

(2014) 12 SIK CK 0006
In the Sikkim High Court
Case No : W.P. (PIL) No. 06/2013

Karma Thinlay Lama

APPELLANT

Vs

The State of Sikkim

RESPONDENT

Date of Decision : 12-12-2014

Acts Referred:

Constitution of India, 1950 — Article 21, 47

Contract Act, 1872 — Section 3

Criminal Procedure Code, 1973 (CrPC) — Section 144

Citation : (2014) 12 SIK CK 0006

Hon'ble Judges : Sunil Kumar Sinha, Acting C.J.

Bench : Single Bench

Advocate : Subramaniam Hariharan Iyer, Doma T. Bhutia, Sarita Bhusal and Rupa Dhakal, Advocate for the Appellant; J.B. Pradhan, Additional Advocate General, S.K. Chettri and Pollin Rai, Assistant Government Advocates, Rita Sharma, Legal Counsel and Sabina Chettri, Legal Counsel, Advocate for the Respondent

Judgement

Sunil Kumar Sinha, Actg. C.J.

1. Madhya Bharat Power Corporation Ltd. (MBPCL) is a power generating company. The company has been engaged by the Government of Sikkim for developing a 96 MW Hydro Electric Project (HEP) in East District of Sikkim by an Agreement dated 01.03.2006. The date of commercial operation of the Project has been extended upto June, 2016. As stated by counsel for Respondent No. 3, now about 35% work has already been completed and the rest is going on.

2. The Project consists of several components including the digging of Head Race Tunnel (HRT), which passes through different places, namely Namli, Khongsey, Basilakha, Priklakha, Nimtar, Mangthang, Lower Sumin, Middle Sumin, Samsing and Jitlang in Duga Block.

3. The HRT has to be constructed in parts from various Adits. These Adits are Adit-0 to Adit-III. Each Adit has two faces to facilitate the construction. Adit-0

has Face-1 & Face-2; Adit-I has Face-3 & Face-4; Adit-II has Face-5 & Face-6 and Adit-III has Face-7 & Face-8.

4. The survey work for the Project was awarded by the MBPCL to one M/s. Globe Tech Engineering Survey after due tendering process. Globe Tech, after completion of the survey works, submitted its Strip Survey Contour Map of the entire HRT to finalise the alignment of the tunnel. On the basis of Contour Map by the said agency, the alignment of the HRT was finalized by the Civil Construction Designer of the MBPCL.

5. The Ministry of Environment and Forests (MoEF), Government of India granted environmental clearance to the MBPCL on 04.04.2007. MBPCL completed the detailed survey for preparation of the Detailed Project Report (DPR). The DPR then was produced before Sikkim Power Development Corporation Ltd. (SPDC) for Techno-Economic Evaluation, as it was the Nodal Agency of the Government of Sikkim for the Techno-Economic Evaluation of the Project and issuance of clearance. The SPDC found certain deficiencies in project work relating to Hydrology, Geology and Project Location and recorded conclusions that there were major discrepancies in the water availability studies and geological investigations and the technical queries submitted by SPDC, were not addressed by the MBPCL. Therefore, MBPCL has shown a very laid back approach towards the investigation, design and planning of the Project. As such Techno-Economic Viability of the Project was doubted. This Report is dated 24.11.2007.

6. On account of the above deficiencies and further on account of alleged failure to achieve the important milestone on the Project implementation as per Agreement and also on account of failure to achieve financial closure and looking to overall delay in execution of the Project, the Government of Sikkim terminated the above Agreement dated 01.03.2006, on 06.06.2008.

7. The MBPCL then filed W.P. No. 47/2008 in the High Court, challenging the order of termination of the Agreement by the Government. During the pendency of the W.P. No. 47 of 2008, the Status Reports of MBPCL dated 05.06.2008 and 19.06.2008 were considered by the SPDC. These reports were submitted to show status of the Project and the work already done, as also various clearances and approval obtained in respect of the project development. MBPCL had also submitted the revised DPR in light of the deficiencies pointed out by the SPDC. The SPDC expressed its satisfaction on the Status Report and the report on the discrepancies earlier pointed out, and recommended for reconsideration of the termination of Agreement. The State Government, thereafter, on completion of usual formalities of approval from Cabinet etc. then decided to withdraw the Order for cancellation and ultimately it was withdrawn. After communication to the MBPCL in this regard, CMA No. 68 of 2008 was filed before the High Court for withdrawal of the W.P. No. 47/2008. The said application was allowed vide Order dated 18.09.2008 and the MBPCL was allowed to go ahead with the implementation of the Project in terms of the Agreement dated 01.03.2006. Forest clearance for diversion of 26.2313 ha of forest land for construction of 96

MW HEP was granted on 18.05.2009. By Notification dated 12.12.2011, a Multidisciplinary Central Level Committee for monitoring of environmental safeguards and issues arising during the implementation of the Project, was constituted by the State Government and the work commenced.

