

(2010) 07 MAD CK 0351

Madras High Court

Case No: Writ Petition No. 14866 of 2010

M. Vetri Selvan

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision: July 22, 2010

Acts Referred:

- Constitution of India, 1950 - Article 118, 122, 14, 21, 212

Citation: (2010) 4 LW 97

Hon'ble Judges: M.Y. Eqbal, C.J; T.S. Sivagnanam, J

Bench: Division Bench

Advocate: M. Radhakrishnan, for the Appellant;

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

M.Y. Eqbal, C.J.

This writ petition has been filed as a public interest litigation by an Advocate, praying for issuance of a writ of mandamus to direct the Respondents to arrange "public hearings" on the Civil Liabilities for Nuclear Damage Bill, 2010 at all State Head Quarters in the country and at all the places where the nuclear installations are in existence in the country before the introduction of the Bill in the parliament.

2. It is submitted by the Petitioner that the second Respondent published a advertisement in the English Daily "The Hindu" dated 24.06.2010, inviting written comments/suggestions either in English or in Hindi on the Civil Liabilities for Nuclear Damage Bill 2010 (for short, the bill). In the terms of the notification those, who are willing to appear before the committee for oral evidence, besides submitting the memoranda may indicate so, In the response to the notification the Petitioner is stated to have submitted his memoranda through e-mail on 06.07.2010. The grievance expressed in the writ petition is that the notification does not make any provision for public hearings as available in matters relating to environmental

clearance and therefore, in public interest the writ petition has been filed.

3. According to the Petitioner, "nuclear damages" as defined in Clause 2(f) of the Bill itself is incapable of defining the terms used in the Bill and since the ultimate sufferers are public, public hearings are essential. Failure to make provision for public hearings before the introduction of Bill of this nature is violative of Articles 14 and 21 of the Constitution of India. In terms of Clause 5 of the bill an "operator" shall not be liable for any nuclear damage, where such damage is caused by a nuclear incident directly, due to natural disaster or act of armed conflict, civil war etc. When the Government is the "operator", the liability of the Government to compensate those affected by nuclear disaster is two fold. As the "operator" of the nuclear installation, the Government is liable. Since the liability of the Government as "operator" is limited the liability of the Government as the Central Government is added to its liability, which is always discharged by means of public funds. Therefore, in terms of Clause 5, the operation of the nuclear operation will not be liable, if the nuclear incident is directly due to terrorism and this exclusion would mean absence of effective remedy for the affected public and therefore public hearing before introduction of the Bill is essential. It is further submitted that fixation of time limit for claiming compensation for any nuclear damage is arbitrary and unreasonable. That, the bill does not provide for an appeal against the award passed by the Nuclear Damage Claims Commission and the Chairperson and members of the Commission are appointed by the Central Government, and the Government has complete control over the Commission and it is not an independent body. Further, it is submitted that the Union of India considered public hearings in matter touching environment and the Union held public hearings for introduction of genetically modified brinjal. Environment Clearance Regulation, 2006 provide for public hearing on commencement of nuclear power project and proposing of nuclear fuel. The term nuclear damage speaks about impaired environment caused by a nuclear incident, environment and nuclear incident are inter-related and therefore, public hearing prior to introduction of the Bill is essential.

4. Mr. M. Radhakrishnan, learned Counsel appearing for the Petitioner made elaborate submissions about the Bill pointing out that in case of a nuclear incident, the public are the sufferers and therefore, it is essential that a public hearing is conducted. It is further submitted by the learned Counsel that seldom there is discussion in the Parliament about the Bill and from the press reports, it is understood that during 2008, the Parliament passed 16 of the 36 Bills in less than 20 minutes and most of them got the approval of the Members of Parliament without any debate. The learned Counsel relied on press reports on nuclear accidents in India and would submit that prior to introduction of the Bill, unless public hearing is granted, it would not bring about a proper debate on the various factors. The learned Counsel placed reliance on the notification of the Government of India dated 14.09.2006, issued under the Environmental Protection Act, that prior

environmental clearance is required for various projects/activity as mentioned in the schedule of the notification and the nuclear power project is also one such project covered under the notification and in terms of Clause 7(III). Stage 3 public consultation is contemplated and it refers to the process by which the concerns of local affected people and others, who have plausible stake in the environmental impacts of the project are ascertained with a view to taking into account all the material concerns in the project design as appropriate. Further, such public hearing should be held at the site or in close proximity. Therefore, it is contended that public hearing is essential in the instant case. The learned Counsel placed reliance on the decision of the Hon"ble Supreme court in [S.P. Gupta Vs. President of India and Others,](#) , regarding the aspect of loco-standi and the Petitioner is entitled to approach this Court to enforce the Socio Economic Rights and to compel performance of public duty which the State is bound to perform.

