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WP No.23570 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2023

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THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

WP No.23570 of 2017

G.Sundarrajan : Petitioner

versus

1.Union of India,
rep. By the Secretary to Government,
Department of Atomic Energy
Anusakthi Bhavan,
Chatrapathy Shivaji Maharaj Marg,
Mumbai 400 001

2.The Chairman,
Atomic Energy Regulatory Board,
Niyamak Bhavan, Anushaktinagar,
Mumbai 400094

3.The Chairman and Managing Director,
Nuclear Power Corporation of India Ltd.,
Nambhkiya Urja Bhavan,
Anuskahti Nagar, Mumbai 400094

4.The Site Director,
Koodankulam Nuclear Power Project,
Koodankulam, Radhapuram Taluk,
Tirunelveli District

: Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for

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issuance of a Writ of Mandamus forbearing respondents 3 and 4 from continuing the work of First Pour of Concrete for Kudankulam Nuclear Power Project 3 and 4 (KKNPP 3 & 4) without first complying with Norms 5 and 6 contained in the annexure to the order of sitting consent dated 09.02.2011 passed by the second respondent.

For the Petitioner : Mr.M.Radhakrishnan

For Respondents 1 & 2 : Mr.G.Ilangovan

For Respondents 3 and 4: Mr.Krishna Srinivasan, Senior Counsel,
for M/s.S.Ramasubramanian &
Associates

ORDER

(Made by the Hon'ble Chief Justice)

We have heard Mr.M.Radhakrishnan, learned counsel for the petitioner, Mr.G.Ilangovan, learned counsel for respondents 1 and 2 and Mr.Krishna Srinivasan, learned Senior Counsel, for respondents 3 and 4.

2. The learned counsel for the petitioner submits that the first pour of concrete for the Kudankulam Nuclear Power Project 3 and 4 (KKNPP 3 & 4) would be contrary to the observations made by this Court under order dated 30.10.2014 in WP No.27891 of 2014. The learned counsel submits that no study whatsoever was undertaken by the respondents regarding Norms 5 and 6 contained in the annexure



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to the order of siting consent. No administrative measures were initiated to ensure that only natural growth would be permitted in the Sterilized Zone, which is the area of 5 km radius around the plant.

3. Counter-affidavit has been filed by respondents 3 and 4. It has been stated that the exclusive zone has been established by the Nuclear Power Corporation of India Limited ('NPCIL', for short) with required access control and the same is also periodically verified by the Atomic Energy Regulatory Board ('AERB', for short) during regulatory inspections. With regard to condition No.6 of Annexure to siting consent, it is stated that the natural growth of population within the sterilised zone is permitted and natural growth means that no steps would be permitted or allowed by the Government such as setting up of industry which may act as an incentive for more people to migrate and settle in the sterilised zone. The administrative measures to allow only natural growth within a radius of 5 km is ensured by State administration. This has been effected through order of the Tamil Nadu Government vide G.O.No.329 dated 29.04.1991. The compliance of the same is ensured by both respondents 3 and 4 and the Government of Tamil Nadu.



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4. The learned Senior Counsel for respondents 3 and 4 further submits that in fact the petitioner is now re-litigating the matter. All these issues have been considered by the Apex Court in its judgment reported in ***G.Sundarrajan vs. Union of India and Ors., (2013) 6 SCC 620.***

The petitioner was the same; the project was also the same.

The Apex Court in the said judgment, observed thus:

“114.Facts presented indicate that there is no population in the “Exclusion Zone” of KKNPP. “Exclusion Zone” is under the exclusive control of the plant operator NPCIL, guarded by CISF, where no public habitation is permitted. The property wall at a distance of 2 km from the reactor buildings existing at KKNPP, which encloses the exclusion zone, and no people reside permanently inside the property wall. A sterilised area around the exclusion area covering an area of up to 5 km radius from the plant has also been established. As per AERB Citing Code, the desirable population within the sterilised zone is about 20000. As per the documents available, 3 villages are within SZ of KKNPP, namely, Kudankulam, Vijayapathi (Idinthikarai) and Irrukkandurai. As per 2001 census, the population residing with SZ consisting of these three villages is approximately 23960, which has been taken care of while preparation of the Emergency Preparedness Plan (EPP) of KKNPP.



