



एनएचपीसी लिमिटेड
(भारत सरकार का उद्यम)

NHPC Limited
(A Government of India Enterprise)

संदर्भ सं./Ref. No. **NH/CS/199/**

फोन/Phone : _____

दिनांक/Date : **01.08.2019**

<p>Manager The Listing Department, M/s BSE Limited, Phiroze Jeejeebhoy Towers, Dalal Street, Mumbai-400001</p> <p>मैनेजर, लिस्टिंग विभाग, बीएसई लिमिटेड पि.जे. टावर्स,दलाल स्ट्रीट, मुंबई- 400 001 Scrip Code: 533098</p>	<p>General Manager The Listing Department M/s National Stock Exchange of India Limited, Exchange Plaza, Bandra Kurla Complex, Bandra(E), Mumbai- 400051 महाप्रबंधक, लिस्टिंग विभाग, नेशनल स्टॉक एक्सचेंज ऑफ इंडिया लिमिटेड एक्सचेंज प्लाजा, बांद्रा कुर्ला कॉम्प्लेक्स, बांद्रा (ई), मुंबई - 400 051 Scrip Code: NHPC</p>
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ISIN No. INE848E01016

Sub: Hon'ble National Green Tribunal order in respect of Subansiri Lower HE Project

विषय: सुबानसिरि लोअर एचई परियोजना के लिए माननीय राष्ट्रीय हरित अधिकरण का आदेश

Sirs/महोदय,

In compliance to Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, it is to inform that as per the orders uploaded on the website of Hon'ble National Green Tribunal, its Principal Bench has upheld the Expert Committee constituted by Ministry of Environment, Forest and Climate Change (MoEF&CC) for the Subansiri Lower HE Project which is being executed by NHPC Limited. The copy of the above order is enclosed at Annexure-I.

This is for your information and record.
यह आपकी जानकारी और रिकॉर्ड के लिए है।
धन्यवाद।

भवदीय,

(विजय गुप्ता)
कंपनी सचिव

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

M.A. No. 83/2019 IN M.A. No. 285/2018
IN
Original Application No. 346/2013 (EZ)
WITH
M.A. No. 84/2019 & I.A. No. 283/2019
IN
Execution Application No. 23/2018
IN
O. A. No. 109/2017 (EZ)

Aabhijeet Sharma

Versus

Applicant(s)

Union of India & Ors.

Respondent(s)

With

Tularam Gogoi

Versus

Applicant(s)

Union of India & Ors.

Respondent(s)

Date of hearing: 25.07.2019

Date of order: 31.07.2019

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

For Applicant(s):

Mr. Sanjay Upadhyay and Ms. Eisha Krishnan,
Advocates
Mr. Ritwick Dutta and Ms. Meera Gopal,
Advocates

For Respondent (s):

Mr. Kallol Guhathakurta, Advocate for
Brahmaputra Board, Ministry of Power, Central
Electricity Authority, Ministry of Water
Resources, River Development and Ganga River
Rejuvenation

Mr. Shovudeep Roy and Mr. Vinayank Gupta,
Advocates for State of Assam
Mr. A.D.N. Rao, Mr. A. Venkatesh, Mr. Rahul
Mishra and Mr. Ambar Sachdeva, Advocates
Mr. A. Mari Arputham, Senior Advocate, Mr.
Avneesh Arputham, Ms. Anuradha Arputham
and Ms. Geetanjali, Advocates for NHPC
Mr. Ajit Pudussery, Advocate
Mr. Divya Prakash Pandey, Advocate for
MoEF&CC

