

(2009) 08 DEL CK 0135

In the Delhi High Court

Case No : Writ Petition (C) 11176 of 2009

Jain Steel and Power Ltd.

APPELLANT

Vs

National Environment Appellate Authority and Others

RESPONDENT

Date of Decision : 26-08-2009

Acts Referred:

National Environment Appellate Authority (Appeal) Rules, 1997 — Rule 5
National Environment Appellate Authority Act, 1997 — Section 11

Citation : (2009) 164 DLT 504 : (2010) 7 RCR(Civil) 1763

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : Sandeep Sethi, C. Mukund Ashok Jain and Pankaj Jain, for the Appellant; Anjana Gosain, for respondent No. 5-AAI, for the Respondent

Final Decision : Dismissed

Judgement

Sanjiv Khanna, J.—The respondent No. 2, Mr. S.K. Naik, has filed an appeal u/s 11 of the National Environment Appellate Authority Act, 1997 questioning the permission granted by the Ministry of Environment and Forest to the petitioner-Jain Steel and Power Limited to set up a sponge iron plant at village Durlaga District, Jharsududa, Orissa vide order dated 29th December, 2008. Section 11 of the National Environment Appellate Authority Act, 1997 reads as under:

11. Appeals to Authority.- (1) Any person aggrieved by an order granting environmental clearance in the areas in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards may, within thirty days from the date of such order, prefer an appeal to the Authority in such form as may be prescribed:

Provided that the Authority may entertain any appeal after the expiry of the said period of thirty days but not after ninety days from the date aforesaid if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

2. Section 11 stipulates that appeal should be filed within 30 days of the order but the tribunal has power to condone delay upto 90 days thereafter. In the present case, the appeal was filed within this period of 90 days and was belated by 74 days. Respondent No. 2 had filed an application for condonation of delay in filing of the appeal. Respondent No. 2 in the said application had pointed out that copy of the impugned order dated 29th December, 2008 was made available to him on 6th March, 2009 and after reading and considering the said order, the appeal was filed on 29th March, 2009. As per Rule 5, every appeal should enclose a copy of the impugned order. The respondent No. 2 in this regard had rightly in the rejoinder relied upon the decision of the Supreme Court in the case of D. Saibaba Vs. Bar Council of India and Another, inter alia, observing that mere knowledge of an impugned order is not sufficient but the knowledge also must relate to essential contents of the impugned order.

3. Learned Counsel for the petitioner has submitted that the respondent No. 2 had knowledge about the impugned order dated 29th December, 2008 as it was published in the newspapers on 7th January, 2009 and 12th January, 2009. Learned Counsel for the petitioner submitted that there was delay in applying for copy of the order as the respondent No. 2 had knowledge of the order dated 29th December, 2008 at least with effect from 23rd January, 2009. Reference in this regard is made to letter dated 23rd January, 2009 written by respondent No. 2 to the Director (Impact Assessment), Ministry of Environment and Forest. The said letter reads as under:

When I spoke to you with regard to the way the Govt. of Orissa is pursuing a policy of indiscriminate industrialization in the Western Belt and brought to your notice that even Orissa Pollution Control Board has not been discharging its assigned role to prevent polluting the otherwise healthy and clean environment by inviting public opinion on the sitting of an integrated steel plant to be set up by the Jain Sponge Power Ltd. (JSPL) at Jharsuguda; you wanted me to send the photographs of the structures set-up by JSPL even prior to any clearance.

I am enclosing the original photographs for your information. I am also enclosing a copy of the report submitted by Times of India, Bhubaneswar dated 12.1.2009 wherein Executive Director of JSPL has been claiming that they have obtained the clearance from your department.

As I have stated in my earlier letter, JSPL appears to have engaged a consultant of their own choice to give an environmental assessment impact report in their favour. It contains a lot of misleading information, a few of them have been referred to in my earlier letter. On hearing from you, I will give a complete list of them.

I hope the Ministry of Environment & Forest will come to the rescue of the area by preventing sitting of this unit at Jharsuguda, so close to the Airport and the newly created District Headquarter town of Jharsuguda whose prospective master plan envisages the inclusion of the JSPL site into the municipal limits.

4. The aforesaid letter written by the respondent No. 2 states that he was enclosing a report published in the Times of India, Bhubaneswar dated 12th January, 2009 wherein Executive Director of the petitioner had claimed that he had obtained clearance from Ministry of Environment and Forest. This letter does not show or disclose that the respondent No. 2 was aware of the order dated 29th December, 2008. This becomes apparent from the entire contents of the said letter. Similar averments were made by the respondent No. 2 in his rejoinder to the application for condonation of delay. The respondent No. 2 had referred to his earlier letter dated 30th December, 2008 raising objections and stating that clearance should not be granted by the Ministry of Environment and Forest. The respondent No. 2 had also stated that Orissa State Pollution Control Board had forwarded his communication to the Ministry of Environment as late as on 13th January, 2009. Therefore, the respondent No. 2 could not believe or known that clearance had been granted on 29th December, 2008.

5. In the rejoinder affidavit, the respondent No. 2 had pointed out that even Gram Panchayat and office of the Collector were not aware of the said clearance/ permission dated 29th December, 2008 till as late as March- April, 2009.

6. The Supreme Court has repeatedly held that the law of limitation should not be used to strangle a citizen approaching a court/forum and has to be liberally construed. Reference in this regard can be made to the decisions of the Supreme Court in the case of Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, and State of Nagaland Vs. Lipok AO and Others, wherein the term sufficient cause has been interpreted and it has been observed that the said term should be given a liberal construction so as to advance substantial justice. It is clear from the letters written by the respondent No. 2 that he had reservations about environmental impact of the project and had started corresponding with the authorities in December, 2008 itself.

7. One of the allegations made in the writ petition is that the impugned order makes observations with regard to the adverse environment impact in form of air pollution of the local area and the proposed international airport in the vicinity. The said statement made in the grounds of appeal is not correct. What is stated in the impugned order is that the Appellate Authority had agreed to condone the delay taking into account the possible adverse environmental impact as alleged by the respondent No.

2. The Appellate Authority has not given any finding on merits of the allegation made by the respondent No. 2 on the question of impact on the environment. What is stated is that the allegations require consideration. There is no finding.

8. In view of the above, I do not find any merit in the present writ petition and the same is dismissed.