BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 363/13-CN 02/10

In the matter of:

FORCE VIVE DE GRANDE RIVIERE NOIRE

Appellant

v/s

THE MINISTER OF ENVIRONMENT

Respondent

In the presence of:

FOUR H COMPANY LTD

Co-Respondent

Ruling

The present appeal relates to an association, Force Vive de Grande Riviere Noire contesting the decision of the Minister of Environment for having granted an EIA Licence to Four H Co. Ltd for the extension of a hotel over a "barachois" at les Salines, Black River.

A preliminary objection in law was raised by counsel appearing for the co-respondent, Four H Co. Ltd at paragraph 4 of their Statement of Case and is reproduced below:

"4. Co- Respondent moves for a preliminary objection to the appeal lodged against the Respondent, in as much as

(i) It was, at all material times, an interested party in this appeal;

(ii) Such appeal should have been notified to it by the Appellant as an interested party concerned, within the time limits required under the law;

(iii) The appeal that Appellant was lodging was to substantially affect the Project of the Co-Respondent;

(iv) The statutory delay for putting the Respondent and Co-Respondent into cause under the Environment Protection Act is 30 days;

(v) The statutory delay for putting the Co-Respondent into cause, having expired since several months, the appeal lodged by the Appellant should be set aside by the Environment Appeal Tribunal and there is no need for your tribunal to move into the merits of the case."

Chronology of main events

(1) On 20th April 2010, the co-respondent was granted an EIA licence for the extension of the hotel over the barachois

(2) On 13th May 2010, the appellant lodged an appeal against the respondent at the Environment Appeal Tribunal

(3) On 19th June 2012 a notice of intervention was served by the co-respondent on all parties and a copy sent to the Tribunal

(4) On 19th July 2012, with the consent of the parties and leave of the Tribunal, the co-respondent was joined as a party to the proceedings and subsequently allowed to file a statement of case

(5) The case never started before the Environment Appeal Tribunal and was forwarded to the Environment and Land Use Appeal Tribunal with the coming into force of the Environment and Land Use Appeal Tribunal Act 2012.

The Law: statutory time frame

The Tribunal has considered the submissions of all counsel. It is uncontested that the appeal was lodged solely against the Minister of Environment, the respondent. The appeal having been lodged before the defunct Environment Appeal Tribunal (hereinafter referred to as 'EAT') on 12th May 2010, the applicable law is the **Environment Protection Act 2002**. Section 54 (1) referred to the decision, direction, order and notice which were appealable before the EAT, all being related to the decision of the Minister. Section 54 (2), which is of interest here, stipulated that a person may appeal within 30 days of the decision, direction, order or notice referred in subsection (1) in the form and manner as is prescribed by the regulations. The relevant regulations are the **Environment Appeal Tribunal (Rules of Procedure) Regulations** made under the old law, that is **The Environment Protection Act 1991**. Regulation 3 stipulates that an aggrieved person who wishes to appeal to the EAT shall lodge a notice of appeal within 30 days of the decision, direction, order and notice with the secretary (of the tribunal) and at the same time send a copy of the notice of appeal to *the respondent*.

Therefore, it is clear that the law simply imposed on the appellant a time frame of 30 days to notify the respondent, the word 'respondent' not being defined in any Act can clearly be taken to be party against whom the appellant is bringing an action. The relevant sections neither talk of interested parties nor of affected persons nor co-respondents. We cannot read more into the Act than what has been clearly stipulated. Therefore, applying the law to the present facts, the Tribunal is of the view that since the appellant wished to contest the decision of the Minister of Environment for having granted the EIA licence, the only duty it had under the law was to serve a copy of its notice of appeal on the respondent Minister within the statutory time frame of 30 days, which it did. To impose a requirement upon an appellant, in the absence of express language, that *all parties who may have an interest in proceedings* be notified within the time limit, would be to stretch the interpretation of the section beyond reasonable bounds. This view supports the fact that a lay person should be able to initiate and prosecute an appeal without the assistance of a legal representative, as is the case here.

Joinder of Parties

Now, it cannot be denied that Four H Co Ltd has an interest in the matter, since the EIA licence was granted in their favour. Counsel for the co-respondent, Mrs Saha, has referred to a line of authorities from **Lagesse v/s Town and Country Planning Board (1997)** to **Nuckcheddy & Ors v/s Town and Country Planning Board & Ors (2012).** The Tribunal is of the view that the authorities cited can be distinguished from the present appeal in that in those cases the decisionmaking body was never put into cause. The common thread running through the cases referred to above, principles that this Tribunal also supports, is that if a party is impugning a decisionmaking body's findings or decision, due process demands that as a matter of obligation the decisionmaking body be put into cause right from the outset so that on appeal the latter can motivate the basis for its decision thereby allowing the appellate body to take an informed view on the merits of the appeal. Therefore, a failure to put a decisionmaking body into cause would be fatal to the proceedings.

Conversely, the Tribunal subscribes to the view that while out of procedural fairness an interested party be joined as a party in whose presence the appeal be heard, non joinder of such a party as co-respondent cannot, as rightly pointed out by counsel for the respondent, outrightly result in the appeal being set aside. In **The Public Service Commission v/s The Public Bodies Appeal Tribunal IPO Man Lan Wong Chow Ming (2011) SCJ 382,** the supreme court decided that the appeal be remitted back to the PBAT to be heard anew with an order directing the PBAT to allow an interested party be joined as a party. The present case can further be distinguished in that Four H Co. Ltd has already been joined as a co-respondent to the appeal and the hearing is yet to start.

Notice of Intervention

We now turn to manner in which the co-respondent was put into cause. The whole raison d'etre of the notice of intervention which the co-respondent filed on record, seems to run counter its own line of argument. The purpose of a notice of intervention is to give notice to the litigants that there is a party that seeks leave from the court to

intervene in litigation on the ground that it has a legitimate interest in the matter. Once the court or tribunal makes an order granting such leave, the party who served the notice becomes a party to the proceedings. If we are to follow the line of reasoning of Mrs Saha, then despite the fact that with the consent of the appellant and respondent, the co-respondent was granted leave to be joined as party to the present appeal, in essence that whole procedure of intervention was a nullity and of no use, given that the co-respondent was not joined as a party within a certain time frame. The Tribunal cannot make sense of the co-respondent's motion to, on the one hand be joined a party on the basis that it has a legitimate interest in the matter and should therefore be privy to the proceedings to contest the merits of the case, and on the other hand argue that appeal cannot be heard because it was not made a party to the case at the outset (that is they were not served a notice of appeal when they allegedly should have). This, in the Tribunal's view, would be tantamount to allowing the intervention process to be used as a veiled means of staying proceedings.

We therefore dismiss this contention of the co-respondent and find that if ever the co-respondent felt that the proceedings were defective at the outset in that the co-respondent, being an interested party, was not put into cause then that so-called defect has already been cured when its motion for intervention was granted on the 19th July 2012. Consequently, we find that no prejudice has been caused to the co respondent because it was given the opportunity to file its statement of case and has been given the opportunity to make representations before this tribunal even before the case has started.

For all the reasons given above, the plea in limine raised by the co-respondent is set aside and the case is to proceed on its merits.

Ruling delivered on the 17th April 2013 by

Mrs Jayshree RAMFUL-JHOWRY

Vice Chairperson

Mrs Brinda KANNIAH

Assessor

Mr Pazany THANDARAYEN

Assessor

Counsel appearing for

Appellant : Mr, Bernard MARIE

Respondent : Mrs Carol GREEN-JOKHOO together with Miss Kamlesh DOMAH

Co-respondent: Mrs Ruby SAHA