

**BEFORE THE NATIONAL GREEN TRIBUNAL**

**SOUTHERN ZONAL BENCH**

**CHENNAI**

**Appeal No. 48 of 2013 (SZ)**

S. Ali Hussain

No. 13, Maruthi Nagar

Mayiladuthurai-609001

Nagapattanam District

.....Appellant

**Vs.**

1. Union of India

Through the Secretary

Ministry of Environment, Forest and Climate Change

Paryavaran Bhawan, CGO complex

Lodhi Road, New Delhi-110 003

2. Tamil Nadu Pollution Board

Through the Member Secretary

Corporate Office No.76, Mount Salai

Giundy, Chennai- 600 032

3. M/s. Sindya Power Generating Company Pvt. Ltd.

2<sup>nd</sup> Floor, Pottipati Plaza

77 Nungambakkam High Road

Chennai- 600 034

...Respondents

**Counsel for the Appellant**

Mr. Ritwick Dutta

Mr.Rahul Chaoudhary

M/s.Srilekha Sridhar

**Counsel for the Respondents**

M/s. C.Sangamithrai - Counsel for Respondent No.1

M/s. Rita Chandrasekar - Counsel for Respondent no. 2

M/s. Vinod Kumar - Counsel for Respondent No. 3

Raj Jhabak and

Deepti Susan George

**Appeal No. 71 of 2014 (SZ)**

S. Ali Hussain

No. 13, Maruthi Nagar

Mayiladuthurai-609001

Nagapattanam District

.....Appellant

**Vs.**

1. Union of India

Through the secretary

Ministry of Environment, Forest and Climate Change

Paryavaran Bhawan, CGO complex

Lodhi Road, New Delhi-110 003

2. Tamil Nadu Pollution Board

Through the Member Secretary

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Mr. Ritwick Dutta

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**Counsel for the Respondents**

M/s. C.Sangamithrai - Counsel for Respondent No.1

M/s. Rita Chandrasekar - Counsel for Respondent no. 2

M/s. Vinod Kumar, - Counsel for Respondent No. 3

Raj Jhabak and

Deepti Susan George

**Appeal No. 72 of 2014 (SZ)**

M/s. K. Ananthi

Keechankuppam Seva BharathiTsunami Housing

Nagapattinam

...Appellant

**Vs.**

1. Union of India  
Represented by its Secretary to Government  
Ministry of Environment and Forest  
2-A, Motilal Nehru Marg  
New Delhi- 100 011
2. Tamil Nadu Pollution Board  
Represented by its Chairman  
Annasalai, Chennai-32
3. The District Environmental Engineer  
Tamil Nadu Pollution Control Board  
First Floor, 61 West Gate Main Road  
Melakottai Vasal  
Nagapattinam- 611 001
4. The District Collector  
Nagapattinam District  
District Collectorate Master Complex-611 003  
Nagapattinam
5. M/s. Sindya Power Generating Company Pvt. Ltd.  
2<sup>nd</sup> Floor, Pottipati Plaza  
77 Nungambakkam High Road  
Chennai- 600 034
6. The Tamil Nadu Coastal Zone Management Authority  
Panangal Building, Saidapet  
Chennai

**...Respondents**

**Counsel for the Appellant**

M/s. Remasmrithi

**Counsel for the Respondents**

M/s. C.Sangamithrai - Counsel for Respondent No.1

M/s. Rita Chandrasekar - Counsel for Respondent No. 2 and 3

M/s. M.K.Subramanian - Counsel for Respondent No.4 and 6

M/s. Vinod Kumar - Counsel for Respondent No. 5

## ORDER

### QUORAM

**Hon'ble Justice Dr. P. Jyothimani (Judicial Member)**

**Hon'ble Professor Dr. R. Nagendran (Expert Member)**

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**Delivered by Justice Dr.P. Jyothimani dated 19<sup>th</sup> February, 2016**