ORDER

1. These applications in substance seek reconstitution of the Committee constituted by the Ministry of Environment, Forest and Climate Change (MoEF&CC) vide order dated 27.11.2017 in pursuance of order of this Tribunal dated 16.10.2017.
2. We may make a brief reference to the background giving rise to these proceedings. Subansiri Lower Hydro Electric Project (SLHEP) has been set up by the National Hydroelectric Power Corporation Limited (NHPC) over the river Subansiri at Assam, Arunachal Pradesh border to generate 2000 MW of power. Environment Clearance (EC) for the project was given by the MoEF&CC in the year 2003. The EC was subject to certain conditions, including the ecological flow downstream of the river Subansiri.
3. The NHPC got a study conducted with regard to the downstream impact of the project and other issues by an Expert Group (EG) on 27.05.2008. Report submitted by the EG in the year 2011. A Joint Steering Committee also gave a report on certain issues in July, 2012. The same were challenged

before the Hon'ble Supreme Court but the Writ Petition was withdrawn and an application was filed before the National Green Tribunal, Eastern Bench on 06.09.2013 by one Aabhijeet Sharma being O.A. No. 346/2013 (EZ). One Tularam Gogoi later filed another O.A. No. 109/2017 (EZ) against the findings in the said reports.

4. The said two applications were considered and dealt with vide judgment dated 16.10.2017 of the Eastern Bench of the Tribunal. It may be noted that on 13.01.2015, the Ministry of Power appointed a Project Oversight Committee (POC) to examine various aspects of the project. The POC gave report which led to certain changes in operation of the project.
5. The Tribunal noted that neither the project nor the EC were under challenge. Only challenge was to safety and downstream impact in the course of operation of the project.¹ The applicant suggested alternative design. Members of POC had given differing views.² Having regard to the sensitive location and the precautionary and the sustainable development principles, the Tribunal directed the MoEF&CC to constitute a Committee of three Expert Members to give their opinion with regard to the Terms of Reference (ToR) for which Project Oversight Committee was constituted on 13.01.2015. The Committee was to submit its report to the MoEF&CC without being influenced by the

¹ Para 57

² Para 115

opinions expressed by the earlier Committees or the observations of the Tribunal in the body of the said judgement. The MoEF&CC was then to refer the said report for Stage – IV Appraisal by the Expert Appraisal Committee (EAC) under the EIA Notification, 2006. EIA was thereafter to be completed within sixty days and placed before the Competent Authority for final decision.

6. Accordingly, in compliance of the above directions, an Expert Committee was constituted by the MoEF&CC on 27.11.2017 as follows:-

*“1. Dr. Prabhas Pande, Engineer in Geology
2. Dr. I.D. Gupta, Seismologist
3. Shri P.M. Scott, Hydrologist (from North-East)
Dr. S. Kerketta, Director, IA.I (looking after River Valley Projects) from MoEF&CC, New Delhi shall be the Convener of the above Committee.*

Terms of Reference (ToR) of the Committee

- (i) Review of Safety aspect of the Dam in line with the recommendations made by the Expert Group and Technical Expert Committee.*
- (ii) Review of downstream Impact as recommended by the Expert Group of Assam and Technical Expert Committee constituted by the erstwhile Planning Commission, now NITI Ayog.*
- (iii) The Committee shall finalize its report within a period of three months from the date of issue of this order.*
- (iv) The Committee shall convene its meeting as soon as possible to address the issues and consider early resumption of work on the project.*
- (v) The Committee shall visit the project site and its vicinity, hold meetings with both*

the constituents groups of POC i.e. the expert group of Assam and the expert group from Govt. of India and also hold similar meetings with experts of NHPC and the applicants or their representatives either separately with each of the groups or jointly with all.

- (vi) The Committee shall technically examine the reports submitted by various Committees including the ones submitted by both the groups of the POC.*
- (vii) The Committee shall also technically examine the alternative proposal submitted by the applicants for its feasibility. The Applicants and /or his experts may be allowed to make presentation of their proposal. The committee may seek assistance of independent expert (National or International) on Hydel project, if required.*
- (viii) The Committee shall be at liberty to obtain views of either National or International experts or both on the subject involving the Terms of Reference.*

The Committee shall submit its report within three months of its constitution.”

7. M.A. No. 5/2018-EZ was filed to challenge the constitution of the Committee with the objection that Dr. I.D. Gupta had been Consulted by the earlier POC. Shri. P.M. Scott was a Member of Brahmaputra Board and his inclusion will result in conflict of interest. The Tribunal vide order dated 10.01.2018 directed MoEF&CC to consider the objections and file an affidavit. The proceedings were later transferred to the Principal Bench. M.A. No. 140/2018 was filed by Aabhijeet Sharma seeking reconstitution of the Committee.

