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C.A. No. 11743/13/2011
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

PUBLIC INTEREST LITIGATION NO. 78/2010

1. Padmakar Vinayak Deshmukh,
aged 55 years, Occ. Farmer,
At Pullai village, Tq. Wardha,
Dist. Wardha, Maharashtra.
2. Shri Chandrashekhar Dadaji Bhende,
age 33 years, Occ. Farmer, At Talegaon,
Talatule, Tq. Dist. Wardha.
3. Shri Laxman Pandurang Manwatkar,
age 75 years, Occ. Farmer, at Pullai,
Post: Pavnoor, Tq. Dist. Wardha.
4. Shri Vijay Uttam Muley,
age 46 years, Occ. Farmer, At. Pullai,
Post-Panvoor, Tq. Dist. Wardha.

.....PETITIONERS

...VERSUS...

1. Union of India, thr. its Secretary,
Ministry of Environment and Forest
Paryavaran Bhavan, CGO Complex,
Lodhi Road, New Delhi.
2. The Collector, District Wardha,
Collector Office, Civil Lines, Near
Gandhiputla, Wardha 442001.
3. Shri Avinash Katade, Sub-Divisional
Officer (SDO), Near Gandhiputala,
Civil Lines, Wardha.
4. The Superintendent of Police,
Wardha District Near Gandhiputala,
Civil Lines, Wardha.

Urgent
About Lanco

Regarding
Enclosure

SRO

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5. The Regional Officer, Maharashtra Pollution Control Board, Civil Lines, Nagpur.
6. M/s. Lanco Vidarbha Thermal Power Ltd. At Post Mandawa, Tq. Wardha, Dist. Wardha.

....RESPONDENTS

Mr. Tushar Mandlekar, Advocate for petitioners.
 Mr. S. K. Mishra, A.S.G.I. for respondent no.1.
 Mr. N. W. Sambre, Government Pleader with Mrs. K. S. Joshi, A.G.P. for respondent nos.2, 3 and 4.
 Mr. S. S. Sanyal, Advocate for respondent no.5.
 Mr. J. P. Bhatt, Senior Advocate with Mr. S. P. Dharmadhikari, Senior Advocate with Mr. Deepak Khurana and Mr. Vivek Kolte, Advocates for respondent no.6.

CORAM: S. A. BOBDE & M. N. GILANI, JJ.
DATED: OCTOBER 18, 2011.

ORAL JUDGMENT (Per:- S. A. Bobde, J.)

1. Rule. Rule returnable forthwith. Heard finally by consent of the parties.
2. By this petition, which is filed in public interest, the petitioners have challenged the public hearing conducted by respondent no.3-Regional Officer, Maharashtra Pollution Control Board (MPCB) under a notification issued under Rule 5 (3) of the *Environment (Protection) Rules, 1986* for granting environment clearance to certain new projects or activities covered by the said

notification. The hearing, which is challenged, took place on 17.09.2010. According to the petitioners, since hearing was vitiated by ruckus since the Regional Officer, MPCB did not hear all the villagers, who wanted to raise objections and even when the villagers wanted to object, could not express their objections since they were hustled out of the meeting and suppressed by officers of respondent no.6-Company from expressing themselves.

3. After this petition was filed on 22.12.2010, the Ministry of Environment and Forests (MoEF) granted Environmental Clearance on 24.02.2011 and the respondents acted on the Environmental Clearance and started developing the site for the purposes of setting up of the Coal Based Thermal Power Plant. Apparently, no stay was granted by this Court against the Environmental Clearance nor was any injunction granted by the Court restraining respondent no.6 from carrying out construction.

