

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Special Original Jurisdiction)

Thursday, the Twenty Sixth day of March Two Thousand Fifteen

PRESENT

THE HON'BLE DR.JUSTICE S. TAMILVANAN

AND

THE HON'BLE MR JUSTICE V.S.RAVI

MP(MD) No.1 of 2015

IN

WP(MD) No.733 of 2015

VAIKO, GENERAL SECRETARY,
MARUMALARCHI DRAVIDA MUNNETRA KAZHAGAM,
THAYAGAM, 12, RUKUMANI LAKSHMIPATHI SALAI,
EGMORE, CHENNAI 600 008.

... PETITIONER/PETITIONER

Vs

- 1 UNION OF INDIA, REP BY ITS SECRETARY,
MINISTRY OF ENVIRONMENT AND FOREST,
PARYAVARAN BHAVAN, CCO COMPLEX,
LODHI ROAD, NEW DELHI 110 003.
- 2 THE SECRETARY TO GOVT.OF INDIA ,
DEPARTMENT OF SCIENCE AND TECHNOLOGY,
TECHNOLOGY BHAVAN, NEW MEHRAULI ROAD,
NEW DELHI- 110 016.
- 3 THE CHAIRMAN, ATOMIC ENERGY COMMISSION,
ANUSHAKTHI BHAVAN,
CHATRAPATHI SHIVAJI MAHARAJ MARG,
MUMBAI-400 001.
- 4 THE STATE OF TAMILNADU,
REP BY ITS SECRETARY,
ENVIRONMENT AND FOREST DEPARTMENT,
FORT ST. GEORGE, CHENNAI 600 009.
- 5 THE INSTITUTE OF MATHEMATICAL SCIENCE,
C.T.T. CAMPUS, TARAMANI,
CHENNAI 600 113.
- 6 THE TAMILNADU STATE POLLUTION CONTROL BOARD,
76, MOUNT SALAI, GUINDY, CHENNAI 600 032.
- 7 THE DISTRICT COLLECTOR,
THENI DISTRICT, COLLECTORS OFFICE,
THENI 625 531.

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8 M.SENDHILKUMAR

9 S.ELANGO

... RESPONDENTS/RESPONDENT

[R8 & R9 IMPEADED VIDE ORDER**DATED 23.02.2015 IN MP (MD) NO.2 & 3/15]**

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to grant Add-Interim Injunction restraining the respondents herein from further proceedings in the establishment of India Based Neutrino Projected (INO) at Pottipuram Village, Near Thevaram, Theni District pending disposal of the above Writ petition.

ORDER: This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.VAIKO PARTY IN PERSON, Advocate for the petitioners and of MR.G.R.SWAMINATHAN, ASG of India, for Respondents 1 to 3 and of MR.K.CHELLAPANDIAN, AAG assisted by MR.C.SELVARAJ, Special Government Pleader for Respondents 4 & 7 and of MR.V.VINAYAK MOORTHY, Advocate for Respondent 8 and of MR.C.ARULVADIVEL @ SEKAR Advocate for Respondent 9 and of MR.C.S.ELAMAN, Advocate for Respondent 6 (Pollution Control Board) the Court made the following order:-

S. TAMILVANAN, J

This miscellaneous petition has been filed seeking an order of interim injunction, restraining the respondents 1 to 7 herefrom from further proceeding in the establishment of India Based Neutrino Project (INO) at Pottipuram Village, Near Thevaram, Theni District pending disposal of the writ petition.

2.Respondents 8 and 9 were impleaded, as per the order dated 23.02.2015, passed in their impleading petitions.

3.The petitioner/party-in-person is a practising lawyer and also leader of a political party in Tamil Nadu. The petitioner has stated that he has filed the writ petition solely in public interest and he is prepared to pay costs in case if it is proved that there is no public interest involved in this writ petition.

