



AIR 2001 GUJARAT 71
GUJARAT HIGH COURT
MOHIT S. SHAH , J. and
RAVI R. TRIPATHI , J.

Spl. Civil Appln. No. 8529 of 1999, D/- 2 - 3 -
2000

Centre for Social Justice Appellants v. Union of
India and others Respondents

**(A) Constitution of India, Art.226 - Powers of
Court - Environment clearance certificate -
Grant of, to industries**

@page-Guj72

**- Implementing agency if not paying heed to
object of power conferred on it, appropriate
directions can be issued by High Court to
the authorities - Alleged urgency cannot be
the ground to do away more meaningful
implementation of procedure prescribed
by Rule making authority. Environment
(Protection) Act (29 of 1986), S.3 -**

(Paras14.3 14.5 14.6 15)

**(B) Environment (Protection) Act (29 of 1986),
S.3 - Environment clearance certificate -
Grant of - Public hearing proceedings -
Conducting of - Procedure - High Court
issued directions to make it effective and
meaningful.**

In the instant case the petitioners challenged the environmental clearance given by the State Government to the Thermal Power Project of Gujarat Electricity Board, on the ground that the public hearing proceedings were ab initio void. The High Court in the facts and circumstances issued the following directions to the respondent authorities about the Manner in which the public hearings should be conducted and public hearings should be made effective and meaningful so as to achieve the object of the Act.

(i) The venue of public hearing as prescribed in the Central Government Notification dated 10-4-1997 shall be as near as possible to the site of the proposed project or to the affected village and in any case the venue of hearing shall ordinarily not be further away from the headquarters of the taluka in which the proposed project is coming up or of the taluka which includes most of the affected villages.

(ii) The Pollution Control Board (Board) shall cause the notice of public hearing to be published in atleast two newspapers widely circulated in the region around the project, one of which shall be in the vernacular language of the locality concerned. This would mean that the GPCB is at liberty to publish the notice even in more than two newspapers. Moreover, a newspaper widely circulated in the region around the project does not necessarily mean the newspaper which is being published from the region around the project. All that it means is that the newspaper is widely circulated in the region around the project, even if the newspaper is published from outside the region. For the purpose of finding out the figures of circulation, the Board may of course treat the taluka in which the project is coming up or the taluka in which the affected villages fall as a region around the project, but it is the circulation which matters and not the place of publication as already stated above.

The Board shall also send a copy of the public notice about the public hearing to the Gram Panchayat/Nagar Panchayat/Municipality of each of the villages/towns likely to be affected by the Project with a request to bring it to the notice of the people likely to be affected by the project.

(iii) The date of first public hearing in connection with any project requiring environmental clearance certificate has to be after at least 30 days from the date of publication of the notice in the newspapers. This will be minimum period



and it is open to the Board to fix the public hearing after a longer period but in any case the GPCB shall make sure that the copies of the executive summary of the project furnished by the unit to the Board are made available at all local places mentioned in the notification at least 30 days prior to the date of public hearing.

As far as the Environment Impact Assessment report submitted by the unit to the Board along with the application for clearance certificate is concerned, the summary of such Environment Impact Assessment report in the local language shall also be made available to the concerned persons on demand and if further demanded, a copy of the Environment Impact Assessment report also shall be made available by the GPCB. It will be open to the Board to charge reasonable amount for supplying copies of such summary or copies of the report, but in any case the request shall be acceded to within one week from the date of the demand.

The Board shall bear in mind the following observations made by the Central Government in its letter dated 13-7-1998 :-

"We are often receiving requests from Non-Governmental Organizations for providing them copies of proceedings according environmental clearance to project. You are advised to make copies of environmental clearance proceedings available in your office on request to Non-Governmental Organizations."

(iv) As far as the quorum of the Committee is concerned, for the Committee to hold valid hearing, at least one half of the members of

@page-Guj73

the Committee shall have to remain present and at least the following members of the Committee shall also have to remain present for the hearing to be considered as valid public hearing :-

1. The officer from the Board.
2. The Officer from the Department of Environment and Forest of the State Government.
3. One of the three senior citizens nominated by the Collector.

(v) The minutes of the public hearing shall be furnished by the Board on demand and on payment of reasonable charges. When any demand for such minutes is made and the charges specified therefor are paid, the minutes shall be supplied as expeditiously as possible and in any case within one fortnight from the date on which the minutes are sent to the Environment Impact Agency or to the Central Government in the Ministry of Environment and Forest.

The GPCB shall bear in mind the following observations made by the Central Government in its letter dated 13-7-1998 :-

"We are often receiving requests from Non-Governmental Organizations for providing them copies of proceedings according environmental clearance to projects. You are advised to make copies of environmental clearance proceedings available in your office on request to Non-Governmental Organizations."

(vi) As far as the number of public hearings which may be held by the Committee per day, there cannot be any hard and fast rule, but looking to the size of the project and considering the impact on the environmental front, the Committee shall consider whether the number of public hearings is consistent with the object with which the public hearing is to be held. The Committee shall also consider the following observations made by the Central Government in its letter dated 17-7-1998 for fixing the venue and number of public hearings for certain projects which require environmental clearance :-



"In respect of certain projects such as laying of pipelines, Highways and projects located in inaccessible regions, clarification has been sought whether the public hearing should be conducted in one place or number of places etc. The matter has been examined. It has been decided that venue and number of public hearing to be conducted for a particular proposal may be left to the discretion of State Pollution Control Board.

State Pollution Control Boards/Pollution Control Committees may take a decision on the venue and number of public hearings for projects which requires environmental clearance as per provisions of EIA Notification keeping in view the nature of the project, its environmental ramification and feasibility of grouping of people at nearest convenient locations."

(vii) As far as the Environment Clearance Certificate is concerned, as soon as such clearance is granted, the State Government or the Central Government, as the case may be, shall cause publication of the gist of such clearance certificate in the newspapers in which the notice for public hearing was published by the GPCB for the particular project in question.

(viii) It is clarified that since the Board is the agency which is to fix the venues and the date of hearing and also to cause publication of the notices for public hearing as per the notification dated 10-4-1997, there is nothing to prevent the GPCB from charging the applicant-unit fees for this exercise nor is there anything to prevent the Central Government from charging any fees or expenses for granting the environmental clearance certificates. These observations are made in order to see that for the purpose of giving wider publicity to the notice for public hearings, the GPCB does not feel handicapped in the matter of incurring expenses for publication of such notices in newspapers with wider circulation which would normally charge higher

rates than the newspapers with less circulation and also to make sure that if more than one public hearings are required to be held, the administrative expenses incurred for such hearings are taken care of and also for supplying copies of documents which may be demanded by the affected people or Non-Governmental Organizations.

(Paras 17 7.3 7.4 7.5 8 9 11 12)

Cases Referred

Chronological Paras

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Basudeo Tiwary v. Sido Kanhu University, AIR 1998 SC 3261 : 1998 AIR SCW 3186 : 1998 (8) SCC 194 : 1998 Lab IC 3539	13.2
Dr. Rashlal Yadav v. State of Bihar, 1994 AIR SCW 3329 : 1994 (5) SCC 267	13.2 , 14.3
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M. S. E. B. and H. S. E. v. K. S. Gandhi, 1991 AIR SCW 879 : 1991 (2) SCC 716	13.2
Hindi Hitrakshak Samiti v. Union of India, AIR 1990 SC 851	14.2



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Commissioner of Expenditure Tax, A. P. v. PVG Raju, AIR 1976 SC 140	14.3
Union of India v. J. N. Sinha, AIR 1971 SC 40 : 1971 Lab IC 8 : 1970 (2) SCC 458	14.3
Seaford Court Estates Ltd. v. Asher, 1949 (2) All ER 155 : 1949 (2) KB 481	14.3

A. K. Clerk, Anmol G. Sharon, for Appellants; Anant S. Dave, for Respondent No. 1, Govt. Advocate, for Respondent No. 2, K. H. Baxi, for Respondent Nos. 3-4, Kartikey P. Rawal, for Respondent No. 4, M. D. Pandya, for Respondent No. 5, Notice Served by D. S., for Respondent No. 5, Nanavati and Nanavati, for Respondent Nos. 6, 16, 19, Anshin H. Desai, for Respondent No. 7, M/s. Trivedi and Gupta, for Respondents Nos. 8, 12, 19, 21, 23, S. V. Raju, for Respondent No. 9, M. P. Prajapati, for Respondent Nos. 10, 24, Maulm R. Raval, for Respondent No. 11, Nanavati Associates, for Respondent No. 13, Notice served for Respondent Nos. 14, 20, I. M. Bengali, for Respondent No. 15, Manish R. Bhatt, for Respondent No. 17, A. and M and S. Shroff Co., for Respondent No. 18, for Respondents.

