

CENTRAL INFORMATION COMMISSION

(Room No.315, B-Wing, August Kranti Bhawan, Bhikaji Cama Place, New Delhi 110 066)

Prof. M. Sridhar Acharyulu (Madabhushi Sridhar)

Information Commissioner

CIC/SA/A/2015/000509

(Video Conference – Bangalore)

Davis George Thomas Vs. Ministry of Environment & Forest, Climate Change, GOI

Important Dates and time taken:

RTI Application: 19-11-2014	1 st Appeal: 17-1-2015	2 nd Appeal: 24-4-2015
Disposed of with directions	Hearing:13-10-2015	Decision:

Parties present:

The appellant is present for video conference at Bangalore. The Public Authority is represented by Mr. Y.P.Singh, Scientist-D.

FACTS:

2. The appellant is seeking information regarding compliance of the order of NGT for revisiting the exemption given to Solar Power projects for Environmental clearance. As no information was received he approached the Commission in second appeal after exhausting the first appeal.

3. M/s Sagitaur Ventures India Pvt Limited has been allotted 1250 acres of land in the Amrit Mahal Kavals of Challakere Taluk, Chitradurga District, Karnataka state to set up a 200 mw capacity Solar Power Generation project. Quoting the Environment Impact Assessment Notification 2006 the Ministry claimed that Solar projects do not require Environmental Clearance

as they cause minimal or no damage to the environment. Citing recent research showing environmental hazards that Solar project could cause, the NGT directed the Ministry to revisit the exemption order with regard to Environmental Clearance given to M/s Sagitaur Ventures India Pvt Ltd and pass suitable orders, in the light of research reports.

DECISION:

4. Both the parties made their submissions. Appellant Davis George Thomas said neither the CPIO nor the FAAO of the MoEF have complied with the letter and spirit of the RTI Act, 2005 by either furnishing information sought or by providing reasons by such information cannot be provided to him.

5. The Environment Support Group (ESG), to which appellant also belonged, has filed Applications No. 6/2013 and 12/2013 before the Hon'ble National Green Tribunal. In those cases, the ESG raised a variety of grounds highlighting how project proponents had commenced work in total disregard of applicable laws, norms and clearance procedures. In particular it was highlighted that fundamental provisions of the Environment Protection Act, 1986 (and Rules), Environment Impact Assessment Notification, 2006, Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981, Forest Conservation Act, 1980, etc. had been flouted by the proponents, who started ground work without any clearances whatsoever. The Petitioners also demonstrated that none of the projects had been grouped together flouting risk assessment norms (for instance an uranium enrichment plant is proposed next to a weaponised drone testing facility) and without addressing basic land use planning, industrial and hazardous facilities citing norms. In addition, the locating of the projects were in violation of provisions of the Factories Act, 1948, Karnataka Town and Country Planning Act, 1961, Aircraft Act, 1934 and the Constitutional 74th Amendment (Nagarpalika) Act, 1992.

6. The appellant stated that the NGT (Southern Zone, Chennai) in order dated 27th August 2014 in Application No.6/2013 and 12/2013 had given directions to the respondent Ministry to revisit the exemptions given to the M/s Sagitaur Ventures India Pvt Ltd to commission solar power project. He has referred to relevant paragraph:

“2. Citing an Office Memorandum issued by the MoEF, M/s. Sagitaur Ventures India Pvt. Limited, the 14th Respondent in Application no. 6 of 2013, claims that it need not obtain EC from the MoEF. We are of the considered view that the Solar thermal power technology is still at its infancy. Its impacts on environment are being investigated in many research institutes across the globe and newer and newer information on this aspect is emerging. In fact, the applicant placed before the tribunal a few of the recent literature on this aspect and took us through the significant findings in this regard. Keeping these and the averments made by the applicant on the subject in mind and also guided by the “Precautionary Principle”- one of the legs of the concept of “Sustainable Development”, we direct the MoEF to revisit the exemption order with regard to EC given to M/s. Sagitaur Ventures India Pvt. Limited and pass suitable orders in the light of recent research findings and other relevant materials available.”

Applicant also stated that the aforesaid direction of the Hon'ble Tribunal needs to be read with another part of its aforesaid order wherein it has been stated that any or all clearances whether granted or exemptions provided must be based on acute rationalization which the Hon'ble Tribunal termed in its wisdom as “verifiable and measurable “conditions”.

“215. In addition to directions given under different heads at appropriate sections of the judgment, we give the following “Specific” directions to the MoEF, KSPCB and the Allottee Project Proponents:

At the time of granting EC or CFE to the Project Proponents who have been allotted sites in the land in question, the MoEF and/or KSPCB as the case may be, are directed to take strict note of the observations and comments made in this judgment regarding several environmental issues and concerns raised by the applicants and include verifiable and measurable “conditions” regarding the same to be complied in full, at all stages, by the project proponents.”