8. During the course of execution of work, complaints were made against MBPCL for illegal; dumping of muck on 06.02.2013 and 25.03.2013 and the above acts were taken as illegal by the authorities and were compounded by MBPCL under the Sikkim Forest (Compounding of Offences) Rules, 1998, on payment of compensation of Rs. 4,29,800/-, Rs. 20,65,334/- and Rs. 6,50,000/-.

9. The main incident forming cause of action for filing this PIL took place on 19.06.2013 when a cavity formation took place in Face-5 of Adit-II. A big cavity occurred on account of fall of the roof of tunnel in the said area forming a day light area along with HRT near village Sumin, where the Petitioners reside. Complaints relating to damage to the houses of the villagers were also made. The matter was reported to the District Magistrate, who immediately directed for enquiry through the Department of Mines, Minerals and Geology (DMMG), Government of Sikkim. An expert committee of the said Department inspected the site and submitted its Report dated 11.07.2013.

10. Considering the above Report and further considering the Report submitted by the Sub Divisional Magistrate, the District Magistrate passed an Order dated 24.07.2013 under Section 144 of the Cr.P.C. and directed to stop forthwith all the construction works at barrage sites at Namli, Audit-I at Nimtar/Priklakha and Adit-III at Samsing of the Rongni Chu HEP till further order. Any construction at Adit-II in Lower Sumin was also prohibited strictly. After considering all the Reports, the District Magistrate modified his earlier Order dated 24.07.2013 by a subsequent Order dated 05.09.2013 and revoked the Order against construction at all sites on following conditions, except Face-5 of Adit-II, where the cavity formation has occurred: -

"1. The Corporation shall comply in-toto, the terms and conditions laid down vide Para (i) to Para (xi) of letter No. 91/GOS/E&P/2004-05/2536 dated 03/09/2013 (letter enclosed for ready reference);

2. The Corporation shall take all necessary measures to prevent happening of any incident as apprehended by SDM East during his site inspection dated 21/07/2013 and reflected in the report dated 22/07/2013, based on which the aforementioned order under Section 144 Cr.P.C. was issued against it by this office.

3. The Corporation shall continue to have the strip survey carried out through Mines, Minerals & Geology Department as ordered vide Order N0.15/DCE subject to conditions stipulated in Para -1, 3, 4 & 5 thereof;

4. The Corporation shall take all necessary measures to keep the construction In order and as per prescribed norms and guidelines;

5. The Corporation shall give an undertaking in writing to comply the conditions laid down at Para 1, 2 & 3 above and submit a monthly progress report to the office of the District Collector, East about the actions taken regarding above."

11. On 10.09.2013, a public meeting was held. The said meeting was chaired by the Hon"ble Speaker, Sikkim Legislative Assembly, alongwith whom the following authorities and the public of Sumin including the Writ Petitioners also participated:--

"Hon"ble Area MLA, Shri B.B. Rai; Director, Department of Mines, Minerals & Geology; SDM, East; Addl. Director, Department of Mines, Minerals & Geology; | Addl. Chief Engineer, Energy & Power Department; SE (Civil), Energy & Power Department; Zilla Panchayat, Sumin Lingchey GPU; Panchayat Member, Middle Sumin ward; Public of the Sumin; the MBPCL representatives; Director-cum-CEO; Sr. DGM (Engg. & Liaisoning); Sr. Manager (Civil); Dy. Manager (Liaisoning) & others."

Many proposals were made and discussed in the said public meeting and the Speaker made the following points with the agreement for further precautionary measures:--

"1. That the works in Sumin shall not be resumed till completion of the survey in this area; flagging of the centerline of HRT alignment shall be expedited; and the area up to 100M on either side of the centerline shall be surveyed and a baseline for assessment of any alleged damaged by tunneling activity created. Shri H.P. Pradhan, Retd. CCF, presently the DGM (Environment) of MBPCL shall coordinate with the team. The villagers will allow access to the survey team, and MBPCL shall deploy two villagers of Sumin to assist the survey team. On completion of the survey in Face-6, MBPCL, along with village representative shall meet to discuss the issue, prior to resumption of the work, and to decide on the further course of action. Puja, as per the religious practice of the locals should be performed prior to resumption of the works at Sumin.

2. That, the villagers and the corporation should work amicably, and any problems that may arise during the execution of works, should be appraised to the Hon"ble Speaker,

3. That, MBPCL shall repair the Gumpa under CSR scheme, for which Mr. Damber Chettri, SE (Civil), Department of Energy and Power has been instructed to prepare an estimate.