Judgement

1. M. S. SHAH, J. :-Rule. With the consent of the learned counsel for the parties, the petition is taken up for final disposal.

2. In this petition under Article 226 of the Constitution, the Centre for Social Justice (a public trust registered under the Bombay Public Trusts Act, 1950 which is engaged in various activities relating to social justice and human rights since 1994) has challenged the manner in which notifications issued by the Government of India under the Environment (Protection) Act, 1986 in the matter of grant of environmental clearances are not being complied with in letter and spirit. The petition also challenges the said notifications, if the interpretation placed by the petitioner on the said notifications are not accepted as the correct interpretation. The petition also challenges the environmental clearance given by the State Government to the Gujarat Electricity Board, Dhuvaran, Thermal Power Project, Anand on the ground that the public hearing proceedings were ab initio void. The petitioner also prays for certain directions to the respondent authorities about the manner in which the public hearings should be conducted and public hearings should be made effective and meaningful so as to achieve the object of the Environment (Protection) Act, 1986.

2A. 2A. Before enumerating the contentions urged on behalf of the petitioner, it would be necessary to set out the relevant statutory provisions and the notification.

2.1. Relevant portion of Section 3 of the Environment (Protection) Act, 1986 (hereinafter referred to as "the Act") reads as under :-

"3. Power of Central Government to take measures to protect and improve environment :-
(1) Subject to the provisions of this Act, the Central Government shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution."



(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), such measures may include measures with respect to all or any of the following matters namely :-

"(v) restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards."

2.2. The Central Government has also framed statutory rules under this Act which are known as Environment (Protection) Rules, 1986. The relevant rules being sub-rules (2) and (3) (d) of Rule 5 read as

@page-Guj75

under :-

"5(2) While prohibiting or restricting the location of industries and carrying on the processes and operations in an area, the Central Government shall follow the procedure hereinafter laid down.

... ..

(3) (d) The Central Government shall, within a period of one hundred and twenty days from the date of publication of the notification in the Official Gazette, consider all the objections received against such notification and may within three hundred and sixty five days from such date of publication, impose prohibition or restrictions on location of such industries and the carrying on of any process or operation in an area."

2.3. In exercise of the powers conferred by the aforesaid statutory provisions in the Act and the Rules, the Central Government in the Ministry of Environment and Forests issued notification dated 27-1-1994. The said notification was thereafter amended by

notification dated 10-4-1997 (Annexure "B"). As per the amended notification, the following procedure is prescribed :-

Any person who desires to undertake any new project in any part of India or the expansion or modernization of any existing industry or project listed in Schedule II to the notification shall submit an application to the Government of India in the Ministry of Environment and Forests as per the pro forma in Schedule II to the notification which is to be accompanied by a project report, which shall, inter alia, include an Environmental Impact Assessment Report. The reports submitted with the application are to be evaluated and assessed by the Impact Assessment Agency which may consult a Committee of Experts, (whose composition is specified in Schedule III to the notification). The Impact Assessment Agency would be the Union Ministry of Environment and Forests. The Committee of Experts as stated above is to be constituted by the Impact Assessment Agency or its delegate.

2.4. Under the 1994 notification, the Impact Assessment Agency and its Committee of Experts had a discretion whether to interact with the local people likely to be affected by the project. By the amendment made in the year 1997, it is made obligatory for the Impact Assessment Agency to take into consideration the minutes of the public hearings. The detailed procedure for public hearings is contained in Schedule IV to the notification, which reads as under :-

SCHEDULE - IV

(See sub-para (I) of Para 2)

I. Procedure for Public Hearing :- (1) Process of Public Hearing :- Whoever applies for environmental clearance of projects, shall submit to the concerned State Pollution Control



Board twenty sets of the following documents, namely :-

(i) An executive summary containing the salient features of the project both in English as well as local language.

(ii) Form XIII prescribed under Water (Prevention and Control of Pollution) Rules, 1975 where discharge of sewage, trade effluents, treatment of water in any form, is required.

(iii) Form I prescribed under Air (Prevention and Control of Pollution) Union Territory Rules, 1983, where discharge of emissions are involved in any process, operation or industry.

(iv) Any other information or documents which is necessary in the opinion of the Board for their final disposal of the application.

(2) Notice of Public Hearing :- (i) The State Pollution Control Board shall cause notice for environmental public hearing which shall be published in at least two newspapers widely circulated in the region around the project, one of which shall be in the vernacular language of the locality concerned. State Pollution Control Board shall mention the date, time and place of public hearing. Suggestions, views, comments and objections of the public shall be invited within thirty days from the date of publication of the notification.

(ii) All persons including bona fide residents, environmental groups and others located at the project site/sites of displacement/sites likely to be affected can participate in the public hearing. They can also make oral/written suggestions to the State Pollution Control Board.

Explanation :- For the purpose of the paragraph person means :-

(a) any person who is likely to be affected by the grant of environmental clearance;

(b) any person who owns or has control over the project with respect to which an

@page-Guj76

application has been submitted for environmental clearance;

(c) any association of persons whether incorporated or not likely to be affected by the project and/or functioning in the field of environment;

(d) any local authority within any part of whose local limits is within the neighbourhood, wherein the project is proposed to be located.

(3) Composition of public hearing panel : The composition of Public Hearing Panel may consist of the following, namely :-

(i) Representative of State Pollution Control Board;

(ii) District Collector or his Nominee;

(iii) Representative of State Government dealing with the subject of power;

(iv) Representative of Department of the State Government dealing with Environment;

(v) Not more than three representatives of the local bodies such as Municipalities or Panchayats;

(vi) Not more than three senior citizens of the area nominated by the District Collector.

(4) Access to the Executive Summary :- The concerned persons shall be provided access to the Executive Summary of the Project at the following places, namely :-

(i) District Collector Office;

(ii) District Industry Centre;

(iii) In the Office of the Chief Executive Officers of Zilla Parishad or Commissioner of the Municipal Corporation/Local body as the case may be;

(iv) In the head office of the concerned State Pollution Control Board and its concerned Regional Office;

(v) In the concerned Department of the State Government dealing with the subject of environment."

3. The petitioner trust has asserted in the petition that notices for public hearings in respect of the applications made by 20 units for environmental clearance certificates were attended by the representatives of the petitioner trust and that in certain respects such hearings were found to be defective and not serving useful purpose for which the hearings are required to be given by the authorities. The details of such 20 units are given in Annexure "C" to the petition. At the hearing of this petition, however, the learned counsel for the petitioner has submitted that the petitioner is not interested in challenging the public hearings already held in respect of the said 20 units and that though the present petition does contain a challenge to the public hearing held for grant of environmental clearance to GEB, the petitioner is basically interested in enunciation of correct principles regarding the scope of public hearing as provided in the aforesaid notifications as the authorities holding such hearings are not implementing the notifications in their true spirit and correct perspective. The following major grievances are made in the petition.

3.1. Regarding the venue of public hearing, it is submitted that the authorities are holding such hearings at District headquarters. The persons who are likely to be affected by the project, particularly those who are going to be adversely affected in environmental matters, are poor persons who would not travel a long distance

between the proposed project site and the District headquarters. It again restricts local participation at the public hearing. Therefore, the venue of the public hearing should be fixed either at the site of the proposed project or at the office of the Gram Panchayat of the concerned village.

3.2. As per the notification, the notice for public hearings is required to be published in at least two newspapers having wide circulation in the area where the project is going to be put up and at least one of such newspapers has to be in vernacular language.