5. We have heard the learned Counsel for the Petitioner in extenso and perused the materials available on record.

6. In the Statement of Objects and Reasons of the Bill, it has been mentioned that the nuclear industry in India is growing and as a result of the steps taken particularly in the recent period, it is expected to form an important part of energy-mix of the country. While making the design and during construction and operation of nuclear power plants every care is taken to ensure safety of the plant, public and the environment. However, in the unlikely event of a nuclear incident or accident, there may be damage to individuals property and environment on a large scale. The geographical scope of the damage may not be confined to national boundaries and it may have trans-boundary effects. In such an event, it is desirable that protection is accorded to victims of such incident or accident by a third party liability regime. It is important to make provision to ensure clarity of liability and the requirement to pay compensation. At the international level there are four instruments for nuclear liability, i.e., the 1960 Paris Convention, 1963 Vienna Convention, 1997 Protocol to Amend Vierina Convention and 1997 Convention on Supplementary Compensation for nuclear damage. Convention on Supplementary Compensation was developed under the auspices of International Atomic Energy Agency and which deal with nuclear liability. It provides for treaty relations among all countries that accept the basic principles of nuclear liability law and an international fund to compensate nuclear damage in the event of nuclear incident. The said Convention on Supplementary Compensation envisages a two tier system with respect to the amount of compensation, e.g., Installation State to ensure availability of the amount of compensation (at least 300 million Special Drawing Rights), and International Fund for which all contracting parties are obliged to contribute the amount based on a formula for calculation of contribution. India is not a party to any of the nuclear liability conventions mentioned above. Indian nuclear industry has been developed within the context of a domestic framework established by the Atomic Energy Act 1962. There is no provision in the said Act

about the nuclear liability or compensation for nuclear damage due to nuclear accident or incident and no other law deals with nuclear liability for nuclear damage in the event of nuclear incident.

7. In the above stated background, the Government considered necessary to enact a legislation, which provides for nuclear liability that might arise due to a nuclear incident and also on the necessity of joining an appropriate international liability regime. The Bill contains 7 chapters, chapter I-the preliminary, chapter II-liability for nuclear damage, chapter III-Claims Commissioner, chapter IV claims and awards, Chapter V Nuclear Damage Claims Commission, Chapter VI offences and penalties and chapter VII-miscellaneous. The Bill, which was introduced and pending in Lok Sabha had been referred to the Parliamentary Standing Committee on Science and Technology, Environment and Forest headed by a Member of Parliament (Rajya Sabha) for examination and report. Based on such reference, a publication/advertisement was issued in the dailies on 24.06.2010, stating that in order to have wider consultations, the Standing Committee has decided to invite memoranda containing suggestions/views/comments of experts/institutions/organizations interested in the subject matter of the Bill. Those desirous of submitting memoranda to the Standing Committee could send their written comments/suggestions to the named officer of the Rajya Sabha Secretariat within 15 days from the date of the publication. Those, who are willing to appear before the committee, besides submitting the memoranda were directed to indicate their preference, however, the committee's decision in this regard shall be final. It is further stated that the memoranda submitted to the Committee would form part of the records of the committee and would be treated as confidential and would enjoy privileges of the committee. The bill had been published in Gazette of India dated 07.05.2010 and copies could be obtained on written request or can be downloaded from the official website of the Rajya Sabha. According to the Petitioner, he has submitted his memoranda by e-mail on 06.07.2010. Copy of such memoranda has been filed in page 30 of the typed set of papers and the contents of the memoranda are the matters mentioned in the affidavit filed in support of the writ petition, most of which has been referred to in the preceding paragraphs. It is to be noted that the Petitioner has not expressed his willingness to appear before the committee for giving oral evidence.

8. The sheet anchor of the arguments of the learned Counsel is that before the Bill is placed before the Parliament, the Respondents have to conduct public hearings in various places, regarding the effect of the Bill and to point out the deficiencies and lacunae. Heavy reliance has been placed on the notification issued under the Environment and Protection Act, stipulating pre-environmental clearance in respect of projects like nuclear projects and in the process of obtaining pre-environmental clearance, public hearing is contemplated and as a nuclear incident or accident would have direct impact on the environment, therefore public hearing has to be conducted.

9. A public hearing is a type of public meeting, and much literature refers to it as such, however there are some distinctive aspects that make a hearing different. Abigail Williamson and Archon Fung define a public hearing as "an open gathering of officials and citizens, in which citizens are permitted to offer comments, but officials are not obliged to act on them or, typically, even to respond publicly." The main purpose of a public hearing is to allow citizens the chance to voice opinions and concerns over a decision facing a legislature, agency, or organization. Public hearing does not always mean public participation in a meeting held for any purposes. The main purpose of public hearing is to allow citizens the chance to voice opinions and suggestions inter alia on a proposed legislation. This can be done by issuing notifications through news papers and inviting suggestions and opinions from the citizens. If this is done, it will amount to sufficient compliance of the term "public hearing".