4. That, MBPCL shall award the petty civil works to the villager.

5. That, any pending issues between the company and the public should be resolved amicably.

6. Protection of Explosive Magazine House: MBPCL has been directed to strengthen the fencing of the explosive magazine for further safety and security. Lighting facility shall also be provided.

7. The approach road to Sumin from Sangkhola is a PWD road. MBPCL has the same right as those of others to use the road."

12. Thereafter, the DMMG submitted its report in the month of October, 2013 and made observations that the surface alignment of Adit-II (560 m) and HRT (312 m) towards day light area and HRT up to Rangtu Khola was carried out and around 24 flag pillars are erected as per the demand of the local public. Similarly, the terrain survey of the entire area within 100m on either side of the HRT was carried out and mapped. I The said team also surveyed underground HRT including Adit-II approximate 1.2 km inside and compared their observe co-ordinates with underground alignment co-ordinates and found correct. The survey team also collected all necessary information relating to roads, footpath, small streams, perennial springs, Government buildings, religious places and all the residential houses of the local public. Photography of the residential houses within 100m on both sides of the HRT and Adit-II was done.

13. On 10.12.2013, the survey team further submitted a report of progress at various Adits (Adit-I, Adit-II and Adit-III) as also at day light area in Face-5 of Adit-II and observed that the re-alignment of Face-5 as suggested may be taken up by civil design consultants of MBPCL based on the contour strip map prepared by the DMMG and the work may be started after approval of Government of Sikkim based on civil designers recommendation.

14. After above developments, on the application made by the MBPCL, the District Magistrate on 16.01.2014, then permitted underground blasting at HRT Face-6 under certain conditions. After the said blasting in Adit-II Face-6, certain complaints were received by the District Magistrate regarding vibrations and development of cracks in houses on account of excessive blasting. The District Magistrate, thereafter, directed to conduct a test blasting in presence of public and the technical team for monitoring by Order dated 25.01.2014 and, thereafter, permission was granted on 03.02.2014 to carry out blasting for 30 days in HRT Face-6. The Expert Team of the Central Mine Planning & Design Institute Limited (CMPDI) then submitted its Report for drill and blast design on 25.02.2014. Thereafter, on 07.03.2014, the District Magistrate granted permission to carry out underground blasting at HRT Face-6 for 60 days.

15. It is in this background, the present Writ Petition, styled as Public Interest Litigation (PIL), was filed by the two villagers of village Sumin on 08.11.2013.

16. Mr. Iyer, learned Counsel for the Petitioners, firstly contended that the State was having no authority or jurisdiction to revive the Agreement dated 01.03.2006 after its termination on 06.06.2008. According to him, when a decision was taken by the State to terminate the Agreement on 06.06.2008, it became final. Though the above argument was raised but he could not show any legal provision to substantiate that an Agreement once terminated by a party to it cannot be revived. The parties to the Agreement are essentially bound by the terms of the Agreement, which may be expressed or implied. If the Agreement

contains a clause for its termination by one party, may be on certain specific grounds, the said party always has a right to terminate the Agreement on terms of the contract. If the Agreement itself contains a clause for its revival, the same shall be availed. However, if no such clause is there in the Agreement and the parties concerned are inclined to revive the Agreement, and they do so, the same cannot be held to be without authority if it is not prohibited by law, in force. This may be understood in terms of Section 3 of the Indian Contract Act, 1872. In the instant case, after termination of the Agreement dated 01.03.2006 on 06.06.2008, the MBPCL filed its Status Report dated 05.06.2008 to show the work done in pursuance of the Agreement dated 01.03.2006. Another Report dated 19.06.2008 was also filed to show that the MBPCL has already taken various clearances and approval and there was a reasonable development in the work. On this Status Report, they had prayed for reconsideration of the order of termination and giving them a chance to proceed with the work as per Agreement. This may be taken as an offer from the side of the MBPCL, which, on due consideration, was accepted by the State Government and then, the order of termination dated 06.06.2008 was withdrawn and the Agreement dated 01.03.2006 was revived. No statutory provision prohibiting such an action could be shown by the Counsel for the Petitioners on which the said action of the Government can be taken as without authority or jurisdiction.