8. The MoEF&CC filed affidavit dated 15.02.2018 in M.A. No. 5/2018, stating that the names of the Experts were finalized by the Ministry in consultation with Ministry of Earth Sciences, CWC and CEA. Experts are from fields of Seismology, Geology and Hydrology. They did not suffer from any bias and were experts in the field.
9. NHPC also opposed the prayer by stating that the members of the Expert Committee are highly qualified and there was no basis for attributing any bias to them. The cost of the project as assessed in December, 2002 was Rs. 6285.33 Crores. Due to delay, the cost has already gone to Rs. 18,000/- Crores. A sum of Rs. 9610 has already been invested. 50% of the work has been completed till December, 2011. Each day delay was causing loss of Rs. 10 Crores. The project has been duly cleared by all the statutory authorities and is for flood moderation and electricity generation which is to promote public interest. The delay has resulted in huge arbitration cases against the NHPC. The project will benefit the States of Assam and Arunachal Pradesh by way of free power. All the details of the three Experts were annexed by way of annexure R3/1 to the said reply.
10. The application came up for consideration 19.11.2018 and after hearing the learned counsel for the parties this Tribunal dismissed the applications. Another application to the same

effect filed by Tularam Gogoi being E.A. No. 23 of 2018 was also dismissed on that basis on 14.12.2018.

11. C.A. No. 2011/2019 of 2019 and C.A. ____ of 2019 (D. No. 46429/2018) were filed before the Hon'ble Supreme Court against the above orders which were decided on 11.03.2019. The Hon'ble Supreme Court noted that during the hearing, learned Solicitor General took instructions and made a statement that considerable amount of the work having already been carried out by the Expert Committee, constitution of a new Committee will cause delay of one year. Role of the Committee was purely recommendatory and the matter is to be independently appraised by the EAC. It was, thus, not advisable for the Government to reconstitute the Committee.

12. The Hon'ble Supreme Court directed as follows:-

"We are of the view that, without this Court expressing any opinion whatsoever on the merits of the contentions which have been urged by the appellant, it would be appropriate and proper if the objections which have been raised are reconsidered by the Tribunal. We are constrained to issue this direction since we find from the earlier order of the Tribunal dated 19 November, 2018 as well as from the impugned order dated 14 December, 2018 that the objections which were raised by the appellant, as well as by the earlier objector have not been considered by the Tribunal. While we are not inclined to impede or interdict the work of the Committee in the meantime, any steps taken would abide by the result of the

objections which are permitted to be raised by the appellant before the Tribunal.

We accordingly set aside the impugned order of the Tribunal dated 14 December 2018 in Execution Application No. 23/2018 (earlier Execution Application No. 1 of 2018) and the order dated 19 November 2018 in M.A. No. 140/2018, M.A. No. 178/2018, M.A. No. 295/2018, M.A. No. 285/2018 and M.A. No. 286/2018 and restore the applications to the file of the Tribunal for determination afresh.

We, therefore, clarify that this order shall not be construed as any determination by this Court on the merits of the objections which have been raised by the appellant, which shall be determined on their own merits by the Tribunal.

The Appeal stands disposed of.

Civil Appeal No. ____ of 2019 (D. No. 46429/ 2018)

Taken on board.

Delay condoned.

In view of the order passed by this Court today in Tularam Gogoi vs. Union of India, Civil Appeal No. 2011/2019, the Appeal stands disposed of.

Pending application, if any, shall stand disposed of.”

