commission, Shillong.

f) The CWC has also been integrally involved in conceiving and reviewing the Subansiri Lower project right since the inception. For example during the review process both the Dam Design Review Panel (DDRP) and NCSDP have a number of members from the Central Water Commission. The Project Oversight Committee (Government of India representatives) also included CWC. This group has specifically disagreed with the POC (Assam Group).

g) Similarly, a perusal of the information available on Dr. Prabhas Pande shows that he retired as the Additional Director General of the Geological Survey of India in 2011. The GSI again has been involved in investigations related to the Subansiri Lower project from the inception, including during the term of Dr. Pande. The GSI was also part of the NCSDP which originally gave a go ahead to the Subansiri Lower project based on the seismic design parameters which are currently under dispute and was also represented on the POC set-up by GOI.

h) The CWC and GSI, organisations with which two of the members are/were affiliated are also the two organisations which are consulted by the Central Electricity Authority during grant of techno-economic clearance to the Subansiri Lower project originally. Many issues in the original TEC are currently under dispute and an objective review of these is supposed to be now done by the three-member committee constituted as per judgment of the Ld. National Green Tribunal."

The objections which were filed by the appellant were dismissed by the Tribunal on 14 December 2018 in terms of the following order:

"We have heard the learned counsel for the applicant.

It is not disputed that identical matters being M.A. Nos.140/2018, 178/2018, 295/2018, 285/2018 and 286/2018 have been dismissed vide order dated 19.11.2018. We do not find any merit in the application.

Accordingly, the application is dismissed."

The order of the Tribunal relies on its earlier decision of 19 November 2018. The order dated 19 November 2018 reads as follows:

"We have heard the learned counsel appearing for the Applicant. We do not find any merit in these applications.

M.A. No.140/2018, M.A. No.178/2018, M.A. No.295/2018, M.A. No.285/2018 & M.A. No.286/2018 stand dismissed.”

We find considerable merit in the submissions which have been urged on behalf of the appellant by Ms. Anitha Shenoy, learned counsel that neither the earlier order dated 19 November 2018 nor the impugned order dated 14 December 2018 contains any reasons for rejecting the objection to the independence of the members of the Committee.

During the course of the earlier hearing in the present proceedings, we had requested Mr. Tushar Mehta, learned Solicitor General of India to take instructions on whether the Union Government in the MOEF&CC would be willing to reconstitute the Committee to obviate any objection to the independence of the members of the Committee without casting any aspersion on the existing three-member Committee.

In response, the learned Solicitor General has, on instructions, stated that a considerable amount of work has already been carried out by the Expert Committee which was appointed by the MOEF&CC, since its constitution on 27 November 2017. Moreover, it was submitted that if a new Committee is constituted at this stage, it would entail a delay of about a year since any new Committee would require to appraise itself on the matter afresh. This, it is submitted, would further lead to a delay in terms of investment outlay. Moreover, the

learned Solicitor General submitted that the role of the present Committee is purely recommendatory and the issue as to whether an environment clearance should be granted has to be decided by the EAC independently. Considering the recommendatory role of the Expert Committee, the learned Solicitor General submitted that it would not be advisable for the Government at the present stage to reconstitute the Committee.

We are of the view that, without this Court expressing any opinion whatsoever on the merits of the contentions which have been urged by the appellant, it would be appropriate and proper if the objections which have been raised are reconsidered by the Tribunal. We are constrained to issue this direction since we find from the earlier order of the Tribunal dated 19 November 2018 as well as from the impugned order dated 14 December 2018 that the objections which were raised by the appellant, as well as by the earlier objector have not been considered by the Tribunal. While we are not inclined to impede or interdict the work of the Committee in the meantime, any steps taken would abide by the result of the objections which are permitted to be raised by the appellant before the Tribunal.

We accordingly set aside the impugned order of the Tribunal dated 14 December 2018 in Execution Application No.23/2018 (earlier Execution Application No 1 of 2018) and the order dated 19 November 2018 in M.A. No.140/2018,

M.A. No.178/2018, M.A. No.295/2018, M.A. No.285/2018 & M.A. No.286/2018 and restore the applications to the file of the Tribunal for determination afresh.

We, however, clarify that this order shall not be construed as any determination by this Court on the merits of the objections which have been raised by the appellant, which shall be determined on their own merits by the Tribunal.

The Appeal stands disposed of.

CIVIL APPEAL NO. _____ OF 2019 (@D.No.46429 of 2018)

Taken on board.

Delay condoned.

In view of the order passed by this Court today in Tularam Gogoi Vs. Union of India³, the Appeal stands disposed of.

Pending application, if any, shall stand disposed of.

.....J.
(DR DHANANJAYA Y CHANDRACHUD)

.....J.
(HEMANT GUPTA)

NEW DELHI
MARCH 11, 2019

ITEM NO.61

COURT NO.11

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CIVIL APPEAL NO.2011 OF 2019

TULARAM GOGOI

APPELLANT(s)

VERSUS

UNION OF INDIA & ORS.

RESPONDENT(s)

(WITH IA No.22944/2019-STAY APPLICATION)

WITH

CIVIL APPEAL NO. _____ OF 2019
(D.No.46429 of 2018)

Date : 11-03-2019 These appeals were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE HEMANT GUPTA

For Appellant(s) Ms. Anitha Shenoy, Adv.
 Ms. Srishti Agnihotri, adv.
 Ms. Meera Gopal, Adv.
 Ms. Sharon Mathew, Adv.
 Ms. Kanika Sood, Adv.
 Ms. K. V. Bharathi Upadhyaya, AOR

D.No.46429/2018 Mrs. Mayuri Raghuvanshi, Adv.
 Mr. Sanjay Upadhyay, Adv.
 Ms. Eisha Krishn, Adv.
 Ms. Maya Ramesh, Adv.

For Respondent(s) Mr. Tushar Mehta, SG
 Mr. Ajit Pudussery, AOR
 Mr. K. Vijayan, Adv.
 Mr. Ajeet Singh Verma, Adv.
 Mr. Divya Prakash Pande, Adv.
 Ms. Swati Ghildiyal, Adv.

UPON hearing the counsel the Court made the following
O R D E R

CIVIL APPEAL NO.2011 OF 2019

Admit.

The appeal is disposed of in terms of the signed order.

Pending application, if any, stands disposed of.

CIVIL APPEAL NO. OF 2019 (D.No.46429 of 2018)

Taken on board.

Delay condoned.

In view of the order passed by this Court today in Tularam Gogoi Vs. Union of India⁴, the Appeal stands disposed of.

Pending application, if any, shall stand disposed of.

(SANJAY KUMAR-I)
AR-CUM-PS

(SAROJ KUMARI GAUR)
COURT MASTER

(Signed order is placed on the file)