10. It is to be borne in mind that the present issue pertains to a legislation proposed to be introduced in order to achieve certain objects and reasons as set forth above. The basic function of the Parliament is to make laws, amend them or repeal them. All legislative proposals are brought before the Parliament in the form of Bills, which is a statute in the draft form and cannot become law, unless it has received the approval of both the houses of Parliament and the assent of the President of India. Under Article 118 of the Constitution, each house of Parliament may make Rules for regulating its procedure and the conduct of its business. In terms of Article 122 of the Constitution, the validity of any proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure and no officer or member of Parliament in whom powers are vested under the Constitution for regulating procedure or the conduct of business or for maintaining order in Parliament shall be subject to the jurisdiction of any Court in respect of the exercise by him of those powers, Article 212 of the Constitution is the corresponding Article in respect of State legislature. Based on such power the rules of procedure and conduct of business in Lok Sabha has been made. The Hon'ble Supreme Court in [Pandit M.S.M. Sharma Vs. Dr. Shree Krishna Sinha and Others](#), has held that the validity of the proceeding inside the legislature of a State cannot be called in question on the allegation that the procedure laid down by law had not been strictly followed. As per the Rules of Procedure, there are various steps in the process of enacting a new law, which could be broadly classified in four stages, stage-1 where the need for a new law or an amendment to an existing law is identified, Stage-2 when the concerned Ministry's drafts proposed laws which is termed as the Bill, Stage-3 when the cabinet approves the Bill and is introduced in the Parliament and every such Bill goes through three readings in both houses before it becomes an Act. If the Bill is passed in one house then it is forwarded to other house, where it goes through the second and third readings. During the second reading the Government or any member of Parliament may introduce amendment to the bill, which may be based on recommendations of the Standing Committee. Thereafter,

in stage-4 after both the houses of Parliament have passed the bill, it is presented to the President for assent. Perusal of the notification issued by the Rajya Sabha Secretariat, it is seen that the Bill was introduced and was pending in the Lok Sabha, which was referred to the Parliamentary Standing Committee. Thus, it appears that the Bill is in stage-1 (as referred above). At this stage the comments/suggestions/views have been invited from the public and by which the public are given an opportunity to participate in the process of law making. In our view, this notification enables persons interested to get themselves involved in the process of law making.

11. In our opinion a public hearing is required only when a specific statute requires one to be conducted, but it is always open to the Government to hold public hearings in other instances. In the process of law making, which are governed by a separate set of rule, the theory of public hearing as stipulated under the Environment Protection Laws cannot be incorporated into the rules of procedure of Lok Sabha, which are already codified. This Court has no jurisdiction to legislate or amend or vary the Rules of Procedure. The test which is normally required to be fulfilled in administrative or executive action is that the action should be free from arbitrariness and without discrimination thereby, it does not violate Articles 14 or 21 of the Constitution of India. Though, the tests evolved to examine executive or administrative action cannot be made applicable to legislative process, it remains to be seen in the instant case, the Standing Committee of the Rajya Sabha, based on a reference, has issued a public notice calling for objections. The notification further permits such persons submitting their memoranda could indicate that they should be given an opportunity of hearing to place material before the Standing Committee. Therefore, the opportunity provided for persons interested for submitting their objections, satisfies the test of fairness. The Petitioner cannot import the theory of public hearing stipulated under a statute such as Environment laws in the matter of law making. It is not as if that the Bill which has now been drafted and on which objections/views have been called for, is to be declared a law on the expiry of the time limit in the notification. As seen above, there are various stages before which the Bill become an Act and therefore, in our view the opportunity afforded in the notification to submit memoranda containing objections/views with a right to seek for oral enquiry is an effective opportunity to enable the persons, who are desirous of availing such opportunity to submit their views. There is nothing unreasonable or arbitrary in the procedure adopted by the Standing Committee with regulated as per the Rule framed under Article 118 of the Constitution. As already noted, the Petitioner herein has not sought for an opportunity to appear before the committee in person. One other ground, which has been raised in the writ petition is that there is no appellate forum provided against the award of the Claims Commission. The Hon'ble Supreme Court in [Babubhai and Co. and Others Vs. State of Gujarat and Others](#), has held that mere absence of a corrective machinery by way of appeal or revision by itself would not

make the power under the statute unreasonable or arbitrary, much less would render the provision invalid.

12. For the above reasons, we do not find any sufficient grounds to grant the prayer sought for in the writ petition as it would amount to enacting a separate set of rules of procedure, which this Court is not entitled to do. In the result, the writ petition fails and it is dismissed. However, there shall be no order as to costs.