17. Learned Counsel for the Petitioners also contended about reasonableness of revival of the Agreement. The contents of the termination order dated 06.06.2008 would show that it was a termination on account of non-achieving of certain milestones and observations relating to discrepancies in the water availability studies and lacking of sufficient geological investigations. However, after receiving the above two representations from MBPCL, SPDC considered them and looking to the various clearances and approval already obtained for the project development, submissions of MBPCL about achievement of the important milestones and further that the company had presented the revised DPR and has adequately and satisfactorily addressed the discrepancies of the water availability studies and other discrepancies as pointed out by the SPDC earlier and further that about financial closure, the MBPCL had received a comfort letter from Axis Bank and looking to the huge money already deployed and further that a long time would be required if the Project was given to a new developer, the SPDC made recommendations to the Government for withdrawal of the order of termination. The Government, thereafter, considered all these facts and then only the order of termination was withdrawn. This shows that the order of termination was withdrawn on reasonable grounds by the Government on the recommendation of its expert body (SPDC). I am of the view that in the facts and circumstances of the case, it cannot be held that the decision of withdrawal of the order of termination was unreasonable.

18. That apart, we find that no pleadings with relation to above facts have been made in the Writ Petition. In *State of Madhya Pradesh v. Narmada Bachao Andolan & other connected matters* (2011) 7 SCC 639, it was held vide

paragraphs 8 to 13 that even in the PIL, the rules of procedural law are to be made applicable. Though every technicality in the procedural law may not be available as a defence in such proceedings when a matter of grave public importance is for consideration before the Court. For ready reference those paragraphs are quoted below: -

"8. It is settled proposition of law that a party has to plead its case and produce/ adduce sufficient evidence to substantiate the averments made in the petition and in case the pleadings are not complete the court is under no obligation to entertain the pleas.

9. In *Bharat Singh v. State of Haryana* : (1998) 4 SCC 534, this Court has observed as under: (SCC p. 543, para 13)

"13.... In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or the counter-affidavit, as the case may be, the court will not entertain the point.... there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not [the] evidence are required to be pleaded, in a Writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it."

(emphasis added)

A similar view has been reiterated by this Court in *M/s. Larsen and Toubro Ltd. Vs. State of Gujarat and Others*, , *M/s. Atul Castings Ltd. Vs. Bawa Gurvachan Singh, and Rajasthan Pradesh V.S. Sardarshahar and Another Vs. Union of India (UOI) and Others*, .

10. Pleadings and particulars are required to enable the court to decide the rights of the parties in the trial. Thus, the pleadings are more to help the court in narrowing the controversy involved and to inform the parties concerned to the question(s) in issue, so that the parties may adduce appropriate evidence on the said issue. It is settled legal proposition that "as a rule relief not founded on the pleadings should not be granted". Therefore, a decision of a case cannot be based on grounds outside the pleadings of the parties.

11. The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. If any factual or legal issue, despite having merit, has not been raised by the parties, the court should not decide the same as the opposite counsel does not have; a fair opportunity to answer the line of reasoning adopted in that regard. Such a judgment may be violative of the principles of natural justice. (Vide *Ram Sarup Gupta (Dead) by Lrs. Vs. Bishun*

Narain Inter College and Others, and Prem Prakash @ Lillu and Another Vs. State of Haryana, .)

12. It cannot be said that the rules of procedural law do not apply in PIL. The caution is always added that every technicality in the procedural law is not available as a defence in such proceedings when a matter of grave public importance is for consideration before the court. (Vide Rural Litigation and Entitlement Kendra Vs. State of U. P., .)

13. Strict rules of pleading may not apply in PIL, however, there must be sufficient material in the petition on the basis of which the court may proceed. The PIL litigant has to lay a factual foundation for his averments on the basis of which such a person claims the reliefs. The information furnished by him should not be vague and indefinite. Proper pleadings are necessary to meet the requirements of the principles of natural justice. Even in PIL, the litigant cannot approach the court to have a fishing or roving enquiry. He cannot claim to have a chance to establish his claim. However, the technicalities of the rules of pleading cannot be made applicable" vigorously. Pleadings prepared by a layman must be construed generously as he lacks the standard of accuracy and precision particularly when a legal wrong is caused to a determinate class. (Vide A. Hamsaveni and Others, A. Soosai and Others, J. Devid Baskar and Others, S. Rameshbabu and Others and K. Parthasarathy and Others Vs. State of T.N. and Another, , Ashok Kumar Pandey Vs. The State of West Bengal and Others, , Prabir Kumar Das v. State of Orissa : (2005) 13 SCC 452 and A. Abdul Farook v. Municipal Council, Perambalur (2009) 15 SCC 35."

19. In the instance case, pleadings on all these aspects are lacking. Not only this on several other aspects also, which learned Counsel for the Petitioners raised before this Court, there is no pleading in the Writ Petition. We may note that this is not a PIL suo-motu taken or entertained on any information submitted by the Petitioners by way of letter or representation. Here, the PIL has been filed by the Petitioners through their Counsel, therefore, at least on the substantial issues, which were raised at the time of the argument, there should have been proper pleadings so that the State as well as the MBPCL would have been able to take their stands on those issues. Thus, the Writ Petition is lacking in material particulars.