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- 1) Whether the judgement is allowed to be published on the internet ----- yes / no
- 2) Whether the judgement is to be published in the All India NGT Report ----- yes / no
1. The original appeals pertain to challenge to the EC dated 07-03-2013 granted by the MoEF and CC to M/s. Sindhya Power Generating Company Private Limited for setting up of a 2×660 MW imported Coal Based Thermal Power Plant at Perunthottam, Agara Perunthottam, Sirkali Taluk of Nagapattinam District of Tamil Nadu. We heard the arguments of learned Counsel appearing for the appellants in Appeal No. 48 of 2013 on 10-08-2015 and 11-08-2015. Subsequently, on 21-09-2015 we have heard learned Counsel appearing for appellants in Appeal No. 71 and 72 of 2014. On the said date, we directed the MoEF and CC to produce the entire documents of EAC, CRZ including the report filed by the Tamil Nadu Coastal Zone Management Authority and all the minutes of the Committees along with the list of members of EAC and Coastal Zone Management Authority. On the 6<sup>th</sup> October 2015 the learned Counsel for MoEF and CC filed 5 volumes of copies of documents and undertook to produce the original files on the next date of hearing when the learned Additional Solicitor General would make his submission. In the order passed on the said date we directed that the copies of 5 volumes produced before the Tribunal may be perused by the learned Counsel appearing for the parties in the presence of an Officer of the Tribunal.
2. Thereafter we heard the learned Additional Solicitor General on 14-10-2015 and felt that the entire original documents relating to the matter should be filed before the Tribunal before continuation. The learned Additional Solicitor General submitted that the entire original files will be produced on the next date of hearing. It was on 20-11-2015 that the learned Additional Solicitor General produced the original documents along with one set of photo copy. We directed that the originals be compared with the photo copies by the

law clerks attached to both the Hon'ble Judicial Members in the chamber of Hon'ble Expert Member Dr. R. Nagendran stating that the learned Counsel appearing for the parties shall be entitled to peruse the entire documents in the presence of law Clerks and that after perusal the originals will be returned to the officer of MoEF and CC.

3. When the matter came up on 30<sup>th</sup> November 2015, the learned Counsel appearing for MoEF and CC submitted that he has filed a memo dated 20<sup>th</sup> November 2015 stating that the 1<sup>st</sup> respondent had submitted the original files only for the perusal of the Hon'ble Tribunal and it may not be appropriate for the appellant and respondents to go through the files as it contains various sensitive documents and official communications. Therefore, the learned Counsel appearing for the 1<sup>st</sup> respondent in the memo has stated that the appellants as well as other respondents shall not be permitted to peruse the files pertaining to this case. In the meantime, the law clerks have compared the original files with the photo copy and in fact they have filed a report on verification and found some of the pages missing in the file. The report submitted by the Law Clerks is as follows:

Report on Verification of Photocopies of documents Submitted by MoEF and CC along with the Original Documents

1<sup>st</sup> Bundle

Sl No.	Document Name	Missing Page Nos.
1	Bundle I: Submission of Additional Information: Cumulative marine EIA study for SPG: Final report August 2012	1 <sup>st</sup> page (form), i, ii, iii, iv (table of Contents) and introduction page
2	5 Cumulative Marine Env Modelling and Impact Assessment	10, 15, 16, 85,91 & 103, 5 maps are not taken properly ( it comes after 112 <sup>th</sup> page)
3	Exhibit 4: Correspondence with Labour & organizations Specialised in Testing of Heavy Metals and Radioactivity Central Power Research Institute :	Letter by Addtl Director Dr. S. Seetharam
4	Report on Impact of Thermal P. Plant on shrimp/ aqua farm	Cover page, About the Consultant page ( one side), Contents (Other sides),2.1, wake of Aqua farm page, remarks
5	Sindhya Power Generating Pvt Ltd: Area Drainage & Ground Water Study for 1320MW(2*660mw) August 2012 by K . Jayachandran	Synopsis (other side), Introduction, Admn Details (other side), Details of Project Area,Area Details, Ground water scenario (graph), Ground water scenario 4.3.1, 4.3.2 (other sides), ground water quality (table), Area drainage,5.3.2.1, 5.3.2.2, 5.33, 5.3.4, 5.3.4.1, 5.3.4.3, 5.3.5, 5.4.1, 5.4.2, 5.4.2.1, Summary,20,14,15,38,39,42,50