13. In pursuance of order of the Hon'ble Supreme Court afore-said, M.A. No. 83/2019 was filed by Aabhijeet Sharma seeking the same relief as sought earlier. Tularam Gogoi has also filed similar application being M.A. No. 84/2019.
14. The MoEF&CC filed further reply dated 27.04.2019. With regard to plea of 'conflict of interest' on the ground that the Experts had been associated with the Government institutions which institutions were associated with the project in question, it was submitted that said Experts had never given views in

respect of the project in question in their individual capacity. Dr. Prabhas Pande and Mr. Dr. I.D. Gupta had given declaration of 'No Conflict of Interest'. Shri P.M. Scott is from North Eastern region itself and well versed with the rivers and riverine basin in Brahmaputra region. Dr. Prabhas Pande has vast experience and retired as Additional DG (GSI). Dr. I.D. Gupta was an independent scholar and Consultant in Earth Quake Engineering and Seismology. CWPRS was not involved with the process and design of the project. 'Spillway Division' CWPRS, Pune had been involved in the hydraulic model studies of Subansiri Lower HEP and Dr. I.D. Gupta was not associated with the hydraulic model studies of Subansiri Lower HEP as he is seismic expert and not hydraulics Engineers. The Committee is broad based. The recommendations of the Committee are based of collective wisdom of the Committee. The project has undergone several layers of scrutiny. Studies have been earlier carried out with the involvement of several institutions. Such institution cannot be declared to be ineligible for association for all times. There can be no plea of conflict of interest as alleged by the applicants. The scope of order of this Tribunal is to review technical reports already available. The Committee has already held extensive discussions with the Experts. The applicant was invited but never attended the meetings to delay the project. The Tribunal has given three months' time for completion of the review. The Expert Committee has already submitted its report which is to be placed before the EAC.

However, in view of the order deferment of the EC meeting earlier, the proceedings were stalled till order dated 19.11.2018. Role of the Committee is purely recommendatory. The EAC had to conduct Stage – IV Appraisal. EAC comprises 15 Members, with different domain expertise for project appraisal. The list of EAC for hydroelectric power project is available at the website of MoEF&CC.

15. Additional Affidavit dated 20.05.2019 filed by the MoEF&CC is that the report of the Committee dated 23.03.2019 was placed before the EAC which was approved and recommendation was made for grant of EC.
16. During the hearing, learned counsel for MoEF&CC has handed over copy of a letter dated 20.06.2019 to the effect that recommendations of EAC dated 23.04.2019 was duly approved by the Competent Authority and vide a letter dated 13.06.2019, NHPC was intimated of laying down the conditions to be observed in the course of the project as follows :-

“(i) *The Lower Subansiri HEP is located in the Outer Himalaya, which is composed of the youngest group of rocks lying between the Main Boundary thrust in the north and the Himalayan Frontal thrust in the south. It is to mention that several major hydroelectric projects like the Bhakhra dam, Pong dam, Ranjit Sagar dam, etc. have been built in similar geological and seismotectonic environments of this Himalayan segment and are in successful operation for decades. So, the location*

- of the Lower Subansiri HEP is considered acceptable.
- (ii) The foundation grade rock at the Lower Subansiri HEP dam site consists of relatively low strength sandstone of Subansiri Formation, which is free from any active tectonic discontinuity. The provision of several treatment measures has made the foundation stratum adequately competent to withstand the load of the dam even under conditions of extreme dynamic loading.
 - (iii) The studies carried out in the thickly forested lower Subansiri HEP reservoir indicate that the area is free from any major active landslide problem and no significant slope instability condition exists in the immediate vicinity of the dam.
 - (iv) The dam abutments have been excavated in massive to moderately jointed rock mass occurring mostly under a dry condition. Provision of several corrective measures like deep cable anchors, concrete cladding, etc. has further improved the stability of abutment slopes even under expected seismic loading.
 - (v) The largest magnitude earthquakes in the Lower Subansiri HEP area are inferred to occur either along the Main Himalayan thrust (MHT) between the MBT and MCT or in the lower crust at depths greater than 20 km and not along the MHT south of the MBT at very shallow depths. Thus, the closest distance of Lower Subansiri HEP site to the fault rupture plane of M8.0+ earthquakes is not expected to be less than 15-20 km.
 - (vi) Scientifically plausible Maximum Credible Earthquake (MCE) scenarios for estimation of design ground motion at Lower Subansiri HEP site may be taken as magnitudes of 8.0 and 8.5 at the closest distances to fault rupture of 15 km and 20 km, respectively. These scenarios may result in Peak Ground Acceleration (PGA) exceeding 0.5g for higher confidence level (say 84th percentile level).

