(2022) 02 CHH CK 0053

In the Chhattisgarh High Court

Case No : Writ Petition (PIL) No. 141 Of 2021

Ramesh Agrawal VsUnion Of India

Date of Decision : 23-02-2022

Acts Referred:

Environment (Protection) Rules, 1986 — Section 5(3), 5(3)(d)
Environment (Protection) Act, 1986 — Section 3(1), 3(2)(v), 3(3)
Disaster Management Act, 2005 — Section 6(2)(i), 10(2)(i)

Citation : (2022) 02 CHH CK 0053

Hon'ble Judges : Arup Kumar Goswami, CJ;N.K. Chandravanshi, J

Bench : Division Bench

Advocate : K. Rohan, Ramakant Mishra, Meena Shastri, Abhijeet Mishra, Sanjay Upadhyay, Sourabh Sharma, Vikram Rajkhowa

Final Decision : Dismissed

Judgement

1. Heard Mr. K. Rohan, learned counsel for the petitioner. Also heard Mr. Ramakant Mishra, learned Assistant Solicitor General for the respondent No. 1, Ms. Meena Shastri, learned Additional Advocate General for the respondents No. 2 and 6, Mr. Abhijeet Mishra, learned counsel for the respondents No. 3 to 5 and 8, as well as Mr. Sanjay Upadhyay, Mr. Sourabh Sharma and Mr. Vikram Rajkhowa, learned counsel for the respondent No. 7.

2. The petitioner describes himself as an environmentalist and states that he had taken up the cause of ecology and had brought to the notice of the Courts and the Tribunals the issues concerning ecology and environment.

3. The proximate cause for filing this writ petition in the nature of public interest litigation is publication of a notice on 13.10.2021 in ‘Ispat Times’ by the Member Secretary of the Chhattisgarh Environment Conservation Board (for short, CECB), respondent No. 4, notifying a public hearing on 17.11.2021 consequent upon an application submitted by the respondent No. 7 on 22.06.2021 before the CECB in accordance with the Environment Impact Assessment Notification, 2006 (for short, EIA Notification, 2006), as amended, for conducting the hearing.

4. The respondent No. 7 had submitted an application dated 20. 08.2020 to the

Expert Appraisal Committee (for short, EAC), Ministry of Environment, Forest and Climate Change (for short, MoEF) for issuance of Terms of Reference (for short, ToR) for expansion of its Integrated Steel Plant. Pursuant thereto, ToR dated 08.09.2020 was issue in favour of respondent No. 7. The respondent No. 7 had submitted draft Environment Impact Assessment (for short, EIA) report on 10.06.2021 before the respondent No. 3 and the application on 22.06.2021 for conducting public hearing. The respondent No 4 issued a public notification in “Navin Kadam”, a regional vernacular daily newspaper, on 12.08.2021, for public hearing on 15.09.2021.

5. It is the case of the petitioner that when he, other villagers and the residents to be affected by the expansion of the Integrated Steel Plant of the respondent No. 7 reached the venue of the public hearing on 15.09.2021, they came to learn that the scheduled public hearing had been cancelled/postponed/adjourned. Immediately, the petitioner preferred an application under the provisions of the Right to Information Act, 2005, for short, RTI Act, seeking documents pertaining to cancellation/postponement/ adjournment the public hearing and based on the information provided, the petitioner learnt that the Collector, Raigarh, i.e. respondent No. 6, vide his letter dated 14.09.2021, had requested the Member Secretary, CECB for postponing the public hearing scheduled on 15.09.2021 and it is on the basis of the said letter, the public hearing scheduled on 15.09.2021 was postponed and a notification to that effect was published in the 15.09.2021 publication of ‘Navin Kadam’.

6. Subsequently, as noticed earlier, another public notification was published in ‘Ispat Times’ on 13.10.2021 notifying that the public hearing will be conducted on 17.11.2021.