The grievance is that the publication is made in newspapers having comparatively less circulation and sometimes in obscure newspapers having no sizable circulation but only having official patronage. It is submitted that the rules do not place any upper limit on the number of newspapers in which the notice for public hearing can be published. Publication of such notice should be made in all newspapers having circulation in the area or at least the publication must be made in the newspapers having wide circulation in the District concerned.

It is further submitted that the copy of the public notice should be sent to the Gram Panchayat of every village which is likely to be affected by the project.

As regards the period of notice, it is submitted that the period of public notice regarding

@page-Guj77

public hearing should be at least three months.

3.3. It is further submitted that the executive summary required to be furnished by the unit is very often not available at the local level with the result that the local participation in public hearing is practically nil. Therefore, the authorities are required to be directed to make the executive summary available at all the places



stipulated by the notifications especially at the local level. It is also submitted that the unit is required to submit the environmental impact assessment report, but a copy of such report or summary thereof is not made available. It is only if the summary of such environmental impact assessment report in the local language is made available that there can be effective participation of the affected local people at the public hearing.

3.4. It is further submitted that the public hearings are very often conducted when the concerned committee does not have adequate number of members and that it is very rarely that the entire panel is present. In any view of the matter, there is no effective hearing as no technical/qualified persons are present on the panel.

3.5. It is further submitted that the minutes of the public hearing are either not recorded or not given to the concerned persons who participated at the public hearing with the result that the concerned persons who have raised objections are not aware whether their objections have been recorded and considered and, therefore, they are also not in a position to effectively file an appeal against any clearance which may ultimately be granted by the concerned Government.

3.6. It is submitted that sometimes hearing is held for a number of projects which makes it impossible for the committee to hold an effective public hearing. Therefore, there should not be more than one public hearing on a given day.

3.7. Finally, regarding the environmental clearance certificate, it is submitted that since the authorities do not communicate the grant of environmental clearance certificate to the objectors, their statutory right of preferring an appeal under the National Environment Appellate Authority Act, 1997 becomes illusory.

4. In response to the notice issued by this Court, affidavit in reply has been filed on behalf of the GPCB. It is stated therein that the representative of the State Pollution Control Board, who is usually the Regional Officer is only one of the members of the public hearing panel consisting of nearly 10 members. The Board initially grants NOC which is only the first stage about the efficacy of the project from the view point of the provisions of the Water (Prevention and Control of Pollution) Act, 1974 or the Air (Prevention and Control of Pollution) Act, 1981 and that it does not relieve the industrial unit from its obligation of obtaining consent under Section 25 of the Water Act before the start of any new outlet. It is submitted that the public hearings panel had complied with all the procedural requirements prescribed by the notifications and that no illegality or fault was committed by the panel in respect of the public hearing for the project of the Gujarat Electricity Board. It is further stated that -

(a) as regards venue of the public hearing, by their letter dated 17-7-1998, the Government of India in the Ministry of Environment and Forests have clarified that venue and number of public hearings to be conducted for a particular proposal may be left to the discretion of the State Pollution Control Board (Annexure IV to the reply affidavit).

(b) As regards publication of notice in newspapers for public hearings, the GPCB sends such notice for publication to the Director of Information, who decides as to in which newspaper public notice for public hearing is to be published.

(c) The names and designations of the members of the Committee who had remained present at the public hearing on 12-4-1999 for GEB project are set out in Annexure I to the aforesaid notice, so also the names of the persons who were

present to make their oral or written suggestions are given.

(d) The minutes of the public hearing in respect of the GEB project are produced at Annexure V to the reply.

The affidavit in reply filed on behalf of the Central Pollution Control Board is only formal and throws no light on the controversy raised in this petition. It is also stated that the State Government has granted the Environmental Clearance Certificate to the Gujarat Electricity Board for the Thermal Power Station at Dhuwaran in Anand District.

@page-Guj78

DISCUSSION

5. At the hearing of this petition, the learned counsel for the petitioner Mr. A. K. Clerk has submitted that the statutory notifications themselves provide for public hearings and, therefore, the petitioner is not claiming any new right for challenging the notification issued by the Central Government as such. It is on account of the difficulties faced by the petitioner-trust at the time of participating at such public hearings in respect of 20 units that the petitioner-trust has been constrained to file this petition. It is submitted that although the statutory provisions provide for public hearing, the manner in which the respondent authorities are purporting to implement the provisions is such that the public hearing does not become an effective and meaningful hearing but it becomes merely a formality and the entire idea of inviting local people to participate at the hearing is frustrated.

6. Venture of Public Hearings

6.1. It is stated by Mr. Clerk for the petitioners that the venue of the public hearing is kept at district headquarters. The local persons who are likely to be affected by the project are too poor

who are likely to be affected by the project are too poor to travel all the way to the district headquarters. It is only if the hearing is held at the proposed site or in the nearby village that persons likely to be affected can be expected to participate at the hearing. In this connection, Mr. Clerk has invited the attention of the Court to the Central Government letter dated 17-7-1998 to the Pollution Control Boards, the relevant portion of which reads as under :-

"State Pollution Control Boards/Pollution Control Committees may take a decision on the venue and number of public hearings for projects which require environmental clearance as per provisions of EIA Notification keeping in view the nature of the project, its environmental ramification and feasibility of grouping of people at nearest convenient locations."

6.2. An against the aforesaid grievance, Mr. S. N. Shelat, learned Additional Advocate General with Mr. K. H. Baxi for the GPCB and Ms. Manisha Lavkumar, learned AGP for the State Government have submitted that the district headquarter is the appropriate place for holding public hearing as a number of officers and representatives are from, and are available at the district headquarters and that the distance between the district head quarters and the concerned site is not such a long distance that the people cannot travel to the district head quarters. It is also submitted that the districts are comparatively small and, therefore, there is not much distance between the district head quarters and the project site.

6.3. We called upon the learned counsel for the petitioner to give us the exact details of the distance between the headquarters and the project site. The distance in each case would naturally be different; in some cases the distance was less than 13 KMs. but in some cases the distance exceeded even 150 KMs. It appears that since the committees for public hearings are

constituted at the district level and as per the State Government Resolution dated 11-8-1997 (Annexure "F"), the District Collector is shown at Sr. No. 1 of the list of officers/persons forming part of the committee for public hearing, and accordingly the District Collector is the convenor of the Committee and as a matter of practice, the Collectors are holding such public hearings at the district head quarters. Considering the distance between the district head quarters and the site at which the project is going to be put up and considering the fact that the persons who are likely to be most affected by the environmental degradation are people belonging to the lower economic strata of the society, it would not be unreasonable to expect that the GPCB and the concerned authorities will hold the public hearings at places near the project site or the affected village. Even if there cannot be any hard and fast rule about the venue of such meetings but it appears to us that looking to the comparatively less distance between the taluka head quarters and the villages where such projects are being put up, it would be more convenient for the local people if such public hearings are held at least at the taluka headquarters. This will also take care of the argument on behalf of the GPCB that the project may cover more than one villages. Even if the project covers more than one taluka, the GPCB and the Committee should take into consideration the distance between the villages likely to be affected by the project and one taluka head quarter on the one hand and distance between the villages and the other taluka head quarter on the other hand.

@page-Guj79

7. Publication in Newspapers

7.1. Mr. A. K. Clerk, learned counsel for the petitioner has made a serious grievance that the GPCB does not give wide publicity to public hearings for environmental clearance to

proposed projects. By illustration, it is submitted that the public notice for the GEB project was published in Gujarati Newspaper called 'Naya Padkar' which does not have any significant circulation even in Kheda district where the project is coming up. Of course, the said notice was also published in an English newspaper which was read by the representatives of the petitioner, which is an NGO, but the local people do not read such English newspapers.

7.2. On the other hand, Mr. Shelat, learned Addl. Advocate General with Mr. K. H. Baxi for the GPCB pointed out that the public notice was sent by the GPCB to the Director of Information who is the official Government agency for deciding as to in which newspaper the advertisement should be published. It is further submitted that the very fact that the petitioner participated at the public hearing and there were others also who were present at the public hearing shows that there was sufficient publication of the notice.