4.According to the petitioner, the implementation of the proposed India-Based Neutrino Observatory Project, in short INO, to be located at Pottipuram Village, Bodi Western Ghat Hill Area, Theni District, Tamil Nadu, will bring unimaginable and terrible disaster to the mankind and also make degradation of the environment in and around Theni District in Tamil Nadu and Idukki District of Kerala. According to the petitioner/party-in-person, for the establishment of the project, the Government of India has sanctioned Rs.1500 crores on 05.01.2015 and the Department of Atomic Energy (DAE) has also received the Central Government's Final Sanction for constructing the India-based Neutrino Observatory (INO), the biggest underground science laboratory in the World in Theni District of Tamil Nadu, bordering Idukki District of Kerala, in the underbell

of the Western Ghats (77 17'5.32"E, 9 56'46.20"N). It is further stated by the petitioner that there are 12 dams, storing 5 billion m3 of water, the lifeline for six districts of Tamil Nadu and Kerala all within a radius of 50 km from the proposed site, all receiving water flows from three rivers, namely, Periyar, Vaigi and Vaippar. According to him, Idukki Dam on Periyar River, one of the highest arch dams in Asia, located 26 km from the proposed site, is listed as one of the 53 known global examples of reservoir-triggered seismicity. The 110-year old Mullaperiyar dam, from which the project will be drawing 400 m3 of water daily, is at a distance of 50 kms. from the site. According to the petitioner, if the project is commenced even without getting proper clearance from the Tamil Nadu Pollution Control Board and other authorities concerned, this would be detrimental to the life of the people, who are residing in and around the proposed site of the project.

5. The argument advanced by the petitioner/party-in-person is that the project of India Based Neutrino Observatory (INO) is detrimental to the interest of the general public, residing near the areas and it would lead to clear degradation of environmental protection available to the people. According to the petitioner, poor people, especially working class are depending on the natural resources available in the Western Ghats and living peacefully without any kind of pollution. Hazardous free atmosphere is a fundamental right as guaranteed under Article 21 of the Constitution of India. The project has been initiated even without following mandatory provisions, which are required for commencement of the Project. In support of his contention, the petitioner/party-in-person cited the following decisions.

6. Vellore Citizens Welfare Forum v. Union of India reported in **AIR 1996 SC 2715**, wherein the Hon'ble Supreme Court has issued comprehensive directions for maintaining standards stipulated by Pollution Control Board and also directed the High Court of the State to constitute Special Bench "Green Bench" to deal with the case and other environmental matters, considering the mandate of Article 21 of the Constitution of India. In the aforesaid decision in view of Section 3(3) of Environment Protection Act (29 of 1986) the need of all the statutory authorities, including Pollution Control Board, to protect the environment and to safeguard the natural resources has been emphasised by the Supreme Court of India, however that was not followed by the respondents.

7. In G. Sundarrajan v. Union of India, reported in **(2013) SCC 620**, the Hon'ble Supreme Court has dealt with Articles 21, 47, 48-A, 51-A(g), 38, 32, 136, 226 and 142 of the Constitution of India in National Nuclear Policy and Development of Nuclear Energy with reference to the constitutional guarantee given towards life and safety of the people which includes environmental/ecological protection, in addition to the fundamental rights guaranteed under Article 21 which guarantees the people of India to live in a conducive and unpolluted atmosphere, as a fundamental right.

8. It is relevant to refer Article 48-A of the Constitution of India, relating to protection and improvement of environment and safeguarding of forests and wild life. In view of the constitutional mandate, the State shall endeavour to protect and improve the environmental condition so as to safeguard the forests and wild life of the country.

9. In **State of U.P. vs. Kedar Leather & Liquor Ltd** reported in **2003 (7) SCC 389**, it has been categorically held by the Hon'ble Supreme Court that environmental, ecological, air and water pollution would amount to violation of the right to life and liberty assured under Article 21 of the Constitution. Hygienic environment is an integral facet of healthy life of the people. Right to life with human dignity becomes illusory in the absence of humane and healthy environment.

10. It cannot be disputed that if it is a policy decision, the Court cannot interfere unless there is paramount necessity for such interference. A policy decision should not infringe the fundamental rights guaranteed under Part-III of the Constitution. Similarly, economic development and scientific advancements are mandatory to any civilised country, especially to our motherland India. However, such development should be a sustainable development, as held by the Hon'ble Supreme Court in various decisions. A policy decision should not be detrimental to the safety and fundamental rights of the people and make degradation of natural resources against sustainable development, in view of the fundamental rights coupled with directive principles of State Policy.

11. In the instant case, we need not go into the merits of the case at this stage of deciding the miscellaneous petition relating to writ petition. We have to consider only the *prima facie* case made out and the balance of convenience based on the vital legal aspects and the guarantee given under the Constitution. It is alleged that the project estimate is over Rs.1500 crores, which is not disputed by the learned counsel appearing for the respondent. If it is for sustainable development, that could be continued. However, to decide the sustainable development, the competent authorities, such as Pollution Control Board and other authorities scientifically qualified, by conducting necessary tests and should verify all the scientific aspects to safeguard the constitutional rights of the people.