7. By order dated 11.11.2021, while issuing notices to the respondents making it returnable on 15.12.2021, this Court provided that no public hearing shall take place on 17.11.2021 in terms of notice dated 13.10.2021 issued by CECB. While passing the aforesaid order, this Court observed as follows:

“Drawing attention to paragraphs 7.0, 7.1 and 7.2 of notification dated 01.12.2009 issued by the Ministry of Environment and Forest, Mr. Rohan submits that public hearing is required to be completed within a period of 45 days from the date of receipt of the request letter from the applicant and that if such public hearing cannot be concluded within the aforesaid period, the Central Government, Ministry of Environment and Forest, in respect of Category ‘A’ project or activity, in which the present project falls, at the request of the State Level Environment Impact Assessment Authority shall engage any other agency or authority to complete the process in terms of the said notification.

On the basis of above, he submits that the period of 45 days having expired long back, the present notice issued by the Member Secretary of Chhattisgarh Environment Conservation Board (CECB), is not sustainable in law.

Mr. Mishra and Mr. Sharma, on the other hand, submit that because of Covid-19 pandemic, step had to be taken for postponing the public haring and therefore, the contention of the learned counsel for the petitioner cannot be accepted.

The matter will require a detailed consideration.

We are, however, of the opinion that in the facts and circumstances of the case, a prima facie case is made out for an interim order, as admittedly, the period of 45 days as envisaged under Clause 7.1 from the date of filing of the application by respondent No. 7 has expired."

8. Pleadings have been exchanged.

9. During pendency of the writ petition, the State Level Environment Impact Assessment Authority (for short, SEIAA) was arrayed as respondent No. 8. The Member Secretary of the CECB is also the Member Secretary of the SEIAA.

10. Mr. K. Rohan, learned counsel for the petitioner submits that the public hearing scheduled on 15.09.2021 could have been postponed/ adjourned only in case of some untoward emergency situation, but the reason assigned by the Collector, Raigarh was "unavoidable reasons" and therefore, the same does not meet the requirement of the mandate of paragraph 3.3 of Appendix IV of the EIA Notification. His only and pointed submission is that when CECB has failed to hold and complete the public meeting within the fixed period of 45 days from the date of receipt of the request letter from the applicant as provided under paragraph 7.1, in terms of paragraph 7.2 of Appendix IV, the CECB ceased to have authority and jurisdiction to conduct the public hearing as it had become functus officio and therefore, the notification issued for conducting the public hearing on 17.11.2021 being, ex facie, bad in law, is liable to be set aside. Mr. Rohan further submits that there is no provision for extending the period of 45 days and once the period of 45 days expires, paragraph 7.2 of Appendix IV invariably comes into play. Since the project in question is a category 'A' project, the Central Government in the MoEF, is now required to engage any other agency or authority to complete the process, he submits.

11. Mr. Abhijeet Mishra, learned counsel for the respondents No. 3 to 5 and 8 submits that postponement of the public hearing as per paragraph 3.3 of Appendix IV of the EIA Notification, is the prerogative of the District Magistrate only and considering the unprecedented surge in Covid-19 cases across the country during the second wave of the pandemic, various orders were issued by the Ministry of Home Affairs, prohibiting gathering and congregation as a containment measure and therefore, a note dated 26.07.2021 (Annexure -P/21) was addressed to the respondent No. 6 requesting that public hearing may be conducted in the month of September, 2021, preferably on 15.09.2021, and accordingly, notification dated 12.08.2021 was issued proposing to hold the public hearing on 15.09.2021. However, due to issuance of an order dated 28.08.2021 extending the containment measures prohibiting gathering/ congregation of public up to 30.09.2021, a request was made by the respondent No. 5 to decide upon the date of public hearing after 14.11.2021 so that 30 days'

notice period after the publication of date of public hearing for inviting suggestions/objections from the public can be complied with and after consultations were held, fresh date, time and venue of public hearing was fixed on 17.11.2021. The finalization of the details of public hearing was communicated by the Additional District Magistrate, Raigarh to CECB by letter dated 04.10.2021. Accordingly, a notification was issued in 'Ispat Times' on 13.10.2021, notifying that public hearing would be held on 17.11.2021. He submits that the time period for completion of public hearing under paragraph 7 would not be applicable when paragraph 3.4 is invoked after public hearing is postponed under paragraph 3.3. It is submitted that postponement of public hearing was necessitated in view of Covid-19 pandemic and the orders issued by the Ministry of Home Affairs, and therefore, it does not amount to failure to hold public hearing as contemplated under paragraph 7.2. Accordingly, he submits that no case is made out for interference by this Court and the writ petition is liable to be dismissed.