6	Presentation to the Hon'ble Chairman & Members of the Expert appraisal Committee Thermal Power Projects, MoEf for EC by Sindhya P.G. Co.Pvt Tld	Maps are not taken properly
7	Marine EIA: Indo Marine Coastal Hydrolics (p) Ltd, Chennai	Front page
8	Report on Community Development	Fig. 2, Fig 3 ( last pages)
9	Hydrogeological Report of Sindhya Power Generating Company Ltd, Nagapattanam Dist, TN	Letter addressed to the Dist Collector, Nagapattanam Dist Colector by Village Integral Association dtd 13.02.2012
10	Letter in tamil dated 4.12.12	
11	Last portion	24,25
12	Note on use of Calpuff Model: Modelling study	1-12, 1-13, 1-18, 1-19, 2-1, 3-14, 7-1
13	Exhibit- 2: Users Guide: Calpuff	Cover page, 1-10, 1-11, 1-12, 1-13, 1-16, 1-17, 2-4, 2-5, 2-6, 2-7, 2-36, 2-37, 2-44, 2-45, 2-56, 2-57, 2-60, 2-61, 2-66, 2-67, 2-70, 2-71, 2-74, 2-75, 2-82, 2-83, 2-120, 2-121, 4-4,6-1
14	Submission of Additional Information to the Hon'ble EAC on proposed coal based Thermal Power Plant	13, 14
15	Final EIA Report of 1320 mw Coal based Project	12,13,52,55,57,61,80,123,156,161, 8(map not properly copied), 10, 15,18,19,21,26-30,32,34-40,43, 45, 47, 49, 51, 54, 59, 63, 65, 67, 70
16	Additional Information to the Final EIA report Coal based	20,21 ( maps are not copied properly), 3, 5, 22(map)

2<sup>nd</sup> Bundle

Sl No	Document Name	Missing Page Nos.
1	5 <sup>th</sup> file	First 2 pages,13, 157, 156
2	7 <sup>th</sup> file	19-24, 37-49
3	10 <sup>th</sup> file: ref. No. SPGCPL-MoEF 24 -2010	7, 112, 77,last page
4	12 <sup>th</sup> file	Map is not properly copied (after 8.137 <sup>th</sup> page)
5	8 <sup>th</sup> file: Sindhya power Generating co.Ltd, Presentation to the Expert Appraisal Committee of MoEF for ToR approval	Original is missing (2 copies are available)
6	3 <sup>rd</sup> file: Letters	13, 117, 141
7	MoEF letter to request to amend ToR to change of Sindhya power Generating Coal base Company from 1050 to 1320 mw	Village Survey map ( after 16 <sup>th</sup> page), 18 ( map not proper), 20 ( map is not proper), Ash handling scheme, over all electrical scheme, Control system architecture (3 maps)
8	Letter No. 21/02/2012, Minutes of the meeting on public hearing( Tamil)	18, 19, 34, 12, 13
9	Agenda for 56 <sup>th</sup> meeting of EAC- Project site, Location of Project Site: Plant lay out	Map is missing, Haet and mass balance Diagram, Typical water balance Diagram, Coal Handling system-Shceme, ash Collection Scheme, Stich Yard , Typical Aux Diagram, Control System Architecture

10	Project Sketch of 38*600 mw Thermal Power Plant, Object to setup coal based thermal project	Annex III, Annex IV, Annex V, Annex VI, 21272,21277,21279,21281, 21282
11	12 <sup>th</sup> file: Development of Off shore coal handling facilities	Front page