- (vii) The PGA of 0.38g is the mean value (50th percentile level) for M7.5 earthquakes at the closest distance of 10-4 km, because the necessary conservatism has been built into the generalized and broad response spectrum shape used. Though this is an old methodology, the combination of PGA of 0.38g and the conservative spectral shape of the Lower Subansiri HEP is effectively equivalent to the ground motion with much higher PGA in combination with the realistic site-specific spectral shapes. The severity of design ground motion is characterized by the PGA and the spectral shape together, rather than PGA alone.
- (viii) Design accelerogram for detailed dynamic response analysis of Lower Subansiri HEP dam has been generated to be compatible with the generalized and conservative response spectrum shape; so that the amplitudes of ground motion at all the frequencies are represented appropriately. The PGA, being associated with very high frequencies of 2:50 Hz, is not effective in controlling the response of the dam with much lower natural frequencies. Due to conservative response spectrum shape in the vicinity of the natural frequency of Lower Subansiri HEP dam, even the lower PGA of 0.38g results in the ground motion equivalent to PGA exceeding 0.5g with a site-specific spectral shape.
- (ix) The design of Lower Subansiri HEP dam was arrived at and finalized by the NHPC using progressively advanced methods of analysis, as per the standard International practice (ICOLD, 2016). The initial design based on simple pseudo-static stability analysis was finalized using Chopra's simplified method for dynamic stress estimation. Detailed dynamic response analysis was subsequently got done through CWC based on time history solution using FEM analysis for DBE ground motion with PGA of 0.19g and MCE ground motion with PGA of 0.38g as well as 0.5g. The stresses obtained from

these studies have been found to be well within the permissible limits for the design strength of the concrete of Lower Subansiri HEP dam.

- (x) In view of the highly random and uncertain nature of earthquake events and the resulting ground motion at a site, it is impossible to define an absolute upper limit for the design motion for Lower Subansiri HEP site. The design philosophy adopted for important dams is to minimize the seismic risk to an extremely low level, which could be considered much below the risk level due to prevalent other natural and anthropogenic hazards. In this regard, the seismic design of Lower Subansiri HEP dam can be considered safe with a high degree of confidence.
- (xi) The alternative dam design proposal submitted by the applicant for Lower Subansiri HEP has been examined in detail and it has not been found viable on techno-economic grounds.
- (xii) The downstream issues such as maintenance of continuous minimum flow for sustenance of flora and fauna, flood control and flood forecasting mechanism, sediment management, protection of Subansiri banks, provision of social security to the riparian population, dam break analysis, etc. have taken care off as per the recommendations of various committees.
- (xiii) The present Committee, after reviewing reports of various other expert groups related with issues of foundation competency, slope stability, seismotectonics - seismic design parameters, dam design and the downstream impacts of the project, is of the opinion that the Subansiri Lower HEP has been designed for expected extreme conditions and all the concerns have been adequately addressed to the extent practically feasible.
- (xiv) The construction at the Lower Subansiri HEP was stalled in December 2011. In the period of over seven years, the exposed rock mass and the unfinished works are getting deteriorated gradually

due to the natural processes of weathering and degeneration. Any further delay in resuming the construction activity is bound to have irretrievable and irreversible deleterious effect on the project. It is, therefore, considered prudent to resume the construction work of the Lower Subansiri HEP, at the earliest.

(xv) *The Eastern Himalaya holds enormous hydropower potential, the harnessing of which can usher in rapid overall growth in the North East India, in particular. The commissioning of Subansiri Lower HEP can, not only prove to be a boon for the people of the region, but also open the gates for accelerated development of water resources projects in the entire Brahmaputra basin."*