7.3. As regards the newspapers in which the public notice for such public hearings are to be published, the Rules specifically provide that the publication has to be made in at least two newspapers having wide circulation in the area. The purpose of publication is obvious that the people likely to be affected must be informed about the public hearing at which they can raise their objections or make their suggestions. This purpose would not be served if the notice is published in any obscure newspaper. In view of the controversy between the petitioner on the one hand and the GPCB on the other hand on the question whether sufficient publicity was given to the notice for public hearing for the GEB project, the Court called upon the learned counsel for the GPCB to give particulars about the circulation of 'Naya Padkar' for the relevant period. In response to the said query, the learned counsel for the GPCB has produced a copy of the letter dated 22-2-2000 from the Deputy Director of Information pointing out that 'Naya

Padkar' had a total average daily circulation of 44,379 for the audit period January-June, 1979 out of which the average circulation in Kheda District was 29,563. The statement further gives talukawise break up of the average circulation for Kheda district which shows that while Anand Taluka had an average circulation of 13,227 only, in a few other talukas its circulation reached four digits while in some other talukas its circulation did not even cross 500. The Court can take judicial notice of the fact that there are other newspapers in the State which have wider publication throughout the State and also in Kheda District as compared to the newspaper 'Naya Padkar'. The GPCB which is a statutory authority entrusted with the task of prevention and control of pollution under various statutes and statutory rules or its concerned Regional Officer must decide as to in which newspapers advertisement should be published. They may of course gather the information regarding the circulation of any newspaper from the Director of Information but the responsibility of choosing newspapers in a given case would rest on the GPCB and its officers.

7.4. It is also required to be noted that the notification does not prescribe any maximum number of newspapers in which such public notice is to be given. In case, the authorities feel that wide circulation can be ensured by giving public notice in more than two newspapers, there is nothing to fetter the discretion of the authorities in resorting to such wider publication. At this stage, we would also like to note that the GPCB is smarting under the impression that the entire expenditure for public hearings has to be borne by the GPCB and that the GPCB cannot claim any amount from the industrial unit applying for environmental clearance. Such impression is created on account of the State Government Resolution dated 11-8-1997 (Annexure "F" - Pg. 58). In the said resolution issued by the Ministry of Environment and Forests, the designations of members of the

District level committee for public hearings are specified and the resolution ends with the words-

"The expenditure on this account shall be borne by the Gujarat Pollution Control Board".

This only means that the expenditure is not to be borne by the State Government but it is to be incurred by the GPCB as the public hearing is essentially in connection with the prevention and control of pollution for which

@page-Guj80

the GPCB is the principal statutory agency. We are informed that the GPCB is not collecting fees or expenses from the units applying for environmental clearance certificates. It is surprising as to why the GPCB is not collecting any expenses from the concerned applicant-units. We are constrained to make this observation in order to ensure that desirability of giving wider publicity to the public notice for public hearings need not be dampened only on account of the financial constraints of the GPCB. Mr. Clerk for the petitioner informs that the Maharashtra Pollution Control Board charges such fees and/or expenses from the units applying for environmental clearance certificates. We see no reason why the GPCB cannot follow this course of action.

7.5. Another facet of wider publication is that there are many semi-literate or even literate persons who may not read newspapers but they may get information about the proposed project, if the public notice is sent by the GPCB to the concerned Gram Panchayat also, as the members of the Gram Panchayat would bring it to the notice of the local people. Similarly, if the project affects the people of more than one village, the GPCB would send the notice to all such Gram Panchayats whose people are likely to be affected by the project.

The GPCB could obviously have no objection to such course of action being adopted for wider circulation of public notice.

8. 0. Supply of Executive Summary and duration of public notice.

8.1. As far as duration of the notice for the public hearings is concerned. Mr. Clerk for the petitioner has clarified that the period of one month or 30 days is usually not sufficient because after the publication of notice in the newspapers when the representatives of petitioner-trust go for inquiry, they are not immediately given copies of the executive summary (which the unit was required to submit to the GPCB at the time of making application for environmental clearance in 20 copies in English as well as the local language). In para 11 of the petition, the following averments are made :-

"At Sr. No. (4) under the heading "access to the Executive Summary" in schedule IV of the Notification it is provided that the concerned persons, i.e. the persons participating in the public hearing shall be provided access to the Executive Summary of the project at five places named in Clause (4). The representative of the petitioner invariably found that the so-called Executive Summary is not available at the office of the local body and on all occasions they were directed to go to the office of the State Pollution Control Board at Gandhinagar. The purpose and object of the access to the Executive Summary at various places mentioned in Schedule IV of the Notification is that all types of concerned persons including the residences located at the project site may have easy access to the Executive Summary. Moreover, though the procedure at Sr. No. 1 under the heading "Process of Public Hearing" provides that the Executive Summary should be provided in English as well as the local language, in most of the cases it was not available in the local language. The concerned authorities have ministerpreted the

provisions as to the access to the Executive Summary by holding that the participants can have a look at the Executive Summary and they cannot have a copy of the Executive Summary either free of cost or at their own cost. The petitioner submits that the matter being highly technical and complicated, a mere look at the Executive Summary in a concerned office is meaningless and following the law in spirit. The non-availability of such a copy amounts to negating the right to be heard or the opportunity of being heard and is violative of the principles of natural justice. The representatives of the petitioner at times orally and at times in writing requested for copies of Executive Summary but were not provided with the same."

8.2. Mr. S. N. Shelat, learned Addl. Advocate General with Mr. K. H. baxi, learned counsel for the GPCB submitted that copies of the executive summary are made available at the local offices. In Para 7 of the reply affidavit filed on behalf of the GPCB, it is stated as under :-

"I further submit that as per Schedule IV, Rules 1 and 2, 20 copies of the cited documents are taken and circulated at the specified places and all the authorities are supplied with the copies, in turn permit the access of the same to the concerned persons, including the NGO's which is sufficient assurance to the local residents as prayed for. In fact, NGO's are given copy if asked, in addition to the 20 copies to be given under the Rules in view of the letter dated 13-7-98

@page-Guj81

issued by respondent No. 1, copy of which is produced herewith at Annexure-III, and in this case it is given to the petitioner and therefore, the demand for any number of copies is wholly wrong and unjustified as the adequate does not mean any definition."



Relevant portion of the letter of respondent No. 1 Government of India dated 13-7-1998 (Annexure III to the reply affidavit) reads as under :-

"We are often receiving requests from Non-Governmental Organizations for providing them copies of proceedings according environmental clearance to projects. You are advised to make copies of environmental clearance proceedings available in your office on request to Non-Governmental Organizations."

8.3. At the hearing, Mr. Clerk has shown for our perusal letter No. HB/SC/V/1756/1728/1729 dated 24-11-1999 wherein the Collector had replied to the petitioner that the executive summary regarding the electricity project of Arvind Mills could be obtained by correspondence directly with the Arvind Mills as the Collector had nothing to do regarding the public hearing. This reply was in response to the petitioner's letter dated 11-10-1999.

8.4. No affidavit in reply is filed on behalf of the State Government or by the Collector but it appears that while the GPCB is ready and willing to supply copies of the executive summary to the Non-Governmental organizations approaching the GPCB, such reports are not being made available by the local offices designated in the notification on the ground that the access means only perusal and not the copy of the report. It is obvious that looking to the nature of the executive summary and the nature of the public hearings, it would not be sufficient for the local residents only to read the executive summary even if it is in Gujarati. Copy of such summary must be made available to the persons who ask for such summary for which there may be a nominal charge, it at all required, so as to enable the local residents and the association existing in the field of environment to participate at the public hearings.

8.5. Another important aspect about the executive summary is that it is required to contain salient features of the project. Schedule II to the notification contains a form in which application is required to be made for the hearing for environmental clearance. Obviously the executive summary contains all the particulars given in the application as per the proforma in Schedule II but salient features would definitely include as to which community resources are going to be utilized-such as water, land etc. and are likely to be affected by the industry coming up in that area. Mr. Clerk for the petitioner submits that the executive summary is prepared by the unit and since the unit is otherwise also required to submit the environmental impact assessment report to the GPCB, the summary of environmental impact assessment report must also form a part of the executive summary as that is going to be a part of the discussion at the public hearing.