12. Mr. Sanjay Upadhyay, learned counsel for the respondent No. 7 endorses the submission of Mr. Abhijeet Mishra and while reiterating the same, draws the attention of the Court to pages 457 and 458 to submit that in view of orders issued by the Ministry of Home Affairs, and more particularly, in view of order dated 29.06.2021, it was opined that public hearing could be held on 15.09.2021. He submits that because of ravaging Covid-19 pandemic, as the order dated 28.08.2021 was issued extending the order dated 27.06.2021 till 30.09.201, a note was put up to the Collector for conducting the public hearing after 14.11.2021 and accordingly, the Collector, Raigarh had fixed the date of public hearing on 17.11.2021 and expression used in the order dated 14.09.2021 of the respondent No. 6 for postponing the public hearing is not of any consequence.

13. Mr. Ramakant Mishra, learned Assistant Solicitor General of India submits that if the CECB is unable to hold the public hearing within the stipulated time period, the onus is on the project proponent to request the Central Government to engage any other agency for completion of the process. In the instant case, the CECB had already taken necessary action for re-conducting the public hearing. He further submits that in case of any untoward emergency situation, public hearing can certainly be postponed on the recommendation of the concerned District Magistrate/District Collector.

14. Ms. Meena Shastri, learned Additional Advocate General for the respondent No. 2 and 6 submits that due to Covid-19 pandemic situation, a prudent and rationale decision had been taken by the District Collector, Raigarh to postpone the public hearing in the larger interest of the public at large.

15. We have considered the submissions of the learned counsel for the parties and have perused the materials on record.

16. A draft notification under sub-rule (3) of Rule 5 of the Environment

(Protection) Rules, 1986 (for short, EP Rules of 1986) was published in the Gazette of India, Extraordinary, Part II dated 15.09.2005 for imposing certain restrictions and prohibitions on new projects or activities, or on the expansion or modernization of existing projects or activities based on their potential environmental impacts as indicated in the Schedule to the notification, being undertaken in any part of India, unless prior environmental clearance has been accorded in accordance with the objectives of National Environment Policy as approved by the Union Cabinet on 18.05.2006 and the procedure specified in the notification, by the Central Government or the State or Union territory Level Environment Impact Assessment Authority (SEIAA), to be constituted by the Central Government in consultation with the State Government or the Union territory Administration concerned under sub-section (3) of section 3 of the Environment (Protection) Act, 1986 (for short, EP Act of 1986) for the purpose of the notification, inviting objections and suggestions from all persons likely to be affected thereby within a period of sixty days from the date on which copies of Gazette containing the said notification were made available to the public. Copies of the said notification were made available to the public on 15.09.2005. After objections and suggestions received in response to the above mentioned draft notification had been considered by the Central Government; in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the EP Act of 1986 read with clause (d) of sub-rule (3) of rule 5 of the EP Rules of 1986 and in supersession of the notification number S.O. 60 (E) dated 27.01.1994, except in respect of things done or omitted to be done before such supersession, the Central Government issued a notification dated 14.09.2006 directing that on and from the date of its publication the required construction of new projects or activities or the expansion or modernization of existing projects or activities listed in the Schedule to this notification entailing capacity addition with change in process and or technology shall be undertaken in any part of India only after the prior environmental clearance from the Central Government or as the case may be, by the SEIAA, duly constituted by the Central Government under sub-section (3) of section 3 of the said Act, in accordance with the procedure specified in the notification.

17. Paragraph 4 of the notification dated14.09.2006 has broadly categorized the projects and activities into two categories i.e., Category A and Category B, based on the spatial extent of potential impacts and potential impacts on human health and natural and man made resources. All projects or activities included as Category 'A' in the Schedule, including expansion and modernization of existing projects or activities and change in product mix, shall require prior environmental clearance from the Central Government in the MoEF on the recommendations of an Expert Appraisal Committee (EAC) to be constituted by the Central Government for the purposes of the notification.