20. Mr. Iyer has next contended that execution of HRT work without acquisition of surface land coming over the HRT was wrong and illegal. Mr. R.K. Singh and Mr. J.B. Pradhan, learned Counsel appearing on behalf of State and Respondent No. 3, have vehemently opposed these arguments. They submitted that the HRT is long deep in the earth and there is no law which may provide for acquisition of the surface land falling over the HRT. They put example of Delhi Underground Metro saying that the surface land over the Metro tunnel in Delhi was not acquired because the surface land has been neither affected by the tunnel work nor the deep land at the level of tunnel would have any connection with the surface land falling over it. The argument, advanced by learned Counsel for the

Petitioners, does not appear to be reasonable. The land has been defined under various tenancy laws, which only includes the surface land and benefits to arise out of land and things attached to the earth etc. and broadly speaking, the landholder has only a right over the surface land and not that to the deepness of infinity beneath his surface land. I am of the view that in absence of any other statutory provision requiring acquisition of the surface land falling over the deep grounded tunnel, the action of the Government as also the MBPCL cannot be held to be illegal. Therefore, the argument has to be rejected.

21. Mr. Iyer then contended that when the HRT in Adit-II was realigned, a fresh environmental clearance was required from the MoEF. He referred to the environmental clearance dated 04.04.2007 and relied on the decision of Alaknanda Hydro Power Company Ltd. Vs. Anuj Joshi and Others, .

22. In the said case, Srinagar Hydro Electric Project (SHEP) first got its techno-economic approval for a 200 MW power plant from the Central Electricity Authority in 1982 and in 1987, the said approval was enhanced to 330 MW. The SHEP got then environmental clearance from MoEF in 1985 and investment approval in 1988. The State Electricity Board started work. But due to paucity of funds, the project was ultimately transferred to Alaknanda Hydropower Company Limited by order of MoEF dated 27.03.2006. A writ petition was filed in the High Court challenging the said transfer and also the approval for enhancement of capacity of the hydropower plant to 330 MW. The writ petition was disposed of on 19.04.2011 with a direction to the project proponent AAHPCL to approach MoEF for a specific determination of issues as to the clearance for increased capacity of power generation and increased height of the dam, etc. The MoEF was directed to decide the issues remanded for determination within a period of three months. MoEF by order dated 03.08.2011 clarified that the enhanced capacity of 330 MW and other parameters relating to dam height, diversion of forest land, submergence area, dam top road level, etc. had been duly granted environmental clearance. The said order of MoEF was challenged in the High Court. The writ petition was disposed of by the High Court by directing AHPCL to place documents mentioned in Schedule IV of 1994 EIA Notification dated 27.01.1994 before MoEF and MoEF was directed to take steps to hold a public hearing as per the above Notification. The said order was challenged before the Supreme Court and direction of High Court to hold public hearing was set: aside.

23. In the instant case, the techno-economic approval for 96 MW was granted and ultimately, the environmental clearance was also granted for the said capacity. This is not a case of enhancement of capacity. Here, on account of formation of a day light cavity due to defective strip survey, simply the tunnel falling in Adit-II was realigned. This cannot be said to be a change in the scope of the Project. Therefore, the argument of Mr. Iyer cannot be accepted that on account of the above change in alignment, a fresh appraisal/approval was required as per paragraph No. 6 of the letter of MoEF dated 04.04.2007 for environment clearance.

24. Mr. Iyer, then contended that the instances of muck dumping at two places other than muck dump site and formation of day light area in Face-5 of Adit-II are the two big elements for which the entire Project should be scrapped.

25. The above Project was granted to MBPCL vide Agreement dated 01.03.2006 and the date of commercial operation of the Project was extended upto June, 2016. As stated by the Counsel for MBPCL, about 35% work has already been completed and the rest of the work, after adopting the precautionary measures, is going on. On account of illegal dumping of muck at two sites and creation of a day light area, would it be in the public interest to scrap the entire Project at this stage?