8.6. We do not find any reason why the GPCB should not accept such a suggestion as the whole purpose of the public inquiry is to ensure that local residents who are likely to be affected, especially on the environmental front, on account of the industry coming up in the area should be made to understand the environmental consequences of the project so as to enable them to decide whether they should lodge any objections or make any suggestions. All the residents may welcome the industry and at the same time may like to make suggestions for preventing any environmental degradation.

9. Quorum at the Public Hearings

As regards the number of members of the committee who ought to remain present to constitute a quorum, again it cannot be laid down as a matter of inviolable rule that all the committee members must remain present, but it is obvious that if a large number of members of the committee are absent, the public



hearing may become illusory. In the instant case, the notification prescribing the procedure for public hearing requires, inter alia, appointment of an officer of the GPCB, an officer from the department of Environment and Forest and three senior citizens of the area nominated by the District Collector. If all these persons are absent, the Committee will only consist of Government/Panchayat officers and the very purpose of nominating the former categories of persons on the committee would be frustrated. In each case, therefore, the convener of the committee shall have to consider whether the number of committee members present as well as the categories which they

@page-Guj82

represent are adequate so as to serve the purpose of public hearing. To put it differently at least the officer of the GPCB, the officer from the Department of Environment and Forest and at least one senior citizen nominated by the Collector will have to remain present in order to prevent the public hearing from being rendered invalid.

Another aspect which is required to be considered is that while nominating three senior citizens on the Committee, the Collector shall also consider that at least one of the three senior citizens (not necessarily above the age of 65 years) should have some credentials on the issues of environmental concerns.

10. 0.Minutes

10.1. As regards the minutes of the proceedings of public hearing, the learned counsel for the petitioner has given the details of the applications made by the petitioner for getting copies of the minutes and the reply from the GPCB that there is no provision in the notification dated 11-4-1997 about supply of copies of such minutes.

10.2. At the hearing of this petition, however, the learned counsel for the GPCB has stated that if and when any person approaches for copies of such minutes, such copies are being supplied. This grievance would, therefore, not survive. It is required to be noted that this stand is taken by the GPCB in view of the instructions from the Joint Secretary, Government of India, Ministry of Environment and Forests, New Delhi as contained in their letter dated 13-7-1998 (Annexure III to the reply affidavit).

11. No. of public hearings

As regards the number of public hearings, a submission is made that the number of hearings should be restricted to only one project per day. We are not in a position to hold that the committee can hold meetings for more than one project per day but it all depends upon the nature of the project, the size of the project, the number of persons likely to be affected by the project and the number of persons who want to lodge their objections and make suggestions.

At this stage, we may like to note that from the particulars made available by the petitioner, it appears that even though public hearings had taken place as far back as in August, September, November and December, 1998 in respect of many projects, no environmental clearance certificate is given by the Central Government so far. The convener and the members of the Committee may, therefore, well consider that if the persons lodging objections and making suggestions require any further particulars of the project, the unit may in the facts and circumstances of a given case, be required to furnish such particulars and thereafter a further hearing may be given. It is not possible to make any hard and fast rule but the committee must keep in mind the spirit of the notification for public hearing and particularly the object for which the public hearing is to be held. In this connection, the following observations made

by the Central Government in its letter dated 17-7-1998 to the Pollution Control Boards are required to be noted :-

"In respect of certain projects such as laying of pipelines, Highways and projects located in inaccessible regions, clarification has been sought whether the public hearing should be conducted in one place or number of places etc. The matter has been examined. It has been decided that venue and number of public hearing to be conducted for a particular proposal may be left to the discretion of State Pollution Control Board.

State Pollution Control Boards/Pollution Control Committees may take a decision on the venue and number of public hearings for projects which requires environmental clearance as per provisions of EIA Notification keeping in view the nature of the project, its environmental ramification and feasibility of grouping of people at nearest convenient locations."

12. Communication/publication of Environmental Clearance Certificate.

Lastly, regarding the environment clearance certificate, it is obvious that if the persons who have participated at the public hearing or other persons who are aggrieved by action of any other authorities of the Central Government are desirous of filing an appeal before the National Environmental Appellate Authority Act, 1997, they would not be in a position to file such appeal if the authorities do not make them aware that a particular unit is granted the environmental clearance certificate. The learned Addl. Advocate General and the learned Addl. Standing Counsel for the Central Government, therefore, agree that the concerned authority

@page-Guj83

which grants environmental clearance certificate shall cause a public notice of the grant of such

clearance in the case of a particular unit in at least two newspapers having wide circulation in the area just as a public notice for public hearing is required to be published in at least two newspapers having wide circulation in the area.

22-2-2000

13. Scope of Judicial Review

13.1. Before proceeding to give final directions in light of the above discussion, it is necessary to deal with the contentions in the nature of preliminary objections raised by Mr. S. N. Shelat, learned Addl. Advocate General with Mr. K. H. Baxi for the GPCB, Ms. Manisha Lavkumar, learned AGP for the State Government and by Mr. M. D. Pandya, learned counsel for the Gujarat Electricity Board about the power of the Court to entertain this petition and to give directions. These contentions are dealt with last because the preliminary objections are required to be examined keeping in mind the nature of the directions as indicated in the foregoing discussion and the stand adopted on behalf of the Central Government.

13.2. The learned counsel for the respondents other than the Central Government have submitted that while exercising the jurisdiction under Article 226 of the Constitution, this Court would not rewrite the notification issued by the Central Government as the same is a complete code of procedure for public hearings and this Court cannot add anything to such notification. In support of the said contention, reliance is placed by the learned counsel on the decision in *Dr. Rashlal Yadav v. State of Bihar*, (1994) 5 SCC 267 : (1994 AIR SCW 3329), *Kikabhai v. State of Gujarat*, 1988 (1) GLR 569, *Maharashtra State Board of Secondary and Higher Secondary Education v. K. S. Gandhi*, (1991) 2 SCC 716 : (1991 AIR SCW 879). It is the contention of the learned counsel for the State Government and the GPCB that what the petitioner wants is extension

of the scope of public hearing beyond what is prescribed in the notification and, therefore, they submit that once the rule making authority has delineated the scope of public hearing, it is not for this Court to add to it merely because the petitioner has come out with suggestions which may be quite laudable. It is submitted that at the highest the Court may make recommendations as laid down by the Apex Court in (1991) 2 SCC 716 : (1991 AIR SCW 879) and then it is for the Government to decide whether to amend the notification.

13.3. On the other hand, Mr. Clerk, learned counsel for the petitioner has submitted that it is because the local officers who are entrusted with the task of implementing the notification are not acting in accordance with the letter and spirit of the notification that the object of the notification is sometimes frustrated and that, therefore, if the requirements as suggested by the petitioner are not read into the notification, the public inquiry itself may become meaningless and illusory. The learned counsel has cited 1998 (8) SCC 194 : (AIR 1998 SC 3261) and 1991 (2) SCC 604 : (AIR 1991 SC 1117) to contend that the Courts do read principles of natural justice into statutory provisions unless they are expressly or by necessary implication excluded. It is submitted that when the notification itself provides for public hearing, the Court will not be supplanting the notification as only the scope of meaningful public hearing is to be indicated.

Mr. Clerk has also relied on the decision of the Apex in *A.P. Aggarwal v. Govt. of NCT of Delhi*, (2000) 1 SCC 600 : (AIR 2000 SC 205) and submitted that where the rule confers power together with a discretion, the authority is conferred power which is coupled with a duty to act in a manner which will promote the object for which the power is conferred and that it is, therefore, not open to the authorities to exercise its discretion in a manner which would defeat the object for which the power is conferred.

14. Discussion of the Case Law cited on behalf of the State Government and the GPCB

14.1. The learned counsel have relied on the decision of the Apex Court in *Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupesh Kurmarsheth*, AIR 1984 SC 1543 and particularly the following observations made by Their Lordships (at page 1550) :-

"It is exclusively within the province of the legislature and its delegate to determine, as a matter of policy, how the provisions of the Statute can best be implemented and what measures, substantive as well as procedural would have to be incorporated in the rules or regulations for the efficacious achievement of the objects and purposes of the Act. It is

@page-Guj84

not for the Court to examine the merits or demerits of a policy laid down by regulation making body because its scrutiny has to be limited to the question as to whether the impugned regulations fall within the scope of the regulation making power conferred on the delegate by the Statute.