18. Paragraph 6 of the notification dated 14.09.2006 deals with application for prior environmental clearance (EC). An application seeking prior environmental clearance in all cases is required to be made in the prescribed Form 1 and

Supplementary Form 1A, if applicable, as given in Appendix II, after the identification of prospective site(s) for the project and/or activities to which the application relates, before commencing any construction activity, or preparation of land, at the site by the applicant. The applicant is required to furnish, along with the application, a copy of the pre-feasibility project report except that, in case of construction projects or activities (item 8 of the Schedule) in addition to Form 1 and the Supplementary Form 1A, a copy of the conceptual plan is required to be provided, instead of the pre-feasibility report.

19. Paragraph 7 of the notification dated 14.09.2006 enumerates the stages in the EC process for new projects which comprise of a maximum of four stages, all of which may not apply to particular cases as set forth below in the notification. The four stages are:- (1) Screening (Only for Category 'B' projects and activities), (2) Scoping, (3) Public Consultation; and (4) Appraisal. The Public Consultation shall ordinarily have two components comprising of (i) a public hearing at the site or in its close proximity- district wise, to be carried out in the manner prescribed in Appendix IV, for ascertaining concerns of local affected persons; and (ii) obtaining responses in writing from other concerned persons having a plausible stake in the environmental aspects of the project or activity.

20. Subsequently, by notification dated 01.12.2009, which was issued in exercise of powers conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the EP Act of 1986, the Central Government made certain amendments in the EIA Notification dated 14.09.2006. Amongst others, Appendix IV was substituted.

21. At the outset, it will be appropriate to take note of some of the provisions of the Appendix IV of EIA Notification, which have relevance to the issue in hand.

22. Appendix IV prescribes the 'procedure for conducting public hearing'. Paragraph 1.0 provides that public hearing shall be arranged in a systematic, time-bound and transparent manner ensuring widest possible public participation at the project site(s) or its close proximity district-wise by the concerned State Pollution Control Board (SPCB) or the Union Territory Pollution Control Committee (UTPCC).

23. Paragraph 2.0 of Appendix IV is on the subject of the process. Paragraph 2.1 essentially provides that the applicant shall make a request through a letter to the Member Secretary of the SPCB or the UTPCC in whose jurisdiction the project is located to arrange the public hearing within the prescribed statutory period. In case the project site is extending beyond a State or a Union Territory, the public hearing is mandated in each State or Union Territory in which the project is sited and the applicant shall make separate requests to each concerned SPCB or UTPCC for holding the public hearing. Under paragraph 2.2, the applicant is required to enclose with the letter of request at least 10 hard copies and an equivalent number of soft (electronic) copies of the draft EIA Report with the generic structure given in Appendix III including the Summary Environment

Impact Assessment report in English and in the official language of the State/ local language, prepared strictly in accordance with the ToR communicated after scoping. The applicant is also to arrange to forward copies, one hard and one soft ,of the draft EIA report along with the Summary EIA report to the District Magistrate/ District Collector/Deputy Commissioner(s), Zila Parishad or Municipal Corporation or Panchayats Union, District Industries Office, Urban Local Bodies/ PRIs Concerned / Development authorities, and the concerned Regional Office of the Ministry of Environment and Forests, within whose jurisdiction the project is located.

24. Paragraph 2.3 of Appendix IV provides that on receiving the draft EIA report, the above mentioned authorities except the Regional Office of MoEF, shall arrange to widely publicize it within their respective jurisdictions requesting the interested persons to send their comments to the concerned regulatory authorities. They shall also make available the draft EIA Report for inspection electronically or otherwise to the public during normal office hours till the public hearing is over.

25. Paragarph 2.4 of Appendix IV lays down that the SPCB or UTPCC concerned shall also make similar arrangements for giving publicity about the project within the State/Union Territory and make available the summary of the draft EIA report (Appendix III A) for inspection in select offices or public libraries or any other suitable location, etc. They shall also additionally make available a copy of the draft Environmental Impact Assessment report to the above five authorities/ offices as given in paragraph 2.2.

26. In view of the fact that arguments have centered around paragraphs 3.0, 3.1,3.2, 3.3, 3.4, 7.0, 7.1 and 7.2, it will be appropriate to extract the same. For the present, we extract only paragraphs 3.0, 3.1, 3.2, 3.3. Paragraphs 7.0, 7.1 and 7.2 will be extracted at an appropriate place. We will discuss the extracted paragraphs in detail after we briefly take note of some of the other paragraphs of the EIA Notification in order to understand the scheme of public hearing.

