M/s. IL&FS Tamil Nadu Power Company Ltd. Vs. T. Muruganandam & Ors.

Civil Appeal Nos. 1811-1812 of 2015
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Full judgment text

M/s. IL&FS Tamil Nadu Power Company Ltd. Vs. T. Muruganandam & Ors.

[Civil Appeal Nos. 1811-1812 of 2015]

M.R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 23.05.2012 in Appeal No. 17/2011 and judgment and order dated 10.11.2014 in Appeal No. 50/2012 passed by the National Green Tribunal (Principal Bench), New Delhi (hereinafter referred to as the 'NGT'), M/s IL&FS Tamil Nadu Power Company Limited has preferred the present appeals.

2. The facts leading to the present appeals in nutshell are as under: The appellant herein has been incorporated in the year 2006 to implement the Project for establishing a 2x600 MW and 3x800 MW (aggregating to 3600 MW) imported coal based thermal power plant at village Kottatai, Ariyagoshti, Villianallur and Silambimangalam in Chidambram Taluk, District Cuddalore, Tamil Nadu. Now the appellant company is under the control of Government of India. The appellant submitted Form I under EIA Notification, 2006 to obtain Terms of Reference for the EIA study on 5.2.2008.

The Terms of Reference approval letter was issued by the Ministry of Environment, Forest and Climate Change (hereinafter referred to as the 'MoEF') on 9.7.2008. Public hearing was carried out for the project on 5.2.2010. The appellant completed the EIA study in accordance with EIA Notification, 2006. That thereafter the Expert Appraisal Committee (for short, 'EAC') considered the EIA study and directed the appellant to undertake certain additional submissions to address specific points and directed that an updated Form I be submitted.

That thereafter the appellant submitted updated Form I reflecting recommendations of EAC meeting dated 19.03.2010 to MoEF. The EAC meeting considered the project and recommended the project for Environment Clearance (for short, 'EC'), subject to stipulation of specific conditions including project to keep space for providing Flue Gas De-sulfurization (for short, 'FGD') system with all the five units of the power plant to enable the system to be installed whenever required. The appellant herein was granted the EC in accordance with the recommendations of the EAC under EIA Notification, 2006.

2.1 The original petitioners claiming to be fishermen and persons acting for welfare of fishermen filed appeals against the EC before National Environment Appellate Authority being NEAA Appeal Nos. 19 & 20 of 2010. On the constitution of the NGT, Appeal No. 20/2010 filed before the National Environment Appellate Authority came to be transferred to the NGT, which was re-numbered as Appeal Nos. 16/2011 & 17/2011.

2.2 Vide order dated 23.05.2012 in Appeal No. 17/2011, the NGT upheld the validity of the EC but directed the MoEF to review the EC based on the cumulative impact assessment study and stipulate any additional conditions, if required and directed that till then the EC shall remain suspended. Instead of the cumulative impact assessment study, the appellant completed the Rapid Cumulative Impact Assessment (for short, 'RCIA') study and submitted a copy thereof to the MoEF.

That thereafter the EAC, after extensive deliberations on the RCIA and after hearing the representative of the original petitioners and the appellant/project proponent, recommended certain additional conditions to be added to the EC including the requirement of installing a FGD system as part of the power plant. At this stage, it is required to be noted that as such neither the original petitioners nor even the appellant challenged the first judgment and order dated 23.05.2012 passed in Appeal No. 17/2011 by which the NGT upheld the validity of the EC but directed MoEF to review the EC based on the cumulative impact assessment study and stipulate any additional conditions, if required.

That thereafter, on 14.08.2012, MoEF based on the recommendations of the EAC, issued a corrigendum to the EC imposing additional conditions to the EC. That thereafter the original petitioners who filed the earlier appeal against the grant of EC, filed Appeal No. 50/2012 against the corrigendum dated 14.08.2012 issued by the MoEF. By the impugned judgment and order dated 10.11.2014, the NGT has disposed of Appeal No. 50/2012, quashing the corrigendum dated 14.08.2012. The judgment and order dated 23.05.2012 in Appeal No. 17/2011 and subsequent judgment and order dated 10.11.2014 in Appeal No. 50/2012 passed by the NGT are the subject matter of present appeals.

3. By an interim order dated 10.02.2015, this Court stayed the impugned order dated 10.11.2014 passed in Appeal No. 50/2012, which has been continued till date. Pursuant to the interim order passed by this Court, the appellant-company had commenced two power plants in Phase-I, which are in operation since 2015.

4. Dr. Abhishek Manu Singhvi, learned Senior Advocate appearing on behalf of the appellant-company has submitted that to close the power plant now would not be in public interest. It is submitted that the appellant's power plant is running since September 2015 in power deficit State of Tamil Nadu. Appellant operates two units of 600MW each since September, 2015 and April, 2016, which presently supply power to approximately 40 lakhs households. The power plant is situated in an energy deficient State (Tamil Nadu) and therefore closing the power plant would adversely affect power sector of the State.

