

**Environmental Clearance Granted To the POSCO Odisha Project Ruled Illegal  
A Summary of The Ruling by the national Green Tribunal**

**The Tribunal:** The National Green Tribunal (NGT) is an appellate body constituted by a special act of Parliament, the National Green Tribunal Act, 2010. The Tribunal has original jurisdiction over all civil cases where a substantial question relating to the environment, including enforcement of any legal right relating to the environment is involved. The NGT is eventually supposed to have five benches, but at present only one bench is functional, at Delhi, which commenced its hearings from 4th July, 2011.

A ruling by the NGT can only be appealed to the Supreme Court. No other civil court has jurisdiction to entertain any appeal in respect of any matter which the NGT is empowered to determine under its appellate jurisdiction, and no injunction may be granted by any civil court or other authority in respect of any order passed by the NGT.

**The Case:** South Korean steel major, POSCO, proposes to build an integrated steel plant with a production capacity of 12 million tonnes per annum (MTPA), along with a captive power plant in Jagatsinghpur district of Odisha. This plant was first granted environmental clearances in May/July 2007. The decision was challenged by environmental defenders and by local people opposing land acquisition, and the project was stalled. The Ministry of Environment and Forests (MoEF) directed a special review committee, chaired by Meena Gupta, former Secretary of MoEF, to monitor and evaluate the compliance of the environmental clearance. Based on the review committee report, the MoEF granted final clearance to the project on January 31, 2011, even though the majority of the committee members opposed clearance. An appeal against this clearance was filed with the NGT by some of the affected parties.

**The Ruling:** After extensive review of the submissions by the parties, on 30 March 2012, a bench of the NGT, comprising Justice C. V. Ramulu as the judicial officer and Dr D. K. Agarwal as the technical expert, struck down the environmental clearance granted to the POSCO project by the Ministry of Environment and Forests (MoEF). The NGT ruled that *“[t]he environment clearance granted on January 31, 2011, to the project shall remain suspended till [exhaustive] review and appraisal is done by the ministry[.]”*

The order included specific steps that the MoEF must take, including constituting a *“fresh review committee by engaging subject matter specialists for better appreciation of environmental issues. The project proponent shall be asked to furnish relevant details required for the said review by the newly constituted committee to recommend specific conditions to be attached/ revised in the ECs granted by MOEF[.]”* and outlined requirements that must be fulfilled for environmental impact assessment reports for all major industrial/development projects, not just for the POSCO project.#

**Specific questions entertained by the NGT and its ruling on each:**

- a) Whether the Appeal has been filed within the period of limitation in so far as challenging the ECs granted in May/June, 2007 and whether appeal can be entertained to that extent?

**Ruling:** The NGT said that they could entertain the appeal only to the extent of challenging the final order and its immediate background, i.e., the [Meena Gupta] review committee reports and not the appeal in respect of the original environmental clearances [EC's] granted in May/July, 2007 because, per the NGT, the plaintiffs were barred from appealing the validity of the original environmental clearances because of the passage of time.

- b) Whether the PH [Public hearing] was properly conducted following the prescribed procedure applicable at the relevant point of time and same is valid?

**Ruling:** The NGT, relying on the submission of the same District Magistrate who conducted the disputed hearing, said that there was no “substantial [procedural] error committed by the authority in conducting the PH. Therefore, the allegation of the Appellant that the PH was not conducted in accordance with the law cannot be countenanced, though; it does not fall within the ambit of challenge of this appeal, as discussed at Issue No. (a) above.”

- c) Whether the MOEF was right in accepting the review report submitted by Ms. Meena Gupta who participated in the issue of grant of original ECs since she was the Secretary to the Government of India, MOEF and whether the Government was right in rejecting the majority report of the review committee. And whether the apprehensions/issues raised by the Review Committee are properly addressed while issuance of the final order under challenge?

**Ruling:** “Whether the act of Ms. Meena Gupta is fair or not, they are definitely hit by personal / official / departmental bias, in other words, she supported the decision made by her[self] earlier. This is in gross violation of principles of natural justice. Therefore, *the entire process of review is vitiated under the law.* [Emphasis added]

That the project, especially “a project of this magnitude ... has been dealt with casually, without there being any comprehensive scientific data regarding the possible environmental impacts. No meticulous scientific study was made on each and every aspect of the matter leaving lingering and threatening environmental and ecological doubts un-answered. ... The current EIA report is a huge under representation of the scale of impact that the project will have on the surrounding environment and the community. [This is because although the memorandum of understanding between the Odisha government and POSCO says that the plant will have a capacity of 12 MTPA, the EIA for the project has been prepared on the basis of four MTPA of steel production, providing a justification that further EIA reviews will be done for the project as and how it expands. But land, water, and other infrastructure allocated were for 12 MTPA capacity.]

That “... any development should be within the parameters of environmental and ecological concerns and satisfying the principles of sustainable development and precautionary measures.”

That “... considering the nature and extent of [the] project, it was necessary to have a comprehensive and integrated EIA rather than rapid fragmented EIA. In this context, we find it necessary that MOEF establishes clear guidelines/directives that project developers need to apply for a single EC alone if it involves components that are essential part to the main industry such as the present case where main industry is the Steel plant, but it involves major components of port, captive power plant, residential complex, water supply, etc.”

That “EIA report should include combined impact of other project components and other existing projects in the vicinity.”

And that “[i]t is desirable that MOEF shall undertake a study on Strategic Environmental Assessment for establishment of number of ports all along the coastline of Orissa with due consideration to the issues related to biodiversity, risks associated, etc.”