4. As the learned Counsel appearing for the 1<sup>st</sup> respondent has raised an objection by way of memo regarding the perusal of the original documents by the other Counsel, we have directed the memo to be served on the other side permitting them to file their objections. Accordingly, the learned Counsel appearing for the appellants as well as the 1<sup>st</sup> respondent MoEF and CC have filed their objections in the form of written submission. In addition to that, Mr. Ritwik Dutta has also made his oral submission mainly contenting that as long as the documents are not covered under Section 8 of Right to Information Act, 2005 exempting from disclosing information and consequently anyone can get information under RTI Act 2005, the 1<sup>st</sup> respondent cannot object to the perusal of original documents relating to the project in question. According to him, Section 8 read with Section 21 of the RTI Act would not prejudice the interest of any party and on the other hand the appellants are entitled and privileged to have all information relating to the documents which are not exempted under Section 8 of the RTI Act. That is also his written submission which he has submitted. On the other hand, the learned Counsel appearing for the 1<sup>st</sup> respondent, MoEF and CC by reproducing Section 8 of the RTI Act, 2005, has stated that the establishment of a Thermal Power Plant and information relating to the same will be covered under Section 8(1) (a) of the Act. He has also stated that the EC granted to the project proponent is available in public domain for perusal of the general public and therefore prayed for not permitting perusal of the original documents by the learned Counsel appearing for the appellants as well as the other respondents other than MoEF and CC.
5. Admittedly, during the course of the arguments when the Tribunal desired to peruse the original documents, the learned Additional Solicitor General, accepting the same, made arrangements to produce the documents and the Tribunal has also perused the same.
6. The question is as to whether the information contained in the original documents can be disclosed to the appellants and other respondents?

The RTI Act, 2005 came into existence with an object of securing access to information under the control of public authorities in order to promote transparency and

accountability in the working of every public authority. Section 8 of the RTI Act, 2005 grants exemption from disclosure of information creating no obligation on the public authority. Section 8 (1) is as follows:

*“8. Exemption from disclosure of information. - (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen:-*

*(a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;*

*(b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;*

*(c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;*

*(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;*

*(e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;*

*(f) information received in confidence from foreign Government;*

*(g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;*

*(h) information which would impede the process of investigation or apprehension or prosecution of offenders;*

*(i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers: Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over:*

*Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;*



*(j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:*

*Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person”.*

It is not in dispute that MoEF and CC is a public authority within the meaning of Section 2(h) of the RTI Act, 2005. The term “Right to Information” is defined as an exhaustive definition under Section 2(j) of the RTI Act which is as follows:

*“(j) “right to information” means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to-*

*(i) inspection of work, documents, records;*

*(ii) taking notes, extracts or certified copies of documents or records;*

*(iii) taking certified samples of material;*

*(iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device”.*

7. Therefore, “Right to Information” includes inspection of documents and records if they are not exempted under Section 8(1) of the Act enumerated above.

While speaking about the object of the RTI Act, 2005 the Hon’ble Supreme Court in the *Institute of Chartered Accountants of India v. Shaunakh H. Satya and Others.*, reported in (2011) 8SCC 781 has held that while the object is to ensure transparency and accountability and is intended to curtail corruption on one hand, it must be seen that revealing such information does not affect Public interest and a balance should be struck between the two. That was the case where a person who appeared in the Chartered Accountant’s Final examination and who was not successful in the examination applied for verification of marks and authorities informed there was no discrepancy in evaluation of answer scripts. Thereafter, the candidate submitted an application under RTI Act, 2005 asking for various information including educational qualification of the examiners and moderators with subject wise classifications, procedure established for evaluation of

exam papers, instruction issued to the examiners and moderators, oral as well as written if any, procedure established for selection of examiners and moderators, remuneration paid to the examiners and moderators, evaluation of exam papers, model answers, if any, given to the examiners and moderators. Information was supplied to him by the Chief Public Information Officer against which an appeal was filed before the Appellate Authority which was dismissed against which 2<sup>nd</sup> appeal was filed before the Central Information Commission (CIC) which rejected the appeal while directing information relating to queries Nos. 3 5 and 13 which relate to instruction issued to the examiners, model answers, number of times the Council has revised the marks of any candidate. It was as against the said order of Central Information Commission of rejection the candidate moved the Bombay High Court which has allowed the petition and directed the appellant for disclosure of information relating to Queries 3, 5, and 13 which came to be challenged by the Institute of Chartered Accountants before the Hon'ble Supreme Court. Allowing the appeal filed by the Institute partly, the Hon'ble Supreme Court has held that the matters which do not fall under Section 4(1)(b) and (c) of the RTI Act, 2005 cannot be read in a restrictive manner regarding exemptions in Section 8. The SC has held as follows:

*“25. Therefore when section 8 exempts certain information from being disclosed, it should not be considered to be a fetter on the right to information, but as an equally important provision protecting other public interests essential for the fulfilment and preservation of democratic ideals. Therefore in dealing with information not falling under section 4(1)(b) and (c), the competent authorities under the RTI Act will not read the exemptions in section 8 in a restrictive manner but in a practical manner so that the other public interests are preserved and the RTI Act attains a fine balance between its goal of attaining transparency of information and safeguarding the other public interests”.*

The Hon'ble Supreme Court while directing a balance to be struck between public interest and transparency held as follows:

*“39. We however agree that it is necessary to make a distinction in regard to information intended to bring transparency, to improve accountability and to reduce corruption, falling under section 4(1)(b) and (c) and other information which may not have a bearing on accountability or reducing corruption. The competent authorities under the RTI Act will have to maintain a proper balance so that while achieving transparency, the demand for information does not reach unmanageable proportions affecting other public interests, which include efficient*

*operation of public authorities and government, preservation of confidentiality of sensitive information and optimum use of limited fiscal resources”.*

8. In the light of the admitted position that the materials produced before the Tribunal are forming part of record and right to information is available, the learned Counsel appearing for the 1<sup>st</sup> respondent has resisted the right to information pleading for exemption under Section 8(1) (a) of RTI Act, 2005, it is sufficient if we examine the issue in the light of the above said sub section. This requires a concise statement relating to the proposed project in respect of which information is sought for. The proposed project of the 3<sup>rd</sup> respondent which is a company relates to 1300 MW (92× 660 MW) Coal Based Thermal Power Plant at Perunthottam, Agara Perunthottam, Sirkali Taluk of Nagapattinam District of Tamil Nadu by which the 3<sup>rd</sup> respondent in the appeal proposes the power plant based on super critical technology utilising sea water which is considered as most sustainable technology adopted in Indian Power Plants. The 3<sup>rd</sup> respondent has stated that despite significant escalation of cost in respect of super critical technology proposed, it has adopted to ensure the demand for power in the energy starved State are met but not done at the cost of environment. The 3<sup>rd</sup> respondent has taken up the said proposal as a commercial venture to produce power based on a stated technology and it is not a Government proposed scheme. Even otherwise we do not see any reason to accept the contention raised by the 1<sup>st</sup> respondent that disclosing information may affect sovereignty and integrity of India or security, strategy or scientific or economic interest of the State or lead to incitement of an offence or affecting relationship with Foreign State. It is certainly not any personal information which is exempted. When this Tribunal is entitled to refer to the documents, it may even be necessary for the Tribunal to extract some of the information from the records. In the absence of any crucial issues covered under Section 8(1) (a) arising from the factual matrix of this case, we are of the considered view that the documents which are produced are not exempted from disclosure of information. The consequential irresistible conclusion would be that the documents which are pertaining to the 3<sup>rd</sup> respondent, its proposals, public consultation, appraisal etc., as done in accordance with EIA Notification, 2006 are certainly entitled to be disclosed to the learned Counsel appearing for appellant as well as the other respondents. Moreover, it has to be noticed that when a project like the one in question is being processed in which public interest is involved either in the way of protection of

environment or protection of industrial development, fairness requires transparency at each level so that the attainment of sustainable development will have some purposeful meaning. Accordingly, we reject the memo filed on behalf of the 1<sup>st</sup> respondent and permit the learned Counsel appearing for appellant as well as the other respondents to peruse the records pertaining to the 3<sup>rd</sup> respondent project alone in the chambers of the Registrar of NGT, Southern Zone only by the learned Counsel appearing for the parties and in the presence of the Assistant Registrar of NGT of Southern Zone during office hours on 24.02.2016 to 26.02.2016.

The memo stands ordered accordingly.

Dated 19<sup>th</sup> February, 2016

Justice Dr. P. Jyothimani

Judicial Member

Chennai.

Prof. Dr. R. Nagendran  
Expert Member

NGGT