Any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that, in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act."

These observations were made in the context of the claim of the examinees at a public examination that they had a right to have their answer books reassessed by experts other than the original examiner. The Bombay High Court had accepted the said contention, but the Apex Court reversed that verdict.

It is true that it is not for the Court to examine the merits or demerits of a policy laid down by regulation making body but in the instant case the petitioner is not challenging the wisdom of any policy or the measures enacted by the rule making authority for implementing that policy. The grievance of the petitioner is that in spite of the fact that the rule making authority has laid down the policy and has provided the measures for implementing that policy, on account of the wooden headed and arbitrary approach on the part of the implementing authority, the purpose of the public hearing is not being achieved and that, therefore, the petitioner is not challenging either the notification issued by the Central Government or the resolution passed by the State Government for implementing that notification. The petitioner is making a serious grievance about non-compliance with the notification by the implementing agency in spite of the clear language of the notification and the subsequent instructions issued by the Central Government on 13-7-1998. Hence, the aforesaid judgment does not come in the way of the petitioners.

14.2. The learned counsel for the respondents have also relied on the decision in *Hindi Hitrakshak Samiti v. Union of India*, AIR 1990 SC 851 for contending that where the existence of a fundamental right has to be established by acceptance of a particular policy or a course of action for which there is no legal compulsion or statutory imperative, and on which there are divergent views, the same cannot be enforced under Article 32 or Article 226 of the Constitution as the said Articles cannot be a means to indicate policy preferences.

In the instant case, at the hearing of this petition, the petitioners have not prayed for any writ to quash the notification or to direct the authorities to effect any policy preference. Hence, this decision is of course no avail to the respondents.

14.3. The learned counsel for the respondents have also relied on the decision of the Hon'ble Supreme Court in *Union of India v. J. N. Sinha*, AIR 1971 SC 40 : (1971 Lab IC 8) to contend that rules of natural justice are not embodied rules nor can they be elevated to the position of fundamental rights. Their aim is to secure justice or to prevent miscarriage of justice but these rules can operate only in areas not covered by any law validly made and they do not supplant the law but supplement it.

The learned counsel for the respondents have also relied on the decision in *The Commissioner of Expenditure Tax, Andhra Pradesh v. PVG Raju*, AIR 1976 SC 140 and in *Dr. Rash Lal Yadav v. State of Bihar*, (1994) 5 SCC 267 : (1994 AIR SCW 3329) where the Apex Court has laid down that where the statutory provisions can be read consistently with the principles of natural justice, the Courts should do so but where the statutory provision either specifically or by necessary implication excludes the application of any or all the principles of natural justice then the Court cannot ignore the mandate of the legislature or the statutory authority and read the principles of natural justice into the concerned provisions. Whether the exercise of a power conferred should be made in accordance within any of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and effect of the exercise of such power.

Mr. Shelat for the GPCB further contended that the Court cannot add words to a rule in order to make it consistent with the principles of natural justice unless the Court first comes to the conclusion that but for such addition or but for reading the principles of natural justice into such rule, the rule would be required to be struck down as ultra vires. In support of the said contention,

@page-Guj85

the learned counsel relied on the decision of the Apex Court in Ahmedabad Municipal Corporation v. Nilaybhai R. Thakore, AIR 2000 SC 114 with the concerned provision particularly the observations made in Para 14 of the judgment where the Court observed that keeping in mind the fact that the Rule in question is only a subordinate legislation and by declaring the Rule ultra vires, as has been done by the High Court, we would be only causing considerable damage to the cause for which the Municipal Corporation had enacted this Rule and thereafter Their Lordships relied on the oft-quoted principle relied by Lord Denning in the case of Seaford Court Estate Ltd. v. Asher, (1949) 2 All ER 155.

Mr. Shelat, learned Addl. Advocate General has heavily relied on the decision of the Apex Court in Dr. Rash Lal Yadav v. State of Bihar, (1994) 5 SCC 267 and particularly the following observations from Union of India v. J. N. Sinha, (1970) 2 SCC 458 : AIR 1971 SC 40 (at page 42 of AIR) :

"It is true that if a statutory provision can be read consistently with the principles of natural justice, the Court should do so because it must be presumed that the legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But if on the other hand a statutory provision either specifically or by necessary implication excludes the application of any or all the principles of natural justice then the Court cannot ignore the mandate of the legislature or the statutory authority and read into the concerned provision the principles of natural justice."

and again on the following observations of Sarkaria, J. in Swadeshi Cotton Mills v. Union of India, (1981) 1 SCC 664 : AIR 1981 SC 818 :

"We have already noticed that the statute conferring the power, can by express language exclude its application. Such cases do not

present any difficulty. However, difficulties arise when the statute conferring the power does not expressly exclude this rule but its exclusion is sought by implication due to the presence of certain factors : such as, urgency, where the obligation to give notice and opportunity to be heard would obstruct the taking of prompt action of preventive or remedial nature."

It is true that the principles of natural justice do not supplant the law but they only supplement the law but when the Apex Court has also held that it must be presumed that the legislatures intend the statutory authorities to act in accordance with the principles of natural justice, there is no question of this Court supplementing the law made by the rule making authority. On the contrary, His Lordship Chinnappa Reddy, J. in Swadesh Cotton Mills v. Union of India, observed as under :-

"The implication of natural justice being presumptive may be excluded by express words of statute or by necessary intendment. Where the conflict is between the public interest and the private interest, the presumption must necessarily be weak and may, therefore, be readily displaced. The presumption is also weak where what are involved are mere property rights. In case of urgency, particularly where the public interest is involved, pre-emptive action may be a strategic necessity. There may then be no question of observing natural justice. Even in cases of pre-emptive action, if the statute so provides or if the Court do deem fit in appropriate cases, a postponed hearing may be substituted for natural justice."

Applying the aforesaid principles, it cannot be said that there would be any conflict between public interest and private interest; if anything the concern for environment has to be treated as a part of public interest just as much as the interest of the State Government in developing the industry is also to be treated as a part of

the public interest. So also as far as the urgency is concerned, from the particulars furnished by the petitioner, it is clear that in respect of a number of industries public hearings had taken place in the years 1998 and 1999 but no environmental clearance is granted by the Central Government so far. The pendency of this petition can obviously not be an excuse for not taking any decision on such applications because the petition came to be filed in October 1999 and notice came to be issued in this petition only on 29-10-1999. Even thereafter on 16-12-1999 this Court made it clear that pendency of this petition would not affect any progress in the matter of grant of necessary consent, permission etc. in accordance with law, which will of course be subject to any orders that may be made hereinafter in this petition. Even thereafter when respondents Nos. 6 to 24 came forward with an application that pendency of

@page-Guj86

this petition may come in the way of their applications for clearance being considered, after hearing the learned counsel for the parties we granted their request and deleted them from the arena.

14.4. Ms Manisha Lavkumar, learned AGP has relied on the decision of this Court in *Kikabhai Ukabhai Patel v. State of Gujarat*, 1988 (1) GLR 569 in support of her contention that when a public hearing is in the nature of an adjudicatory process, it may assume a different complexion, but when the hearing is for the purpose of inviting objections to a development plan in a Town Planning Scheme or to grant of environmental clearance to an intending industrial unit, all that is contemplated is that the affected persons have a right to submit their objections and to bring the appropriate facts or their perceptions to the notice of the authorities but the procedure is not contemplated for giving personal hearing to any objector. The members

of the public have been given an opportunity to object or to make suggestions but once their objections or suggestions are received, the same are required to be considered by the concerned authority but there remains no question of giving any personal hearing to such objectors. It is, therefore, submitted that once the hearing takes place before the Committee where the affected persons can lodge their objections or make their suggestions, the objectors do not have any right whatsoever to demand any copies of any documents or to ask for any expansion in the scope of hearing.