4. According to Mr. Mandlekar, learned counsel for the petitioners, hearing was vitiated on account of several facts, which are set out in paragraph 8 of the petition. In the grounds, it is contended that the hearing was conducted improperly, arbitrarily,

unfairly; the respondents used muscle power against the poor villagers; the Police Officers present at the hearing openly threatened the villagers and directed not to speak against the project; adequate notices were not given in the newspapers and after hearing only 14 persons, the public hearing was abruptly closed after the goons hired by the respondents created ruckus and villagers were brutally beaten. A First Information Report was also lodged against an official of respondent no.6-Company. We are informed that subsequently trial has been compromised and settled by the complainant. According to the petitioners, majority of the people were against the project and public hearing was forced to close. The objections were not answered and no satisfactory answers were given. Neither the attendance register was maintained nor it was sent along with proceedings of the public hearing. Minutes of the public hearing were not prepared in Marathi nor were they read. Thus, according to the petitioners, the hearing was a farce. It has defeated the purpose of the said hearing and accordingly, Environmental Clearance granted by the MoEF in the hearing is also vitiated.

5. On behalf of respondent no.6-Company, there is a complete denial of the allegations. According to respondent no.6-

Company, they had no part to play in the grant of permission or otherwise to the villagers for speaking at the hearing and they did not obstruct any villager from speaking. The Regional Officer of the MPCB, who conducted the hearing has stated that the hearing was done in accordance with law. Those who wanted to speak were allowed to speak. According to the MPCB not more than 14 villagers wanted to speak and after they were heard public hearing was concluded. According to the MPCB, the Minutes of the proceedings were recorded and submitted to the MoEF for consideration. The entire proceedings were videographed and sent to the MoEF and are still available for screening.

6. At this juncture, we would like to note that there is a serious dispute of ruckus at the hearing. It is not disputed that the number of villagers were about 5000. This is also not disputed that only 15 people spoke and about 190 written representations were submitted to the MPCB.

7. It is obvious from the circumstances of the case that there is a hue and cry raised about denial of opportunity of being heard to the villagers by the MPCB. Having regard to the number of

villagers who attended the meeting, it is indeed quite possible that there was ruckus at the meeting and that everybody, who wanted to have their say, could not express themselves. It is not disputed that a First Information Report was lodged regarding the ruckus at the meeting though it is equally not disputed that later on the matter has been settled before the Court and no one has been prosecuted. There is no doubt that the person who filed the First Information Report later on could not identify who injured him. This, however, clearly suggests that the public hearing was not peaceful and, in any case, was not marked by solemnity in which such a public hearing should be conducted.

8. We have no doubt that merely because the Rules do not contemplate a public hearing by a Court, there is no reason to assume that the hearing should not be held in an atmosphere of solemnity, where the grievance of the villagers can be taken into account and considered properly.

9. Without going further into the matter, we are of the view that the public hearing was not conducted as it should have been. Indeed, Mr. Bhat, learned counsel for respondent no.6,

submitted that respondent no.6 has no objection if public hearing is conducted again so that the grievance of the villagers that they were not heard may be removed.

In the circumstances, we are not inclined to go through the videographed proceedings and are of the view that the public hearing should be conducted again.

10. Thus there is no manner of doubt that the order passed in pursuance of the public hearing which was not conducted properly is vulnerable. It may be noted that the Environmental Clearance contemplated by the Rules is not based solely on the objections at the public hearing. The *Environment (Protection) Rules, 1986* provide that the Environmental Clearance may be granted on the basis of the report of the Project Appraisal Committee constituted by the Central Government after detailed scrutiny of the application for setting up project or initiating any activity. The Rules also contemplate taking into account all final Environment Impact Assessment Reports and in addition, a report prepared on the outcome of public consultation including public hearing. While the public consultation is, by no means, a minor requirement it is equally true that there are other factors on which such a clearance is based.

11. In the present case, the Environmental Clearance has been granted also on the basis of the other factors such as appraisal by the Expert Environment Appraisal Committee and the outcome of the public hearing, which we have seen was not conducted satisfactorily. The Environmental Clearance was granted on 24.02.2011 and has been acted upon by respondent no.6.

