

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA**

**M.A. 171/2015/EZ
&
O.A. No. 29/2015/EZ**

**M/S ATHENA DEMWE POWER LTD.
PRADIP KUMAR BHUYAN
Vs
UNION OF INDIA & Ors.**

CORAM: Hon'ble Mr. Justice Pratap Kumar Ray, Judicial Member
Hon'ble Prof. (Dr.) P. C. Mishra, Expert Member

PRESENT:

Applicant of MA	: Mr. Tarun Johri, Advocate
Original Applicant	: Mr. Sanjay Upadhyay, Advocate
Respondent No. 1	: Mr. Kallol Guhathakurta, Advocate
	Mr. Sharique Afzal, advocate
Respondent No. 2	: Mr. Gora Chand Roy Chowdhury, Advocate
Respondent No. 3	: Mr. Mrinal Kanti Maity, Advocate
Respondent No. 4	: Mr. Anil Shrivastav , Advocate

Date & Remarks	Orders of the Tribunal
Item No. 17 14th October, 2015.	<p>M.A. 171/2015/EZ : This is an application for impleadment of the applicant in the main application. It is contended inter alia that the applicant herein M/s Athena Demwe Power Ltd. is a registered company engaged in the development and implementation of 1750 MW Demwe Hydro Electric Project on river Lohit in Lohit District of State of Arunachal Pradesh. The applicant has stated in the rejoinder that the company is a run-of the River Scheme with diurnal pondage and designed with minimum 4.89 hours of peaking operations. It is contended further that the original applicant has raised the issue of cumulative impact assessment studies and peaking impact of the project. It is also submitted that in the OA in prayer (a) the applicant</p>

has prayed for scraping of all the four hour peaking proposed 150 plus mega dams of Arunachal Pradesh with immediate effect and replace them with 24x7 naturally flowing run of the river dams to avoid destruction of environment , ecology etc. It is contended further that if the prayer (a) is allowed by the Tribunal, then the present applicant of MA will be seriously prejudiced and affected. Therefore, impleadment of the applicant is necessary.

This application is opposed vehemently by the original applicant. It is submitted by the Id. adv. for the original applicant that no prejudice will be caused to anybody and he is not against any particular project. He is only concerned about environmental issue for undertaking a composite study on cumulative environmental impact assessment to ensure that there is no environmental impact in the event all the hydro electric projects are allowed to operate in Arunachal Pradesh. It is further contended by Mr. Upadhayay, Id. adv. for the original applicant that the cumulative environmental effect of operation of so many projects is the subject matter of the main dispute in the OA. The present applicant of MA cannot be considered as a party necessary in this OA. However, having regard to the respective pleadings of the OA and the MA for impleadment as made and the prayer made seeking appropriate orders for 24/7 naturally flowing run of the river dams to avoid destruction of environment, ecology, livelihood and culture of the riparian population of both Arunachal Pradesh and Assam by making cumulative environment impact assessment study, the matter has to be decided whether the present applicant is a party necessary

or party proper in terms of Order 1, rule 10 of CP Code.

The project proponent i.e. the present MA applicant has already got the forest clearance and environment clearance from the competent authority. It is true that plaintiff in a civil suit is the *dominus litis*, and he may choose the persons whom he wishes to add. The principle of that is limited with reference to adjudication of civil matter following adversarial jurisprudence. In the present case, it is to be decided on the basis of environmental jurisprudence and it is like a public interest litigation and is to be considered on a different angle based on ecological balance, eco- dynamics and ecological sensitivity of the area. A litigation which is decided by adversarial jurisprudence cannot be applied in litigation based on environmental jurisprudence, specially by applying Order 1, Rule 10 of CP Code, but identifying the real nature of the interest of the party who intends to be impleaded in a proceedings. In the instant case it is clear from the documents annexed in the application for impleadment of the party and the rejoinder to the objection of the application that as a party interested he is having clearance from the competent authorities as discussed above, and he has proceeded with construction job of the project.

Long back the legal issue on who is “party necessary” for effective adjudication was considered by the English Court in the case **Dollfus Mieg et Compagnie S.A. –v- Bank of England**, (1950) 2 All ER 605, 611, wherein **Wynn-Parry J** observed that true test lies not so much in an analysis of what are the constituents of the applicants’ rights, but rather in what would be the result on the subject matter of

the action if those rights could be established. **Devlin, J** observed as follows :-

“ The test is “May the order for which the plaintiff is asking directly affect the intervener in the enjoyment of his legal rights”

These observations by the aforesaid Hon’ble Judges of English Court was considered and referred to by the Apex Court of India in the case of **Ramesh H. Kundanmal –vs- Municipal Corporation of Greater Bombay** (1992) 2 SCC 524. In para 14 it is observed as follows :-

“14. It cannot be said that the main object of the rule is to prevent multiplicity of actions though it may incidentally have that effect. But that appears to be a desirable consequence of the rule rather than its main objective. The persons to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved’ that would only make him necessary witness. It is not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is so that the should be bound by the result of the action and question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that the person must be directly or legally interested in the action in the answer i.e. he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights. It is difficult to say that the rule contemplates joining as a defendant a person whose only object to prosecute his own cause of action.”

Hence, on considering the affidavits of respective parties, the application, objection and rejoinder, and legal principle as discussed above, we are of the view that the present applicant in MA is party necessary in the main proceeding as initiated by the applicant of the OA. **Hence the application for impleadment of party stands allowed.** Registry is directed to take necessary

action to incorporate the name of the applicant of MA as party respondent in the OA.

MA stands allowed.

O.A. 29/2015/EZ :

State of Arunachal Pradesh has already filed reply to the OA. Ld. Adv. for the Ministry of Power has prayed for extension of time to file opposition to the OA. Let such opposition be filed by one week in the Registry after proper pagination. After filing, applicant and other co-respondents be served. Rejoinder, if any, by two weeks thereafter.

MoEF has already filed reply. Copy has been served. Rejoinder, if any, by three weeks.

Respondent No. 5, i.e. Brahmaputra Board, the respondent No. 5 has not entered appearance. He is a necessary party as their presence is required for proper adjudication. The said Board is directed to file opposition to the OA by four weeks. Rejoinder, if any, by two weeks. Registry to communicate this order to the non-appearing respondent i.e. Chairperson, Brahma Putra Board and State of Assam through Chief Secretary forthwith.

Applicant is directed to serve a copy of OA with its annexure to the added respondent within a week. The added respondent will file opposition to the OA within four weeks and serve to the applicant and other co-respondents. Rejoinder, if any, two weeks thereafter.

Matter is fixed on 11.12.2015.

.....
Justice Pratap Kumar Ray, JM

.....
Prof. (Dr.) P. C. Mishra, EM