While it is true that the nature of the public hearing may not be in the nature of an adjudicatory hearing, one cannot lose sight of the fact that the persons who lodge their objections or make suggestions before the committee are not only entitled to get copies of the minutes of the meeting at the public hearing, but ultimately if the Central Government grants the environmental clearance, under S. 11 of the National Environmental Appellate Authority Act, 1997, they also have a right to prefer an appeal to the Appellate Authority against the order granting environmental clearance. Section 11(2) of the said Act also defines "person" as any person who is likely to be affected by the grant of environmental clearance or any association of persons (whether incorporated or not) likely to be affected by such order and functioning in the field of environment.

14.5. . In the alternative, the learned AGP referred to a decision of the Apex Court in *A.P. Pollution Control, Board v. Prof, M. V. Nayudu* (Retd. (1999) 2 SCC 718 : (AIR 1999 SC 872) for contending that when the Court finds any shortcoming in the procedure for implementing a Central Government notification, the Court would not lay down any new rule or prescribe any condition precedent and that even where the Court feels that something should be added in the notification, the Court may at the most

make observations and request the Central Government and State Government to take notice of such recommendations and to take appropriate action and the Court on its own would not issue directions.

As discussed earlier, this Court does not propose to ask the Central Government or the State Government to amend any notification but when the Court finds that while exercising the power conferred on it, if the implementing agency does not pay heed to the object for which the power is conferred, the Court can give appropriate directions to the authorities to act in accordance with the notification as interpreted by the Court in light of the submissions made at the hearing of the petition.

It is pertinent to note that in the aforesaid decision, the Apex Court has even held that in a large number of matters coming before the Apex Court either under Art. 32 or under Art. 136 and also before the High Courts under Art. 226, complex issues relating to the environment and pollution, science and technology have been arising and in some cases, the Apex Court has been finding sufficient difficulty in providing adequate solution to meet the requirements of public interest, environmental protection, elimination of pollution and sustained development. The Court may, therefore, even refer the matters to professional or technical bodies. The Apex Court further observed that the environmental concerns arising in the Supreme Court under Art. 32 or under Art. 136 or under Art. 226 in the High Courts are of equal importance as human rights concerns. Both are to be traced to Art. 21 which deals with the fundamental right to life and liberty and that in the context of emerging jurisprudence relating to environmental matters, it is the duty of the Court to render

@page-Guj87

justice by taking all aspects into consideration.

14.6. In *A. P. Aggrawal v. Govt. of NCT of Delhi*, (2000) 1 SCC 600 : (AIR 2000 SC 205), the Apex Court has held that where a rule confers power together with a discretion, the authority is conferred power which is coupled with a duty to act in a manner which will promote the object for which the power is conferred and that it is, therefore, not open to the authority to exercise its discretion in a manner which would defeat the object for which the power is conferred. It appears that even in the context of the grievance made in this petition, since the petitioner is not challenging the notification issued by the Central Government or the Resolution passed by the State Government as such, the Court is not required to read anything into the notification except merely requiring the authorities to exercise their power under the aforesaid notification/resolution with a duty to exercise the power in a manner which will subserve the object for which the power is conferred i.e. to enable the affected persons themselves or through their associations or Non-Governmental organizations to participate at the public hearing for environmental clearances in a meaningful manner, which object will be achieved only if the participants at such public hearing are supplied with the copies of the executive summary of the project which would include all the salient features of the project in a manner which will be intelligible to the affected persons such as local residents and their associations and which features would include the highlighted features enumerated in the application as well as features having specific reference to the resources of the community such as water, land and also as to how such resources of the community are likely to be affected by operation of the project. So also when the affected persons make their representations at the public hearing as well as suggestions before the Committee, and since the recommendations made by the committee are going to carry considerable weight with the Central Government in the matter of grant

of environment clearances, it is but natural that the affected persons must have access to the minutes of the meeting at which the public hearing is held so that they know not only that their objections and suggestions have been considered by the Committee and placed before the Central Government but also that if the persons in charge of the project have given any assurance to allay the apprehension of the local residents or if the committee had made any suggestion or recommendations for tying down the persons in charge of the project to any particular requirements regarding the use of the community resources, ultimately if the environmental clearance is granted by the Central Government keeping in mind such assurances and commitments, the persons incharge of the project can be held responsible for non-compliance with any such commitments or assurances in future. Supply of minutes of the meetings at which the public hearings are held is, therefore, necessary to make such public hearings effective and not merely paper meetings. The very fact that the Ministry of Environment and Forests in the Central Government has also accorded such importance to the transparency at such public hearings supports the petitioner's case rather than the case of the other respondents. The implementing agencies are not acting in a manner which would best subserve the object of the public hearing, which would be clear from the fact highlighted by Mr. Clerk for the petitioner that even after the letter dated 13-7-1998 from the Central Government to the Chairman of the GPCB (Pg. 222 of the paper book), on 1-4-1999 also the GPCB had replied to the petitioner that the Central Government notification did not contain any provisions for giving copies of the minutes of such public hearings. Today also Mr. Clerk has tendered an affidavit of Mr. A. K. Solanki sworn on 21-2-2000 stating that when he had gone to the GPCB, the concerned Environmental Engineer did not furnish a copy of the executive summary regarding the proposed project of Indo

Gulf Corp. Ltd. as the Engineer told him that he would consult the Member Secretary before giving a copy of the executive summary. The public notice for public hearing regarding the said project had already been advertised in the newspaper dated 15-2-2000.14.6. In *A. P. Aggrawal v. Govt. of NCT of Delhi*, (2000) 1 SCC 600 : (AIR 2000 SC 205), the Apex Court has held that where a rule confers power together with a discretion, the authority is conferred power which is coupled with a duty to act in a manner which will promote the object for which the power is conferred and that it is, therefore, not open to the authority to exercise its discretion in a manner which would defeat the object for which the power is conferred. It appears that even in the context of the grievance made in this petition, since the petitioner is not challenging the notification issued by the Central Government or the Resolution passed by the State Government as such, the Court is not required to read anything into the notification except merely requiring the authorities to exercise their power under the aforesaid notification/resolution with a duty to exercise the power in a manner which will subserve the object for which the power is conferred i.e. to enable the affected persons themselves or through their associations or Non-Governmental organizations to participate at the public hearing for environmental clearances in a meaningful manner, which object will be achieved only if the participants at such public hearing are supplied with the copies of the executive summary of the project which would include all the salient features of the project in a manner which will be intelligible to the affected persons such as local residents and their associations and which features would include the highlighted features enumerated in the application as well as features having specific reference to the resources of the community such as water, land and also as to how such resources of the community are likely to be affected by operation of the project. So also when the affected persons make their



representations at the public hearing as well as suggestions before the Committee, and since the recommendations made by the committee are going to carry considerable weight with the Central Government in the matter of grant of environment clearances, it is but natural that the affected persons must have access to the minutes of the meeting at which the public hearing is held so that they know not only that their objections and suggestions have been considered by the Committee and placed before the Central Government but also that if the persons in charge of the project have given any assurance to allay the apprehension of the local residents or if the committee had made any suggestion or recommendations for tying down the persons in charge of the project to any particular requirements regarding the use of the community resources, ultimately if the environmental clearance is granted by the Central Government keeping in mind such assurances and commitments, the persons incharge of the project can be held responsible for non-compliance with any such commitments or assurances in future. Supply of minutes of the meetings at which the public hearings are held is, therefore, necessary to make such public hearings effective and not merely paper meetings. The very fact that the Ministry of Environment and Forests in the Central Government has also accorded such importance to the transparency at such public hearings supports the petitioner's case rather than the case of the other respondents. The implementing agencies are not acting in a manner which would best subserve the object of the public hearing, which would be clear from the fact highlighted by Mr. Clerk for the petitioner that even after the letter dated 13-7-1998 from the Central Government to the Chairman of the GPCB (Pg. 222 of the paper book), on 1-4-1999 also the GPCB had replied to the petitioner that the Central Government notification did not contain any provisions for giving copies of the minutes of such public hearings. Today also Mr. Clerk

has tendered an affidavit of Mr. A. K. Solanki sworn on 21-2-2000 stating that when he had gone to the GPCB, the concerned Environmental Engineer did not furnish a copy of the executive summary regarding the proposed project of Indo Gulf Corp. Ltd. as the Engineer told him that he would consult the Member Secretary before giving a copy of the executive summary. The public notice for public hearing regarding the said project had already been advertised in the newspaper dated 15-2-2000.