12. In the instant case, the Tamil Nadu Pollution Control Board, the sixth respondent, has filed a counter/report stating that the project proposal has not yet been submitted to the sixth respondent, for perusal and there is no relevant document relating to the project is available before the Tamil Nadu Pollution Control Board. Even in the counter affidavit filed on behalf of respondent 1 to 3 and 5, it has been admitted in paragraph 10 that clearance certificate has been obtained from the Tamil Nadu

Pollution Control Board, the 6th respondent herein. Therefore, the case itself is sufficient to show that the petitioner has *prima facie* case to get interim order. As huge amount is invested in a project, the mandatory requirements should be followed. As the respondents 1 to 3 and 5 have not obtained clearance from the Pollution Control Board and other authorities, as argued by the petitioner/ party-1 person, we are of the view that there is *prima facie* case made out and in the said circumstances, spending a huge amount, without getting clearance from the concerned authorities, would show that the balance of convenience is also not in favour of respondents 1 to 3 and 5, since it is the public money being spent. Therefore, we hold that there is a necessity to grant interim order, since *prima facie* case is made out as per materials available on record. The plea of the respondents 1 to 3 and 5 could not be that they are empowered to commence the work even without getting clearance from the Pollution Control Board and following mandatory provisions required for the project. Rule of Law is mandatory and everything should be done according to mandatory provisions in a democratic set-up. Even policy decisions should not be detrimental to the interest of the public, violating of fundamental rights guaranteed under the Constitution.

13. On the facts and circumstances, we pass the interim order restraining the respondents 1 to 3 and 5, by way of interim injunction only with regard to the commencement of the research work of the project, without getting necessary clearance from the Tamil Nadu Pollution Control Board and without following the mandatory provisions. It is also made clear that the interim order is passed without prejudice to the disposal of the main writ petition. The order as to costs.

sd/-

26/03/2015

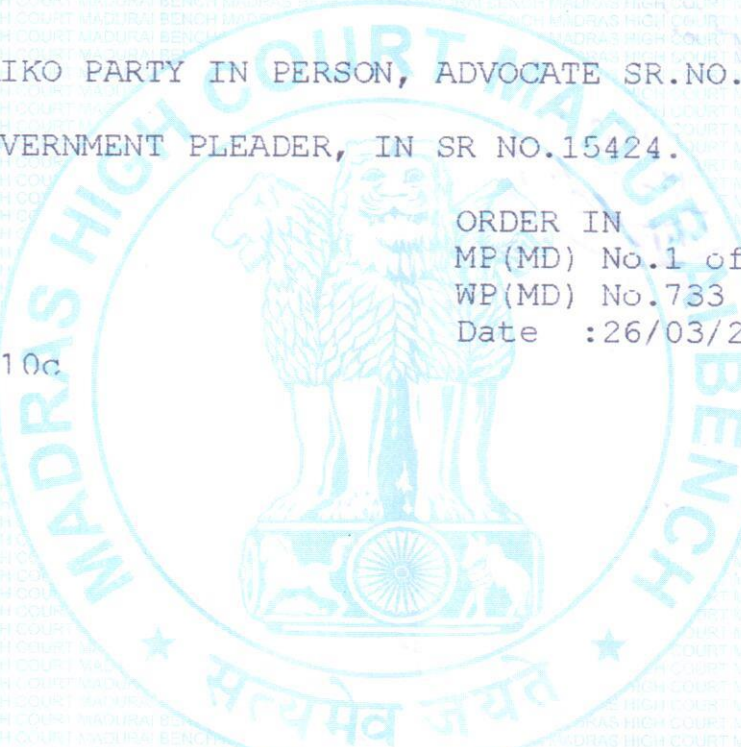
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Sub-Assistant Registrar (C.S.)

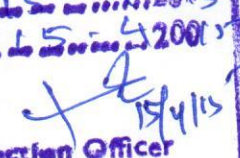
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MADRAS HIGH COURT,
MADURAI BENCH
S. R. No. A.200.....
Carbon Copy Application
made LS: A. 2005
Copy made Ready... LS: A. 2005
Copy delivered... LS: A. 2005

Section Officer
CP Section
15.4.15