26. The argument of Mr. Iyer is based on account of violation of one of the conditions of the environment clearance by MoEF about muck dumping, whereas Mr. R.K. Singh has argued that for the said two faults the Forest Department has already taken cognizance and the above actions were taken as offences and were compounded by the MBPCL by paying compensation of Rs. 4,29,800/-, Rs. 20,65,335/-and Rs. 6,50,000/-,and muck has been cleared and now, the MBPCL is dumping muck at the muck dumping sites. He also argued the doctrine of sustainable development referring to the judgment of Exnora International rep. by its General Secretary v. The Government of Tamil Nadu : (2007) 1 MLJ 3S3. In the said case, their Lordships took note of the two earlier judgments in paragraph 22 in the following manner: -

"22. It is also relevant to mention the latest judgment of the Hon"ble Supreme Court in Mrs. Susetha Vs. State of Tamil Nadu and Others, , wherein, while considering the importance and maintenance of water storage resources. Their Lordships held,

Water bodies are required to be retained. Such requirement is envisaged not only in view of the fact that the right to water as also quality life are envisaged under Article 21 of the Constitution of India, but also in view of the fact that the same has been recognised in Articles 47 and 45-A of the Constitution of India. Article 41A of the Constitution of India furthermore makes a fundamental duty of very citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife. But this principle applies only to natural water storage resources. The same principle cannot be applied in relation to artificial tanks.

Their Lordships have further held that where a temple tank, which had lost its utility long back and now used as dumping yard, if taken by Panchayat to construct shopping complex for the purpose of user thereof for resettlement of those persons, who were displaced due to expansion of a highway project, the decision cannot be found fault with Considering the doctrine of sustainable development, There Lordships have held,

21. In Bombay Dyeing and Mfg. Co. Ltd. Vs. Bombay Environmental Action Group and Others, , referring to a large number of decisions, it was stated that whereas need to protect the environment is a priority, it is also necessary to promote

development stating :

... The harmonization of the two needs has led to the concept of sustainable development, so much so that it has become the most significant and focal point of environmental legislation and judicial decisions relating to the same. Sustainable development, simply put, is a process in which development can be sustained over generations. Brundtland Report defines "sustainable development" as development that meets the needs of the present generations without compromising the ability of the future generations to meet their own needs. Making the concept of sustainable development operational for public policies raises important challenges that involve complex synergies and trade offs.

22. Treating the principle of sustainable development as a fundamental concept of Indian law, it was opined:

The development of the doctrine of sustainable development indeed is a welcome feature but while emphasizing the need of ecological impact, a delicate balance between it and the necessity for development must be struck. Whereas it is not possible to ignore inter generational interest, it is also not possible to ignore the dire need which the society urgently requires."

27. The 96 MW Rongni Chu HEP is being constructed in the larger interest of the public as the power is a basic need for development. A balance has to be strike in between developmental works undertaken by the State and the protection of rights and interest of the people. Both have their own importance. I am of the view that in the above state of affairs, it would not be in the public interest to straight way scrap the entire Project at this stage when 35% work has been completed and take a view that the Project itself be closed for ever. Instead of scrapping the Project, it would be appropriate to command the enforcement agencies and to look that the work of the Project goes on without affecting the rights and interest of the people, which would be in the larger public interest in the prevailing facts and circumstances of the case.

28. Mr. Iyer then contended that a jhora (natural water stream) situated near Adit-II has disappeared as an effect of day light area formation. Therefore, the activities resulting into such incident should not be permitted to continue. He canvassed the public trust doctrine and cited the decision of Association for Environment Protection v. State of Kerala & Ors.: (2013) 7 SCC 266. In the said decision, emphasis was supplied to paragraphs 53, 54, 55 and 65 of the decision of Fomento Resorts and Hotels Ltd. and Another Vs. Minguel Martins and Others, , in which it was observed that the public trust doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. This doctrine puts an implicit embargo on the right of the State to transfer public properties to private party if such transfer affects public interest, mandates affirmative State action for effective management of natural resources and empowers the citizens to question ineffective management thereof. It was

observed that the natural resources including forests, water bodies, rivers, seashores, etc. are held by the State as a trustee on behalf of the people and especially the future generations. These constitute common properties and people are entitled to uninterrupted use thereof. The State cannot transfer public trust properties to a private party, if such a transfer interferes with the right of the public and the Court can invoke the public trust doctrine and take affirmative action for protecting the right of the people to have access to light, air and water and also for protecting rivers, sea, tanks, trees, forests and associated natural ecosystems.

29. In the instant case, the material on record would show that the jhora, in fact, has not disappeared, neither force of the water in jhora has decreased. What has happened is that due to day light formation, over-burden and boulders had come in the area of jhora, therefore, jhora was not visible at that place, but just after some distance it was visible with same flow. Immediate preventive actions have been taken and the place of jhora has been properly cleaned. Moreover, it is not a case of disposition or transfer of public trust property by the State. It is a Case of an accident which occurred on account of technical mistake committed by an agency of the MBPCL, which earlier conducted the strip survey. This, of course, gives a right to the people to agitate and make allegations against the enforcement agency as also to question its ability, etc.