12. In the circumstances, we are of the view that it would serve interest of justice if the impugned Environmental Clearance is allowed to stand pending the outcome of the public consultation at the public hearing proposed to be ordered by us. In other words, in the circumstances of the case, we are of the view that it would serve the interests of justice if a post decisional public hearing is given to the villagers, in accordance with rules. The Regional Officer, MPCl who conducts the public hearing shall ensure that the hearing takes place in an atmosphere of solemnity and seriousness so that it is effective. We are not impressed by submissions made on behalf of the MPCB that the Rules contemplate that the hearing should take place in the presence of all the villagers who have gathered. It may be recalled that in the meeting held in the present case, there were

about 5000 villagers, who were present and it is hard to imagine the Regional Officer being capable of ensuring a quiet, peaceful and solemn hearing with such large numbers.

13. In the circumstances, we direct that the Regional Officer may, without denying access to any member of the public for the hearing, shall make an enclosure of an adequate area where the persons, who have given their names in advance as desirous of being heard, are called in the presence of other villagers. If necessary, the Regional Officer shall make arrangement for a public address system so that those who are gathered outside the enclosure, which we are informed have been like a pendal, may hear the proceedings.

The Regional Officer shall ensure that there is a controlled entry into the smaller pendal where he actually conducts hearing while ensuring that those outside the pendal can follow the proceedings through public address system or video system and further that those outside the smaller enclosure can enter and sit in the pendal by turns.

14. The Regional Officer shall issue fresh public notice inviting objections and notifying the villagers that in addition if they wish that their representatives, if any, be heard their names may be given at least 24 hours in advance and each objection is heard properly regarding his objection to the project.

15. Having regard to the circumstances of the case, we consider it appropriate to direct respondent no.2-Collector and respondent no.4-Superintendent of Police, Wardha to supervise the arrangements and remain present or depute some responsible officer to remain present during the hearing. As it was done before, the proceedings shall be videographed and report of the proceedings shall be countersigned by the Collector and the Superintendent of Police or their representatives.

16. Mr. Mandlekar, learned counsel for the petitioners, empathetically urged that in the circumstances of the case the Environmental Clearance should remain stayed for the reasons indicated earlier.

17. We are of the view that such a stay is not necessary to serve interest of justice. Mere building and construction activities which are going on at this stage cannot be said to have an adverse impact on the environment *per se* particularly since the commissioning of the power plant is long way off. Mr. Bhat, learned counsel for respondent no.6, states that the Power Plant is not due for commissioning before 2014. Therefore, in the meanwhile, there is sufficient time for conducting the public hearing and for respondent no.1-Ministry to review the environment clearance, if necessary, in accordance with law. It is also clear that the respondent no.1-Ministry would be entitled to review the earlier Environmental Clearance in toto or in part depending on the outcome of the public hearing.

Needless to say that any activity undertaken by respondent no.6 in pursuance of the impugned Environmental Clearance shall be at its own risk and subject to final outcome of the proceedings.

18. Mr. Mandlekar, learned counsel for the petitioners further states that the Project Appraisal Committee should be free to take a decision afresh after considering outcome of the public

hearing. Needless to say that there is no restrictions on either Project Appraisal Committee or the Ministry or any other the authorities. They all are free to consider entire matter afresh, in accordance with law.

Rule made absolute in the above terms. No order as to costs.

JUDGE

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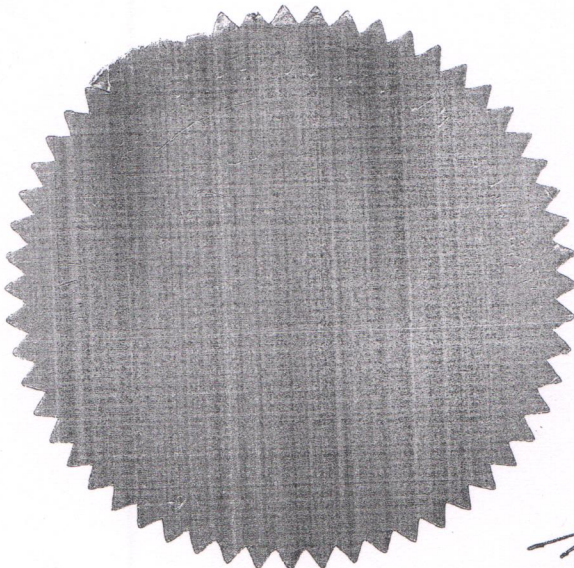
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