14.7. 14.7. In our view, the petitioner in the instant case has not requested the Court to travel beyond the procedure prescribed in the Central Government notifications. As a matter of fact, the Central Government which issued the notifications dated 27-1-1994 and 10-4-1997 under S. 3 of the Environment Protection Act itself has appreciated the scope of public hearings and the object sought to the achieved and has specifically

@page-Guj88

instructed the GPCB as under (vide letter dated 13-7-1998 Annexure III to the reply affidavit) :-

"We are often receiving requests from Non-Governmental Organizations for providing them copies of proceedings according environmental clearance to projects. You are advised to make copies of environmental clearance proceedings available in your office on request to Non-Governmental Organizations.

Yours faithfully,

Sd/-

(R. H. Khwaja)

Joint Secretary"

Such instructions from senior officer of the Ministry of Environment and Forest in the



Central Government to the Chairman, Gujarat Pollution Control Board have to be given due weightage and the implementing agency, that is, the GPCB and the other officers appointed on the committee cannot undermine the importance of public hearings "and the measures for transparency and the role of the Non-Governmental Organizations in playing meaningful, effective and constructive role at the public hearings for environmental clearances.

15. Having regard to the facts on record, it cannot be said that more meaningful implementation of the procedure prescribed by the rule making authority would not be required in view of the alleged urgency, as in spite of the public hearings having already been concluded way back in the year 1998 in many cases and April/June, 1999 in other cases, the environmental clearances are neither granted or rejected in most of the cases.

2-3-2000

16. In response to a query from the Court, Mr. Anant S. Dave, learned Additional Standing Counsel for the Central Government states under instructions dated 25-2-2000 from the Director in the Ministry of Environment and Forests, Government of India that the Ministry does not charge any fees for processing the application for environmental clearance. Mr. Baxi for the GPCB also states that the GPCB does not charge any fees for environmental clearance.

17. In view of the above discussion, the following directions are issued :-

(i) The venue of public hearing as prescribed in the Central Government Notification dated 10-4-1997 shall be as near as possible to the site of the proposed project or to the affected village and in any case the venue of hearing shall ordinarily not be farther away from the headquarters of the taluka in which the proposed

project is coming up or of the taluka which includes most of the affected villages.

(ii) The GPCB shall cause the notice of public hearing to be published in at least two newspapers widely circulated in the region around the project, one of which shall be in the vernacular language of the locality concerned. This would mean that the GPCB is at liberty to publish the notice even in more than two newspapers. Moreover, a newspaper widely circulated in the region around the project does not necessarily mean the newspaper which is being published from the region around the project. All that it means is that the newspaper is widely circulated in the region around the project, even if the newspaper is published from outside the region. For the purposes of finding out the figures of circulation, the GPCB may of course treat the taluka in which the project is coming up or the taluka in which the affected villages fall as a region around the project, but it is the circulation which matters and not the place of publication as already stated above.

The GPCB shall also send a copy of the public notice about the public hearing to the Gram Panchayat/Nagar Panchayat/Municipality of each of the villages/towns likely to be affected by the project with a request to bring it to the notice of the people likely to be affected by the project.

(iii) The date of first public hearing in connection with any project requiring environmental clearance certificate has to be after at least 30 days from the date of publication of the notice in the newspapers. This will be minimum period and it is open to the GPCB to fix the public hearing after a longer period but in any case the GPCB shall make sure that the copies of the executive summary of the project furnished by the unit to the GPCB are made available at all local places mentioned in the notification at least 30 days prior to the date of public hearing.



As far as the Environment Impact Assessment report submitted by the unit to the GPCB along with the application for clearance certificates is concerned, the summary

@page-Guj89

of such Environment Impact Assessment report in the local language shall also be made available to the concerned persons on demand and if further demanded, a copy of the Environment impact Assessment report also shall be made available by the GPCB. It will be open to the GPCB to charge reasonable amount for supplying copies of such summary or copies of the report, but in any case the request shall be acceded to within one week from the date of the demand.

The GPCB shall bear in mind the following observations made by the Central Government in its letter dated 13-7-1998 :-

"We are often receiving requests from Non-Governmental Organizations for providing them copies of proceedings according environmental clearance to projects. You are advised to make copies of environmental clearance proceedings available in your office on request to Non-Governmental Organizations."

(iv) As far as the quorum of the Committee is concerned, for the Committee to hold valid hearing, at least one half of the members of the Committee shall have to remain present and at least the following members of the Committee shall also have to remain present for the hearing to be considered as valid public hearing :-

1. The officer from the GPCB

2. The Officer from the Department of Environment and Forest of the State Government.

3. One of the three senior citizens nominated by the Collector.

This direction shall be read along with the observations made in para 9 hereinabove.

(v) The minutes of the public hearing shall be furnished by the GPCB on demand and on payment of reasonable charges. When any demand for such minutes is made and the charges specified therefor are paid, the minutes shall be supplied as expeditiously as possible and in any case within one fortnight from the date on which the minutes are sent to the Environment Impact Agency or to the Central Government in the Ministry of Environment and Forest.

The GPCB shall bear in mind the following observations made by the Central Government in its letter dated 13-7-1998 :-

"We are often receiving requests from Non-Governmental Organizations for providing them copies of proceedings according environmental clearance to projects. You are advised to make copies of environmental clearance proceedings available in your office on request to Non-Governmental Organizations."

(vi) As far as the number of public hearings which may be held by the Committee per day, there cannot be any hard and fast rule, but looking to the site of the project and considering the impact on the environmental front, the Committee shall consider whether the number of public hearings is consistent with the object with which the public hearing is to be held. The Committee shall also consider the following observations made by the Central Government in its letter dated 17-7-1998 for fixing the venue and number of public hearings for certain projects which require environmental clearance :-

"In respect of certain projects such as laying of pipelines, Highways and projects located in inaccessible regions, clarification has been

sought whether the public hearing should be conducted in one place or number of places etc. The matter has been examined. It has been decided that venue and number of public hearing to be conducted for a particular proposal may be left to the discretion of State Pollution Control Board.

State Pollution Control Boards/Pollution Control Committees may take a decision on the venue and number of public hearings for projects which require environmental clearance as per provisions of EIA Notification keeping in view the nature of the project, its environmental ramification and feasibility of grouping of people at nearest convenient locations."

(vii) As far as the Environment Clearance certificate is concerned, as soon as such clearance is granted, the State Government or the Central Government, as the case may be, shall cause publication of the gist of such clearance certificate in the newspapers in which the notice for public hearing was published by the GPCB for the particular project in question.

(viii) It is clarified that since the GPCB is the agency which is to fix the venues and the date of hearing and also to cause publication of the notices for public hearing as per the notification dated 10-4-1997, there is nothing to prevent the GPCB from charging the

charge higher rates than the newspapers with less circulation and also to make sure that if more than one public hearings are required to be held, the administrative expenses incurred for such hearings are taken care of and also for supplying copies of documents which may be demanded by the affected people or Non-Governmental Organizations.

18. It is clarified that the Court has not gone into the merits of the contentions about legality or otherwise of the public hearings and that the learned counsel for the petitioner has not pressed for challenge to any public hearing held so far till February, 2000 including the public hearing in respect of grant of environmental clearance to the GEB for its Dhwaran Thermal Powers Project, Anand though the petitioner has reserved its right to challenge the final clearance which may be granted in favour of the other parties on the grounds other than the ground about alleged defects in the public hearings held so far in respect of the other projects.

19. The petition is accordingly disposed of in terms of the aforesaid directions and observations.

Rule is made absolute to the aforesaid extent with no order as to costs.

Order Accordingly .

@page-Guj90

applicant-unit fees for this exercise nor is there anything to prevent the Central Government from charging any fees or expenses for granting the environmental clearance certificates. These observations are made in order to see that for the purpose of giving wider publicity to the notice for public hearings, the GPCB does not feel handicapped in the matter of incurring expenses for publication of such notices in newspapers with wider circulation which would normally