30. Mr. Iyer then contended that due to heavy vibration on account of underground blasting in the tunnel, the residential houses of villagers have been damaged and cracks have appeared in the houses for which they would be entitled for suitable compensation. Many photographs have been filed in the Writ Petition to show the alleged damages caused by underground blasting. We note that after the complaints were made to the District Magistrate, the blasting was stopped by his order and many directions including preventive measures were issued. It is stated that the MBPCL had complied with all the directions and then had applied for permitting blasting. Demonstrations were also done in presence of the expert agencies and report to this effect was also submitted. After submission of the report, the District Magistrate reconsidered the issue and permitted the MBPCL to conduct restricted blasting firstly for 30 days and, thereafter, for 60 days, and now the work is in progress. The contention of the MBPCL is also supported by the State. From the contents of the documents filed by the parties, it appears that some precautionary measures have already been adopted in this regard. The photographs would show that the cracks and breakage have occurred in the houses of the villagers, which they claimed that the same have occurred on account of unmindful blasting which the MBPCL did at the initial stage. This, of course, has to be looked into by the appropriate forum.

31. Mr. Iyer has lastly suggested that the entire tunnel area may be declared as the "Project Affected Area" and the lands of the people may be acquired as per the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, they may be rehabilitated and

considerable compensation may be awarded. The argument appears to be too technical. No pleadings in this regard have been made. No material particulars have been brought on record. Moreover, this does not appear to be practicable. The entire length of tunnel is about 12.5 kms. and the tunnel is going on much deeper inside the earth. Therefore, it would hardly be a ground to take a view that the entire surface area was wholly affected. That apart, presently there is no proposal from the Government to acquire the surface land of the entire tunnel area. The claim is being put up in a superficial manner. Therefore, this argument deserves to be rejected.

32. Mr. R.K. Singh has vehemently argued that the conduct of the Petitioners would show that they are not coming forward in public interest. Therefore, the petition filed by them should be dismissed.

33. I have no doubt about the propositions that (i) the Court should, prima facie, verify the credentials of the petitioner before entertaining a PIL; (ii) it should ensure that the PIL is aimed at redressal of genuine public harm or public injury and (iii) it should also ensure that there is no personal gain, private motive or oblique motive behind filing PIL (Vide: State of Uttaranchal Vs. Balwant Singh Chaufal and Others, . The basis of his argument is that these two Petitioners were party to the public meeting held by the Speaker of the Sikkim Legislative Assembly, wherein many decision were taken and were followed. Therefore, the grievances were redressed and filing this petition, styled as PIL, is nothing but is an outcome of their malafides. This does not appear to be correct. In the public meeting, the decisions were taken to do various things in the interest of public and for execution of the project work in a safe manner. If one was party to the said meeting and he agreed to the decisions, simply by that he cannot be estopped from taking further steps if the grievances still subsist.

34. It is well settled that even in a case where a petitioner might have moved the court in his private interest and for redressal of personal grievances, the court in furtherance of the public interest may treat it necessary to enquire into the state of affairs of the subject of litigation in the interest of justice. This is what the Hon'ble Supreme Court said in Ashok Lanka and Another Vs. Rishi Dixit and Others, , relying on the decisions of Guruvayur Devaswom Managing Commit. and Another Vs. C.K. Rajan and Others, and Prahlad Singh Vs. Col. Sukhdev Singh, . In the instant case, as discussed earlier, an element of public interest was found and then the petition was entertained. Therefore, the argument based on the conduct and credentials of the Petitioners now cannot be accepted and it is held that this PIL is maintainable at the instance of the above two Petitioners, who are none else than two villagers of the village where all the activities are going on.

35. We have two Reports of the technical teams. First is dated 11.07.2013 submitted by DMMG and the second is dated 20.08.2013 submitted by SPDC. Various suggestions were made in these Reports. The suggestions and recommendations made in Report dated 20.08.2013 by the SPDC are in quite

detail. They are as follows: -

"(a) Due to the HRT day-lighting at Nallah crossing near to Adit 2, the HRT needs to be re-aligned after a detailed topographical survey and geological mapping of the area is completed and tunnel vertical and lateral rock covers are ascertained. The realignment of the HRT should be done by the Design Consultants and a report to this effect may be submitted by the developer to the Govt. Till such time no work of tunnel excavation from Face-5 should be done. However all works of taking care of Face-5 needs to be routinely undertaken and strict monitoring of this distressed Face be done round the clock.

(b) The day lighted portion of the tunnel needs to be filled up with concrete till such length of the HRT where the vertical/lateral rock cover do not become at least 20 m. This 20 m has been suggested on the basis of keeping the vertical/lateral rock cover of not less than three times the excavated diameter (A conservative excavated diameter of 6 m has been considered). The Design consultants should give construction drawings for treatment of the cavity/day lighted portion/abandoned tunnel length on Face-5 and work should be done as per those design/drawings.