7. The Respondent Ministry is an essential party in the case before the Hon'ble National Green Tribunal and the same Ministry has also taken the stand that the particular project in question, the

information of which was sought, is apparently in violation of the provisions of the Environment Protection Act as is stated in the affidavit dated 28.10.2013 by the Hon'ble Ministry, the relevant paragraph being:

“6. The Respondent further submits that with regard to para-33, it is submitted that there is a violation of Environment (Protection) Act, 1986 in as much as some of the project authorities have started the work without clearance under Environment Protection Act, 1986.”

8. Appellant contended that given the weight of the matter, the stand taken by the Ministry before the Hon'ble Tribunal, the explicit direction to the Ministry by the Hon'ble NGT as cited above, and the fact that the Ministry has violated the provisions of the RTI Act, 2005 by not responding to his Application as well as his Appeal.

9. The CPIO cited an Office Memorandum/Notification of 2006 issued by his ministry saying that solar power projects are not listed, among those requiring the Environment Clearance. Only those projects listed in the 2006 order need to take EC from their Ministry. That was why the question of taking Environmental Clearance (EC) to M/s Sagitaur Ventures India Pvt Ltd for solar power project does not arise. The CPIO, a scientist in the Ministry submitted that he is not aware of the judgment given by the NGT.

10. It is a paradox that the CPIO Mr. YP Singh says that he does not know about the order of NGT. The office memorandum of 2006 which the CPIO is referring in his response was considered by the NGT and directed the MoEF to revisit this kind of general exemption deemed to have been granted to all Solar Thermal Stations including that of M/s Sagitaur Ventures India Pvt. limited. The Ministry of Environment is a party to the case before NGT. It was directed by NGT to reconsider this general order. It is surprising that Public Authority claims that it does not know the order.

11. The CPIO has repeatedly mentioned that 2006 OM and pleaded ignorance of the NGT order. The CPIO should know that he is representing the public authority, not just his desk or RTI wing. Being a party how can the Ministry of Environment claim that it does not know the order of NGT? The appellant was specific in his request for action taken report as order by NGT. When Commission took a serious objection to this kind of ignorance, the CPIO said he would make enquiries with the other officers and find out the information. This is a clear denial of information to the appellant on a very important issue of violation of environment law.

12. Section 4(1)(c) of RTI Act mandates the public authority to publish all relevant facts while formulating important policies or announcing the decisions which affect public. And (d) demands to provide reasons for its administrative or quasi judicial decisions to affected persons.

13. Hence it is the statutory duty of respondent Ministry of Environment to explain why the order of the NGT was not implemented, what is their policy on this issue, what is their administrative decision regarding revisiting of the blanket exemption deemed to have been given under 2006 order, which was agreed by the Ministry of Environment through an affidavit before NGT to be a breach of Environment Protection Act; Are they pursuing any further legal remedy at higher courts to continue this violation of Environment Act?

14. Instead of publishing this information voluntarily as per section 4(1) (c) & (d), the public authority has adopted dilatory attitude and denying the information, which is very vital in public interest and protection of environment, even after this RTI request and first appeal were filed.

15. The Commission cannot agree with the plea of ignorance by the CPIO and declares that the ignorance of NGT order cannot be excused. It is not possible to agree that he does not know the stand of the public authority he is representing. Once NGT gave direction to Ministry, being a party, it is presumed that entire public authority including CPIO knew it. The Commission presumes that the Ministry of Environment and his CPIO knew the order of NGT, its implications

and finds that they deliberately not implemented that order, and also denied the information to the appellant. Hence the Commission directs the respondent public authority

- a) to explain reasons for this non-publication of policy related information about Solar Thermal projects as mandated by Section 4(1) of RTI Act,
- b) to publish the policy along with the reasons in permitting Solar Thermal projects, including that M/s Sagitaur Ventures India Pvt. limited as mentioned in this application, without Environmental Clearance, in spite of stand taken by the Ministry that it was a breach of Environment Protection Act.
- c) To provide the information sought by the appellant
- d) to explain why adequate compensation should not be given to the appellant who was denied information till now, and
- e) to provide necessary training to CPIOs to understand their duties under Environment Protection Act, Right to Information Act, duties as the CPIO representing the entire public authority.

16. The Commission having heard the submissions and perused the record, directs the CPIO to provide information as directed in clauses (a) to (d) to the appellant within 25 days from the date of receipt of this order regarding the status of implementation of the NGT order on EC for Solar Power projects. The appeal is disposed of.

(M. Sridhar Acharyulu)
Information Commissioner

Authenticated true copy

(U.C.Joshi)
Deputy Secretary

Address of the parties :

1. The CPIO under the RTI Act, Govt. of India
Ministry of Environment and Forests & Climate change
Indira Parvaran Bhavan, Jor Bagh Road (RTI Cell)
Lodi Road PO, New Delhi-110003

2. Shri Davis George Thomas
3354, K.R.Road,
Bangalore-560070