17. We have heard the learned counsel for the parties and perused the record to which our attention has been drawn.
18. We have duly reconsidered the matter. Learned counsel for the applicant submitted that constitution of the Expert Committee as well as further proceedings may be set aside on the ground that the Expert Committee was biased. Reliance has been placed on *A.K. Kraipak Vs. Union of India, 1969 (2) SCC 262* to the effect that reasonable likelihood of biased was enough to vitiate a decision of an administrative authority. Reliance has also been placed on *J. Mohapatra and Co. and Anr. Vs. State of Orissa and Anr, (1984) 4 SCC 103*, in support of the said submission.
19. On the other hand, learned counsel for the MoEF&CC as well as the NHPC opposed the above submissions. It was pointed

out that mere association of the Experts with an organization which may have given advice in respect of the project was not enough to infer any bias on the part of the Experts. Moreover, the Experts are to collectively give an opinion for consideration of the EAC. The decision is of the EAC itself which comprises of 15 independent experts. Learned counsel for the respondents relied upon *HRD Corporation (Marcus Oil and Chemical Division) Vs. Gail (India) Limited (formerly Gas Authority of India Limited, (2018) 2 SCC 471*, to submit that if an arbitrator had previously dealt with a matter of the same parties, it could not be disqualification for him for dealing with a subsequent different dispute even of the same party. Further reliance has been placed on *Utkal University Vs. Dr. Nrusingha Charan Saranghi and Ors. (1992) 2 SCC 193*, rejecting the plea of bias in the selection process on the ground that the selected candidate was an editor of a magazine and the member of the selection committee was on the editorial board of the said magazine. The Hon'ble Supreme Court held that in absence of allegations of personal relations between the member of the selection committee and the candidate, there was no merit in the plea of bias.

20. As already noted that in the present case, the Tribunal had required constitution of a three Member Expert Committee to visit the project site, hold meeting with the constituent groups of POC, the experts of the NHPC and the applicants or his

nominee and then examine the reports of the various Committees and alternative proposal of the applicant. The Committee was to act on the material already available and furnish a report within three months and the MoEF&CC was thereafter to complete EIA within sixty days. The Tribunal has not expressed any opinion on merits nor rejected the earlier reports. Exercise was by way of precaution. Since the consideration that the project was in highly seismic zone -V and environmental issues were required to be examined keeping in view the attendant sensitivity of the matter instead of there being any rigidity to get only one point of view accepted.

21. There is no doubt that principles of 'natural justice' are required to be followed in a fair decision making. 'No one should be judge in his own cause' is a principle of natural justice. Avoiding bias by any decision maker is part of said principle. The person taking decision should do so independently and not for extraneous or personal interest. Bias which may vitiate a decision may be either pecuniary or personal of subject matter.

22. This legal position is settled by the judgment of the Hon'ble Supreme Court noted above and also in subsequent

judgments.³ It may be worthwhile to quote certain observations from the judgements of the Hon'ble Supreme Court:

Govt. of T.N. vs. Munuswamy Mudaliar

1988 (Supp.) Supreme Court Cases 651

"This Court in International Authority of India v. K.D. Bali held that there must be reasonable evidence to satisfy that there was a real likelihood of bias. Vague suspicions of whimsical, capricious and unreasonable people should not be made the standard to regulate normal human conduct. In this country in numerous contracts with the government, clauses requiring the Superintending Engineer or some official of the Government to be the arbitrator are there. It cannot be said that the Superintending Engineer, as such." (Para 13)

State of W.B. vs. Shivananda Pathak

1998 (5) SCC 513

*"An essential requirement of judicial adjudication is that the Judge is impartial and neutral and is in a position to apply his mind objectively to the facts of the case put up before him. If he is pre-disposed or suffers from prejudices or has a biased mind, he disqualifies himself from acting as a Judge. But frank, J.. of the United States in In re Linahan, 138 F. 2nd 650 says:-
"If, however, 'bias' and 'particularly' be defined to mean the total absence of preconceptions in the mind of the judge, then no one has ever had a fair trial and no one will. The human mind, even, at infancy, is no blank piece of paper. We are born with predispositions....Much harm is done by the myth that, merely by.... taking the oath of office as a judge, a man ceases to be human and strips himself of all predilections, becomes a passionless thinking machine." (Para 29)*