(c) Design of optimum blasting pattern and a system of vibration measurement at crucial habituated placed/other critical areas may be done by employing specialized agencies like CMPCI/CMFRI/any other suitable reputed Govt. agency. The findings and report of the specialized agency needs to be submitted to the Govt. and monthly vibration monitoring data at specified locations also needs to be maintained regularly.

(d) All the Nallah crossings/depressions along with the HRT alignment need to be identified, surveyed fresh and geological/topo maps on 1:200/500 scale be prepared. Based on the topography/geology, the decision of drilling bore holes may be made by the Design Consultants and a report in this regard is to be submitted to Govt.

(e) It is seen that near to Intake there is a likely vulnerable area of low cover in the HRT. It is suggested that the design consultant provides special measures for this and all such areas.

(f) The revised HRT alignment may be so selected that the vertical and lateral rocks cover from the crown/walls of the HRT is not less than about 50 meters from the nearest habituated area.

(g) Tunnel excavation in HRT from all faces else than Face-5 can be commenced. Geological logs of the excavated HRT stretches must be prepared side by side with the tunnel excavation and be kept ready for the use of designers and for any future inspections.

(h) Diligent records of type and quantum of explosives used for all the excavated stretches of the HRT/Adits/Shaft etc. must be maintained for any future references/inspections etc.

(i) Since the HRT is quite long in this project and passes through relatively weak phyllitic rocks and the most critical portion (Face 6 and 7) totalling to about 4.7 km length (out of total length of 12.6 km) is still balance, it is necessary that adequate technical manpower of civil engineers/geologists etc. are posted at different faces of work sites.

(j) All other works at other sites like Barrage/De-silting etc. may be started and done strictly as per the best prevalent practice and as per the technical specifications.

(k) The Project developer should get the entire reservoir area geologically mapped and identify the critical locations along the reservoir rim for suitable treatment. Treatment should be designed by the Design consultants and submitted for approval of the Govt. This work needs to be satisfactorily completed before reservoir impounding is allowed."

36. The counter-affidavit filed by the MBPCL would show that the MBPCL is complying with the directions and guidelines of the strip survey report finalized by DMMG, Government of Sikkim. They are prosecuting the project work under the supervision of Multidisciplinary Monitoring Committee constituted by the Government of Sikkim. As far as blasting is concerned, it has been stated that it is of low intensity and is monitored by using a machine called "Minimate Blaster" under supervision of expert geologists in presence of IRB personnel duly following the guidelines of the Director General of Mines Safety. Suggestion relating to dumping of muck has also been complied and an action taken report has been submitted to the SDM which has been accepted.

37. Definite pleadings with regard to the compliance of the above recommendations have been made by the MBPCL in paragraph 35 of its counter-affidavit. Therefore, the concern of the Court now is twofold. First, if any damage is caused to the properties of the villagers, that should be compensated; and second, to see that the enforcement agencies as also the project developer take effective steps so that no damage is caused to the public/private properties and the Project goes on in a smooth manner.

38. In *Narmada Bachao Andolan Vs. Union of India and Others*, , it was held that while exercising jurisdiction in PIL cases the court has not forsaken its duty and role as a court of law dispensing justice in accordance with law. It is only where there has been a failure on the part of any authority in acting according to law or in non-action or acting: in violation of the law that the court has stepped in. No directions are issued which are in conflict with any legal provisions. Directions have, in appropriate cases, been given where the law is silent and inaction would result in violation of the fundamental rights or other legal provisions.

39. In view of the above, the Writ Petition, therefore, is disposed of with the following directions:--

"(i) The work of the Project shall be conducted under the strict supervision of

Multidisciplinary Committee constituted by the Government of Sikkim vide Notification dated 12.12.2011.

(ii) The Multidisciplinary Committee shall firstly examine as to whether the suggestions made in the Reports dated 11.07.2013 and 20.08.2013 by DMMG and SPDC respectively have been complied or not. If the Committee finds that the suggestions are not complied without any reasonable cause and even in the changed scenario it is required to be complied, it shall make a report to the Government and the Government thereupon shall take necessary action in accordance with law.

(iii) The Multidisciplinary Committee shall also oversee the effective implementation of the suggested safeguard measures as per provisions of the environmental clearance granted by the MoEF.

(iv) The State/Statutory Authorities shall take effective steps for enforcement of concerned laws.

(v) As far as allegations of damages to the crops/fields/residential houses etc. of the people of the concerned area are concerned, that may require leading of evidence, therefore, they shall be free to approach the appropriate forum in accordance with law.

(vi) No order as to costs."