

HIGH COURT OF CHHATTISGARH, BILASPUR
WPIL No. 43 of 2019

- Ramesh Agrawal S/o Late Shri Narayan Das Agrawal Aged About 64 Years R/o Satyam Kunj, Itwari Bazar, Nayaganj, District : Raigarh, Chhattisgarh

---- Petitioner

Versus

1. Union of India Through Its Ministry Of Environmental Forest And Climate Change, Government of India, Indira Parayavaram Bhawan, Jor Bagh, New Delhi.
2. State of Chhattisgarh Through Its Principal Secretary, Housing And Environment Department, Government of Chhattisgarh, Mantralaya, Mahanadi Bhawan, New Raipur District Raipur Chhattisgarh
3. State Environment Impact Assessment Authority Through Its Chairman P 4b/ 226, Near Canara Bank, Sector, 27, New Raipur, District Raipur Chhattisgarh
4. Chhattisgarh Environment Conservation Board Through Its Member Secretary, Paryavaas Bhawan, North Block, Sector -19, Atal Nagar, New Raipur District Raipur Chhattisgarh
5. Member Secretary Chhattisgarh Environment Conservation Board, Paryavaas Bhawan, North Block Sector-19, Atal Nagar, New Raipur District Raipur Chhattisgarh.
6. Regional Officer Chhattisgarh Environment Conservation Board, Regional Office, TV Tower Road, Raigarh, District Raigarh Chhattisgarh.
7. District Collector and District Magistrate Raigarh District Raigarh Chhattisgarh.
8. M/s Maharashtra State Power Generation Company Limited (MSCPGCL) Through Its Director HDIL Towers, 3rd Floor, Prof. A.K. Marg, Bandra (E) Mumbai (Maharashtra)

---- Respondents

For Petitioner	:	Shri K. Rohan, Advocate
For Respondent No.1/UOI	:	Shri Vaibhav P. Shukla, Standing Counsel
For State	:	Shri S.C. Verma, Advocate General assisted by Ms. Richa Shukla, Dy. Government Advocate
For Respondent No.4	:	Shri Animesh Tiwari, Advocate
For Respondent No.8	:	Dr. N.K. Shukla, Senior Advocate assisted by Shri Sail Sinha and Shri Shailendra Shukla, Advocates

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice

Hon'ble Shri Goutam Bhaduri, Judge

Order on Board

Per, P. R. Ramachandra Menon, Chief Justice

20.06.2019

1. This matter has been filed by the Petitioner as a Public Interest Litigation, particularly, with regard to the objection that has been raised in connection with the setting up of a project by the 8th Respondent herein in the State of Chhattisgarh.
2. We have heard the learned counsel appearing for the Petitioner, the learned Standing Counsel for Union of India, the learned Advocate General for the State, learned Counsel for the 4th Respondent and the learned Senior Counsel for the 8th Respondent as well.
3. The sum and substance of the case projected by the Petitioner is that as per the relevant provisions of the statute, the public hearing in relation to the objection of setting up the Unit has to be held and heard by the Member Secretary of the Environment Conservation Board concerned, in the instant case, the 5th Respondent. Instead of this, it is stated that the power has been delegated to the 6th Respondent, who in turn has issued a notice produced as Annexure-P/1, scheduling the date of hearing as 27.06.2019. This according to the Petitioner is contrary to the mandate of Annexure-P/5, the Environment Impact Assessment Notification, 2006 dated 14.09.2006. Annexure-P/2, the Notification issued by the State Government on 21.12.2006 conferring power upon the Regional Officer i.e. the 6th Respondent to proceed with the issue is stated as wrong and liable to be interdicted. It is for the said reason that Annexure P/1 notification has been subjected to challenge in this writ petition

by raising the prayers as in the following terms :

“10. a) Call for the entire records pertaining to the present case.