"3.0 Notice of Public Hearing:

3.1 The Member-Secretary of the concerned SPCB or UTPCC shall finalize the date, time and exact venue for the conduct of public hearing within 7(seven) days of the date of receipt of the draft Environmental Impact Assessment report from the project proponent, and advertise the same in one major National Daily and one Regional vernacular Daily / Official State Language. A minimum notice period of 30 (thirty) days shall be provided to the public for furnishing their responses;

3.2 The advertisement shall also inform the public about the places or offices where the public could access the draft Environmental Impact Assessment report and the Summary Environmental Impact Assessment report before the public hearing. In places where the newspapers do not reach, the Competent Authority should arrange to inform the local public about the public hearing by other means such as by way of beating of drums as well as advertisement / announcement on radio / television.

3.3 No postponement of the date, time, venue of the public hearing shall be undertaken, unless some untoward emergency situation occurs and then only on the recommendation of the concerned District Magistrate/District Collector/ Deputy Commissioner, the postponement shall be notified to the public through the same National and Regional vernacular dailies and also prominently displayed at all the identified offices by the concerned SPCB or Union Territory Pollution Control Committee;

3.4 In the above exceptional circumstances, fresh date, time and venue for the public consultation shall be decided by the Member – Secretary of the concerned SPCB or UTPCC only in consultation with the District Magistrate/District Collector/ Deputy Commissioner and notified afresh as per procedure under 3.1 above."

27. Paragraph 5 provides for videography of the entire proceedings of public hearing. The SPCB or UTPCC shall arrange to video film the entire proceedings and a copy of the said videotape or a CD shall be enclosed with the public hearing proceedings while forwarding it to the Regulatory Authority concerned. Paragraph 6 of Appendix IV deals as to how the proceeding is to be conducted.

"7.0 Time period for completion of public hearing

7.1 The public hearing shall be completed within a period of 45 (forty five) days from date of receipt of the request letter from the applicant. Thereafter the SPCB or UTPCC concerned shall sent the public hearing proceedings to the concerned regulatory authority within 8 (eight) days of the completion of the public hearing. Simultaneously, a copy will also be provided to the project proponent. The applicant may also directly forward a copy of the approved public hearing proceedings to the regulatory authority concerned along with the final Environmental Impact Assessment report or supplementary report to the draft EIA report prepared after the public hearing and public consultations incorporating the concerns expressed in the public hearing along with action plan and financial allocation, item-wise, to address those concerns.

7.2 If the SPCB or UTPCC fails to hold the public hearing within the stipulated 45 (forty five) days, the Central Government in Ministry of Environment and Forests for Category 'A' project or activity and the State Government or Union Territory Administration for Category 'B' project or activity at the request of the SEIAA, shall engage any other agency or authority to complete the process, as per procedure laid down in this Notification."

28. Beginning from around February/March of 2020, the Covid-19 pandemic has created havoc in the world. Millions of people have died and are still dying; normal life that we were all accustomed to, has become a thing of the past ; economies have been devastated, and the list of woes goes on. We are yet to see the end of the pandemic.

29. Due to onslaught of the pandemic, the Ministry of Home Affairs, Government of India, had issued an order dated 23.03.2021 for effective control of Covid-19 in the country for the period upto 30.04.2021. Considering the unprecedented surge in Covid-19 cases across the Country, the Ministry of Health & Family Welfare (for short, MoHFW) had issued an advisory to all the States and Union Territories vide DO letter dated 25.04.2021 for implementing intensive, local and focused containment frame work in specific districts/cities/areas, identified based on a prescribed criterion. It is also seen that in exercise of powers under section 6(2)(i) of the Disaster Management Act, 2005 (for short, the DM Act), the National Disaster Management Authority (NDMA) had directed the Union Home Secretary and the Chairman, National Executive Committee (NEC), to issue an order for ensuring compliance on the focused containment measures, as mentioned in the advisory dated 25.04.2021 for containment of Covid-19 in the country. Accordingly, in exercise of powers under Section 10(2)(1) of the DM Act, the Union Home Secretary and the Chairman (NEC), by order dated 29.04.2021, directed that the order dated 25.04.2021 will remain in force upto 31.05.2021. It appears that considering the need for containment across the country, the MoHFW vide DO No. Z.28015/85/2021-DM Cell, dated 28.06.2021 had issued an advisory to all the States and Union Territories for implementing targeted and prompt actions for bringing the pandemic under control. Accordingly, by order dated 29.06.2021, the Union Home Secretary directed all the States and Union Territories to consider implementation of targeted and prompt action for Covid-19 management as conveyed by the advisory dated 28.06.2021, as per Annexure-I, until 31.07.2021. It was specifically indicated that the National Directives for Covid-19 Management, as specified in Annexure-II shall continue to be strictly followed throughout the country. Thereafter, on 28.07.2021, another order was issued by the Union Home Secretary and Chairman,NEC, providing that the order dated 29.06.2021 shall continue to remain in force upto 31.08.2021. On 28.08.2021, another order was issued by the Union Home Secretary and Chairman, NEC directing that the notification dated 29.06.2021 will remain in force upto 30.09.2021.