4.1 In support of his submission that to close the power plant now would not be in public interest, it is submitted as under:

(i) That Appellant's power plant is running since September 2015 in power-deficit state of Tamil Nadu: Appellant operates two unit of 600MW each since September 2015 and April 2016, which presently supply power to approximately 40 lakhs households. The power plant is situated in an energy deficient State (Tamil Nadu), and closing the plant would adversely affect power section of the State;

(ii) Plant running in compliance with EC and Corrigendum: That the plant is in compliance with clearance conditions, and six-monthly reports being submitted to Ministry of Environment, Forest & Climate Change, latest report of April-September;

(iii) Plant uses imported coal with low sulphur and uses FGD system: That Appellant uses imported coal from Indonesia for its thermal power plant, which already has low sulphur content. Pursuant to MoEF Corrigendum, has spent Rs. 775 crores to install Flue Gas Desulphurisation (FGD) system. Report of Centre for Science and Environment identifies Appellant's plant as compliant with SO2 standards. All over India only 20 power plants have FDGs, of which two units are the Appellant's power plant;

(iv) Appellant part of IL&FS Group and value to be maximized: That ITPCL/ Appellant is a group company of IL&FS which is under control of Govt. of India and is undergoing restructuring. Larger public interest is to realize value and recover PSU debt. Appellant's restructuring plan has been approved by Hon'ble NCLAT on 01.12.2021. Appellant incurred expense of Rs. 11,000 crores (approx.) to build 2 x 600 MW units, which are operational since September 2015 and April 2016. Of this, Rs. 6,080 crore was through loans from public sector banks (Punjab National Bank, Bank of Baroda, LIC, SBM Bank, SBI) and Rs. 4,560 crores in equity by IL&FS Energy Development (another IL&FS group entity); and

(v) Appellant's CSR initiatives: That till date approx. Rs. 30 crores spent on CSR activities, including adopting several villages in the surrounding areas. As of February, 2022, the Appellant has 1466 employees of which 87% are from Tamil Nadu. Overall, 69% (1005 persons) are from Cuddalore District itself.

4.2 It is further submitted that instead of cumulative impact assessment study, the appellant bonafidely and taking into consideration the order passed by the NGT in Application No. 25/201 conducted/completed RCIA, a copy of which was submitted to MoEF and after undertaking extensive deliberations on the RCIA and after hearing the representative of the original petitioners and the appellant/project proponent, the EAC recommended certain additional conditions to be added to the EC including the requirement of installing FGD system and pursuant to which and based on the recommendations of the EAC, MoEF issued a corrigendum to the EC imposing additional conditions to the EC.

4.3 It is further submitted that taking into consideration the additional conditions imposed vide corrigendum dated 14.08.2012, the appellantcompany had installed FGD system at a cost of Rs. 775 crores, the only thermal power plant in the country to commence operations with FGD system.

4.4 Dr. Abhishek Manu Singhvi, learned senior counsel appearing on behalf of the appellant has also made an elaborate submission on the maintainability of Appeal No. 50/2012 before the NGT, filed by the original petitioners against the corrigendum dated 14.08.2012 issued by the MoEF.

It is submitted that as such the first judgment dated 23.05.2012 passed in Appeal No. 17/2011, by which the NGT specifically upheld the validity of the EC but directed MoEF to deal with the EC based on cumulative impact assessment study and stipulate any additional conditions, was not challenged by the original petitioners. It is submitted that the original petitioners had no locus and therefore the original petitioners could not have challenged the subsequent corrigendum dated 14.08.2012 by which certain additional conditions were imposed to the original EC by the MoEF.

4.5 Dr. Abhishek Manu Singhvi, learned senior counsel has taken us to the additional affidavits dated 20.09.2022 and 28.11.2022. He has also taken us to the EC & CRZ Compliance Report dated 12.01.2022 as well as the subsequent Compliance Report dated 20.09.2022 and the copy of the response of the project proponent. He has stated at the Bar that by and large all the conditions of the original EC as well as corrigendum to the EC have been complied with by the appellant/project proponent and few conditions are under continuous compliance.

He has stated that the conditions imposed while issuing the EC and the corrigendum have been substantially complied with and there are no fundamental breaches and/or non-compliance. He has stated at the Bar that whichever conditions are not complied with and not complied with fully and/or there are continuous compliance, the same shall be complied with within the time stipulated in the response of the project proponent.

4.6 Making above submissions and praying for keeping the question of law , if any, namely, "Whether for the project like this, a cumulative impact assessment study is required or not" open and also the question, "whether an appeal before the NGT against the corrigendum to the EC and the additional conditions imposed as per the corrigendum to the EC would be maintainable or not" and keeping the aforesaid questions(s) of law open, it is prayed to dispose of the present appeals by permitting the appellant to continue the power plants which are in operation since 2015.