³ 1. 1988 (Supplement SCC) 651, Para 13
2. 2012 (4) SCC 609, Para 29
3. 2011 (8) SCC 380, Paras 42, 50, 57, 62 & 71
4. 2011 (10) SCC 106 Paras 29, 30, 40
5. 2016 (5) SCC 808 Para 25
6. 1998(5) SCC 513 Paras 29 & 30

Lalit Modi vs. BCCI

2011 (10) SCC 106

"We have noted the submissions of the petitioner with respect to his apprehensions. However, as far as the propositions of law are concerned, we cannot take a different view in the present case from the law laid down in the judgment of the Constitution Bench of this Court in M.P. Special Police Establishment (supra), and the judgment of four Judges in T.P. Daver Vs. Lodge Victoria (supra). As held in M.P. Special Police Establishment, a mere apprehension of bias cannot be a ground for interference. There must exist a real danger of bias. And, following T.P. Daver Vs. Lodge Victoria, though such domestic inquiries have undoubtedly to be fair, a member of a society cannot stretch the principle of fairness to the extent of demanding a tribunal consisting of outsiders, on the basis that the society members are biased against him". (Para 40)

P.D. Dinakaran vs. Judges Inquiry Committee

2011 (8) SCC 380

"It is, of course clear that any direct pecuniary or proprietary interest in the subject matter of a proceeding, however small, operates as an automatic disqualification. In such a case the law assumes bias. What interest short of that will suffice? The English courts have applied different tests for deciding whether non-pecuniary bias would vitiate judicial or quasi-judicial decision. Many judges have laid down and applied the "real likelihood" formula, holding that the test for disqualification is whether the facts, as assessed by the court, give rise to a real likelihood of bias. Other Judges have employed a "reasonable suspicion" test, emphasising that justice must be seen to be done, and that no person should adjudicate in any way if it might reasonably be thought that he ought not to act because of some personal interest. The High Court of Australia has adopted a different approach; the test applied in Australia in determining whether a Judge was disqualified by reason of the appearance of bias i.e. whether a fair-minded lay observer might reasonably apprehend that the Judge might not bring an impartial and unprejudiced mind to the resolution of the question required to be decided and made a departure from the test applied in England."

Ladli Construction vs. Punjab Police Housing Corp. Ltd.

2012 (4) SCC 609

"Except raising the vague and general objections that the arbitrator was biased and had predisposition to decide against the contractor, no materials, much less cogent materials, have been placed by the contractor to show bias of the arbitrator. No sufficient reason appears on record as to why the arbitrator should not have proceeded with the arbitral proceedings. The test of reasonable apprehension of bias in the mind of a reasonable man is not satisfied in the factual situation."(Para 29)

SCAOR vs. UOI

2016 (5) SCC 808

"From the above decisions, in our opinion, the following principles emerge;

If a Judge has a financial interest in the outcome of a case, he is automatically disqualified from hearing the case.

In cases where the interest of the Judge in the case is other than financial, then the disqualification is not automatic but an enquiry is required whether the existence of such an interest disqualifies the Judge tested in the light of either on the principle of "real danger" or "reasonable apprehension" of bias.

The Pinochet case added a new category i.e that the Judge is automatically disqualified from hearing a case where the Judge is interested in a cause which is being promoted by one of the parties to the case." (Para 25)

23. It is not the case of the applicant that any of the experts have any pecuniary interest or personal interest. Pre-disposition which may disable a person from going into the merits may also be bias but no such pre-disposition has been shown. The plea of the applicant is farfetched. Moreover, the present Committee has only recommendatory role. There is safeguard of further evaluation by experts. The project is to advance public interest.

24. We have not found any material on record justifying the plea of bias. The EAC has conducted the appraisal. The Competent Authority has agreed with the same. Mere association of organizations with the project in professional capacity is not enough to hold that any Expert who worked in such association will have an institutional bias.

Accordingly, we do not find any merit in the applications and the same are dismissed.

Adarsh Kumar Goel, CP

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

July 31, 2019
M.A. No. 83/2019 IN M.A. No. 285/2018 IN
Original Application No. 346/2013 (EZ)
M.A. No. 84/2019 & I.A. No. 283/2019 IN
Execution Application No. 23/2018 IN
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