30. The relevant clauses of the containment framework as mentioned in Annexure - I advisory of the MoHFW dated 25.04.2021 read as follows:

“A. Containment.

i. Focus will be on containment as a major approach to flatten the current curve of the epidemic.

xxx xxx xxx

iii. The spread of the infection has to be controlled through restricting the intermingling amongst people, the only known host for the COVID-19 virus.

iv. Social/political/sports/entertainment/ academic/cultural/religious/festival-related and other gathering and congregation shall be prohibited.

v. Marriages (attended by up to 50 persons) and funerals/ last rites (attended by up to 20 persons) may be allowed.

vi. All shopping complexes, cinema halls, restaurants & bars, sports complexes, gym, spas, swimming pool and religious places should remain closed.

xxx xxx xxx

xiii. However, these are indicative activities, and States/UTs should make a careful analysis of the local situation, areas to be covered, and probability of transmission and then take a decision."

31. National Directives for Covid-19 Management emphasised social distancing. It laid down that individuals must maintain a minimum distance of 6 feet in public places.

32. Paragraph 1.0 of Appendix IV unequivocally mandates ensuring of widest possible public participation at the public hearing in a systematic, time-bound and transparent manner and as a sequel to the above, elaborate provisions are made to ensure transparency and various time-lines are given with regard to the processing of application and eventual holding of the public hearing. Apart from issuing advertisement and making available the draft EIA report to the people who are likely to be affected so as to facilitate a meaningful and effective hearing, in areas where newspapers do not reach, the competent authority is required to inform about the public hearing by other means.

33. In order to complete the process of public hearing in a time-bound manner, paragraph 7.1 of Appendix IV mandates that the public hearing shall be completed within a period of 45 days from the date of receipt of the request letter from the applicant. Once the date of public hearing is fixed, then in terms of paragraph 3.3 of Appendix IV, no postponement of the date, time and venue of the public hearing shall be undertaken in order to ensure time-bound holding of public hearing. There is an exception to the same to the effect that if some untoward emergency situation occurs, on the recommendation of the concerned District Magistrate/District Collector/Deputy Commissioner, the public hearing can be postponed and in the event of any such postponement on the recommendation of the District Magistrate/District Collector/Deputy Commissioner, in the exceptional circumstances, fresh date, time and venue for the public consultation shall be decided by the Principal Secretary of the concerned SPCB or UTPCC, in consultation with the District Magistrate/District Collector/Deputy Commissioner.

34. While paragraph 3.3 of Appendix IV uses the expression 'untoward emergency situation', paragraph 3.4 uses the expression 'exceptional circumstances' in the context of postponement of public hearing.

35. Paragraph 7.2 of Appendix IV provides that if the SPCB or the UTPCC fails to hold the public hearing within the stipulated period of 45 days, the Central Government in the MoEF for Category 'A' project or the activity and the State

Government or the Union Territory Administration for Category 'B' project or activity, shall engage any other agency or authority to complete the process. Paragraph 7.2 lays down the consequences of failure to hold the public hearing. The net result of failure on the part of the SPCB or the UTPCC is that they are divested of the authority to complete the process of public hearing. Such a consequence is envisioned in order to give teeth to the prescription requiring holding of public hearing in the time-bound manner.