5. Shri Shiv Mangal Sharma, learned counsel appearing on behalf of the MoEF has submitted that as such the appellant had never challenged earlier conditions imposed while issuing the EC and the first judgment and order passed by the NGT dated 23.05.2012 and even the corrigendum dated 14.08.2012 issued by the MoEF imposing additional conditions and therefore the appellant is bound by the conditions imposed while issuing the EC and corrigendum to the EC dated 14.08.2012 and the appellant has to comply with all the conditions imposed while issuing EC as well as additional conditions imposed vide corrigendum dated 14.08.2012.

He has pointed out certain non- compliances/part compliances of certain conditions and the response by the appellant. Therefore, he has submitted that if this Court is inclined to permit the appellant to continue with the power plants in the public interest, in that case, the appellant may be directed to comply with all the conditions imposed while issuing EC as well as additional conditions imposed while issuing corrigendum dated 14.08.2012.

6. Ms. Srishti Agnihotri, learned counsel appearing on behalf of the original petitioners has prayed that in case this Court is inclined to permit the appellant to continue with the power plants as per the EC and the corrigendum dated 14.08.2012 which are in operation since 2015, in that case, the question of law, namely, "whether for the project like this conducting a cumulative environment impact assessment study is must or not", may be kept open as so many other such projects may come and that on conducting cumulative environment impact assessment study, the Tribunal may consider the said issue in detail.

6.1 Insofar as maintainability of appeal before the NGT against the order of corrigendum is concerned, it is submitted that against the additional conditions imposed vide corrigendum dated 14.08.2012, an appeal would be maintainable before the NGT against the corrigendum to the EC.

7. Having heard Dr. Abhishek Manu Singhvi, learned Senior Counsel appearing on behalf of the appellant and the learned counsel appearing on behalf of the MoEF and original petitioners and the facts narrated hereinabove, it is to be noted that pursuant to the interim order passed by this Court, the appellant has commenced two power plants in Phase- I, which are in operation since September, 2015.

The appellant is operating two units of 600MW since September, 2015 and April, 2016, which presently supply power to approximately 40 lakhs households. The power plants are situated in an energy deficit State (Tamil Nadu). Thus, closing the power plants/units would adversely affect power sector of the State and which shall not be in the larger public interest, more particularly the power deficient State of Tamil Nadu.

7.1 However, at the same time, the appellant has to comply with all the conditions imposed while issuing EC as well as the additional conditions imposed vide corrigendum to the EC dated 14.08.2012. From the compliance report dated 20.09.2022 (latest compliance report) and the response of the project proponent, it appears that by and large there is a substantial compliance of the conditions imposed while issuing EC as well as the additional conditions imposed vide corrigendum to the EC dated 14.08.2012.

There do not appear to be any fundamental breaches or non-compliance of the conditions imposed while issuing EC as well as additional conditions imposed vide corrigendum to the EC dated 14.08.2012. However, some conditions are still partly complied with, which have been responded by the appellant and has agreed to comply with the same. The particulars of the specific conditions, part compliances and the response to the same are as under:

8. Considering the aforesaid facts and circumstances and subject to compliance of the conditions imposed while issuing EC and the additional conditions imposed vide corrigendum to the EC dated 14.08.2012 and subject to the conditions/additional conditions which are partly complied with, to be complied with within the time suggested in the response of the appellant/project proponent, reproduced hereinabove and keeping the larger question of law, namely, "whether for the project like this, a cumulative impact assessment study is required or not", open and to be decided in an appropriate case, we dispose of the present appeals by permitting/allowing the appellant/project proponent to continue with the power plants which are in operation since September, 2015 and April, 2016 on the conditions as above, i.e., subject to compliance of all the conditions mentioned in the EC as well as additional conditions imposed vide corrigendum to the EC dated 14.08.2012 and to fully comply with the conditions which are partly complied with within the stipulated time as suggested and prayed by the appellant company, prayed in response to the compliance report dated 20.09.2022, reproduced hereinabove.

9. Now so far as the issue, "whether against the corrigendum to the EC along with additional conditions, an appeal before the NGT would be maintainable or not" is concerned, having heard learned counsel appearing on behalf of the respective parties, we are of the opinion that an aggrieved person may always challenge the corrigendum to the EC, however, the appeal will be restricted to the corrigendum to the EC on additional conditions only, if the original EC is not under challenge and/or the original EC has been confirmed by the NGT earlier on certain conditions which have not been challenged.

10. The present appeals stand disposed of in the aforesaid terms. We make it clear that the present order shall not be cited as a precedent in any other matter.

Source disclosure: Complete sanitized public judgment text retained for research. Official-primary replacement and later-history closure remain pending.