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115.NPCIL, after due concurrence with AERB, as already indicated, has prepared the Emergency Preparedness Plan Vol. V for off-site emergency at KKNPP. The EPP has listed the composition of Off-Site Emergency Response Co-ordination Committee (OERCC) comprising of 14 district administration officials for implementing counter measures in public domain in case of an emergency. The District Collector, Tirunelveli is the Off-Site Emergency Director and the members are District Revenue Office, Site Director, KKNPP, Superintendent of Police, District Forest Officer, Joint Director (Fisheries), Deputy Controller (Civil Defence), Divisional Fire Officer, Executive Engineer (Irrigation), Joint Director (Agriculture), Deputy Director (Animal Husbandry), District Supply Officer, Regional Transport Officer, Deputy Director (Health Services). The overall responsibility of OERCC and individual responsibilities of the members of the Committee have been chartered in the Emergency Preparedness Plan for effective implementation of counter measures. Eleven Emergency response teams such as warning and advise Team, Emergency Response Teams, Traffic Control Team, Prophylactics Distribution Team, Evacuation Advice Team, Convoy Team, Decontamination Team, Rallying Post Team, Patrolling Team, Information Team and Services Support Team have also been formed and are in place as well.

207.AEC, DAE, BARC, AERB, NPCIL, TNPCB the expert



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bodies, are all unanimous in their opinions that adequate safety and security measures have already taken at KKNPP which are to be given due weight that they deserve. Further, as already indicated NPCIL Task Force Report on Security of all NPPs including KKNPP dated March 2011, 11.5.2011, AERB-EE Expert Opinion on Design Committee Safety dated 31.8.2011, 15 Member Expert Team Committee Report (post Fukushima) dated December 2011, Supplementary Report dated 31.2.2012 on the Grievances raised by some of the agitators, report submitted by Sri R. Srinivasan, Former President, Atomic Energy Commission appointed by the State of Tamil Nadu are all unanimous in their view on the safety and security of KKNPP.

211.KKNPP has, therefore been set up as part of India's National Policy so as to develop, control and use of atomic energy for the welfare of the people of India. Policy makers consider nuclear energy as an important element in India's energy mix for sustaining economic growth of natural and domestic use. For setting up the project, the project proponent has taken all safety requirements in site and off site and has followed the code of practices laid down by AERB, based on nationally and internationally recognized safety methods. Safeguarding the nuclear plants, radioactive materials and ensuring its physical security have become a central part of Nuclear Law. Adequate measures have, therefore, to be taken for



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storage of NSF at site, and also for the physical safety of stored NSF. Of the seventeen suggested safety measures, by AERB, LWR, twelve have already been implemented and the rest, in a phased manner have to be implemented which the experts say, are meant for extra security. DMP is already in place, so also the emergency preparedness plan, off site and on site and all programmes under CSR are progressing in the right direction with the co- operation and assistance of the District Administration.

212. NPCIL, has also received necessary environmental clearance from MoEF, TNPCB, etc for Units 1 to 6. No violation of CRZ is also noticed. Desalination Plant is also established after following rules and regulations and there is no violation of CRZ. Experts say that there will be no impact on the marine eco-system due to discharge of +7°C, CCW over and above the ambient temperature of the sea. Radiation impact on the eco- system is also within the standard set by AERB, MoEF, EAC, Pollution Control Board etc., so opined by the Experts. In other words, all the expert teams are unanimous in their opinion of the safety and security of the KKNPP both to life and property of the people and the environment which includes marine life. Court has to respect national nuclear policy of the country reflected in the Atomic Energy Act and the same has to be given effect to for the welfare of the people and the country's economic growth and it is with these



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objectives in mind KKNPP has been set up.”

5. Subsequently, again the petitioner filed another writ petition bearing WP No.27891 of 2014 before this Court. The Division Bench of this Court disposed of the said writ petition under judgment and order dated 30.10.2014, by observing that the apprehension expressed by the petitioner is based on surmises and conjectures. The Hon'ble Supreme Court in its judgment has given detailed directions which have been complied with.

6. The fact is that the plant in question is a part of the national nuclear policy. The Apex Court in the case of **G.Sundarrajan**, has observed that KKNPP complied with all statutory provisions rules, regulations and safety guidelines and standards set by Indian and foreign expert bodies.

7. Moreover, AERB and Ministry of Environment and Forest would be monitoring the project on regular basis. Regulatory measures are provided. It is not the case of the petitioner that the authorities concerned have committed dereliction of their duties.



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8. In light of the above, the writ petition stands dismissed.

There will be no order as to costs.

(S.V.G., CJ.)

(P.D.A., J.)

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Index : Yes/No
Neutral Citation : Yes/No
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