b) Hold that the action of the Respondent Authorities in issuance of the impugned Public Notification published in the vernacular daily newspaper – '**Kelo Pravah**' on 26.05.2019 informing that the 'Public Hearing' is to be conducted on 27.06.2019 (Annexure – P/1) is in flagrant violations of and in complete and utter disregard to the provisions of Environment Impact Assessment Notification, 2006 dated 14.09.2006 and without jurisdiction, therefore, untenable in the eyes of law.

c) Issue a Writ of certiorari quashing and setting aside the impugned Public Notification published in the vernacular daily newspaper – '**Kelo Pravah**' on 26.05.2019 informing that the 'Public Hearing' is to be conducted on 27.06.2019 (Annexure – P/1)

d) Hold that the Paragraph 3 of the impugned Order dated 21.12.2006 (Annexure – P/2) issued by the State of Chhattisgarh whereby the decision-making power regarding the determination of the date and venue of the Public Hearing to be conducted has been sub-delegated to the Regional Officer of the Chhattisgarh Environment Conservation Board contrary to the provisions and mandates of the Environment Impact Assessment Notification, 2006 dated 14.09.2006 to be ultra vires and unconstitutional.

e) Issue a Writ of certiorari quashing and setting aside the Paragraph 3 of the impugned order dated 21.12.2006 (Annexure – P/2) issued by the State of Chhattisgarh whereby the decision-making power regarding the determination of the date and venue of the Public Hearing to be conducted has been sub-delegated to the Regional Officer of the Chhattisgarh Environment Conservation Board contrary to the provisions and mandates of the Environment Impact Assessment Notification, 2006.

f) Issue a Writ of Mandamus directing the Respondent Authorities to consider the Representation preferred / Objections raised by the Petitioner.

g) Grant the cost of the petition to the Petitioner.

h) Grant any other relief as deemed fit and proper in the facts and circumstances of the case.”

4. When the matter is taken up for consideration, the learned counsel for the Petitioner asserted that by virtue of the statutory mandate as mentioned above, the notice of hearing has to be issued by the 5th Respondent and it has to be heard by the Member Secretary and nobody else. When the statute says something to be done in a particular manner, it has to be done in that particular manner alone and it is never for the State or any other authority to have the said power delegated to somebody else. The learned counsel further submits that the Petitioner having serious objection with regard to the setting up of the project, adverse consequences may be resulted if no interference is made and hence the writ petition.
5. According to the Petitioner, the very purpose of the statute / provisions of law is to ensure that all the stakeholders are informed well in advance as to the actual facts and figures, in turn giving opportunity to raise objections, if any, so as to ensure that there is no encroachment into the forbidden field governing the environmental issues. It is also the case of the Petitioner that notice of hearing was issued earlier, but just on the basis of a request made by the 8th Respondent, it was adjourned *sine die* and later, the notice of hearing came to be issued / published in a local vernacular daily. The vigil eyes of the Petitioner have been following the steps and he has come across the same and has preferred necessary proceedings so as to cause their objections to be raised. It is in the said circumstances, that assertion is made

that the matter requires to be heard at the level of the Member Secretary and not by the 5th Respondent, so as to be in conformity with the statute.

6. The learned Advocate General representing the State and the competent authorities submits that there is no intent to deviate from the statutory prescription in any manner and that the notice has been issued as instructed by the Member Secretary to have the hearing held on 27.06.2019. It is also fairly stated by the learned Advocate General that the final hearing will be conducted by the Member Secretary himself and all the stakeholders including the Petitioner can air their views / objections, would the said Respondent finalize the matter, passing appropriate orders in accordance with law.
7. The learned counsel for the Petitioner submits that the grievance of the Petitioner would stand redressed and that the relief can be moulded accordingly.
8. In the above circumstance, we are of the view that no other issue survives for consideration or adjudication at the hands of this Court. The writ petition is disposed off making clear that the hearing on the objections scheduled on 27.06.2019 pursuant to Annexure-P/2 notice shall be conducted by the 5th Respondent himself and not by the 6th Respondent, who shall finalize the proceedings in accordance with law.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Goutam Bhaduri)
Judge