36. The term 'postponement' and 'failure' are having two different connotations. Failure, in the dictionary sense means 'a falling short', 'a deficiency' or 'lack'. Failure and default are synonymous terms. Default means omission of that which a man ought to do. In Black's Law Dictionary, Revised Fourth Edition, meaning of the term 'failure' is stated as follows: "Failure – Abandonment or defeat, State v. Summers, 320 Mo. 189, 6 S.W. 2d 883, 885. Deficiency, want, or lack; ineffectualness; inefficiency as measured by some legal standard; an unsuccessful attempt. State v. Butler, 81 Minn. 103 N.E. 783 Lapse, Wilmington Trust Co. v. Wilmington Trust Co., 25 Del. Ch. 204, 15 A. 2d 830, 834. See, also, fail."

37. The meaning of the term 'postpone', has been defined in the Black's Law Dictionary, as follows: "Postpone – To put off; defer; delay; continue: adjourn; as when a hearing is postponed. Also to place after; to set below something else; as when an earlier lien is for some reason postponed to a later lien. The word "postpone" carries with it the idea of deferring the doing of something or the taking effect of something, until a future or later time. Gartner v. Roth, Cal., 157 P. 2D 361, 363. The word "postponement," in speaking of legal proceedings, is nearly equivalent to "continuance;" except that the former word is generally preferred when describing an adjournment of the cause to another day during the term, and the latter when the case goes over to another term. State v. Underwood, 76 Mo. 639; State v. Nathaniel, 52 La. Ann 558 26 So. 1008."

38. In the instant case, the application of the respondent No. 7 for public hearing was submitted to the respondent No. 3 on 22.06.2021. Forty-five days elapsed on 06.08.2021. Though the time period of 45 days was exceeded, the petitioner has not questioned the public notification dated 12.08.2021 for public hearing on 15.09.2021. Rather, the averments of the petitioner go to show that the petitioner and others had gone to attend the public hearing. However, the petitioner now questions the authority of the respondent No. 3 to issue notification published on 13.10.2021 in 'Ispat Times' notifying that the public hearing will be conducted on 17.11.2021 on the ground that respondent No. 3 had no authority to hold the public hearing as it had failed to conclude the public hearing within 45 days from the date of receipt of the application.

39. The advisory dated 25.04.2021 of the MoHFW highlighted that spread of the Covid-19 infection has to be controlled by restricted intermingling amongst people and it is with that objective, the social/ political/sports/entertainment/ academic/cultural/religious/festival-related and other gathering and congregation

were prohibited. The said advisory was to remain in force upto 31.05.2021 and the same was continued by issuing various orders as noticed, including the order dated 29.06.2021 by which it was continued upto 31.07.2021 and then by order dated 28.07.2021, to 31.08.2021.

40. It is in the above background, a request was made to the respondent No. 6 that the public hearing may be conducted in the month of September, 2021, preferably on 15.09.2021 and the same being accepted by respondent No. 6, the date of public hearing was notified as 15.09.2021. However, subsequently, another order dated 28.08.2021 came to be issued extending the containment measures prohibiting congregation/gathering of public upto 30.09.2021.

41. In these circumstances, the decision to postpone public hearing ought to have been taken at an earlier point of time, instead of waiting till 14.09.2021 to announce the postponement of public hearing. As it was issued at the eleventh hour, it appears that many people were not aware of such postponement as a result of which some people had gathered for public hearing.

42. It is seen that, thereafter, on 29.09.2021, a note was put up by the Regional Officer, CECB, Raigarh, requesting the Collector, Raigarh to fix a fresh date, time and venue for public hearing and it is on the basis of the said note, the respondent No. 6 fixed 17.11.2021 as the next date for public hearing.

43. Though, holding of the public meeting beyond the period of 45 days by the respondent No. 3 on 15.09.2021, as noted earlier, is not in question, Mr. Rohan, however, submits that the ground cited by the respondent No. 6, namely, 'unavoidable reason' was not justified and the same does not meet the requirement of postponing a public hearing as laid down in paragraph 3.3 of Appendix IV. We are afraid that the submission advanced has no merit.

44. In Union of India & Others v. E.G.Nambudiri, reported in (1991) 3 SCC 38, the Hon'ble Supreme Court observed that in governmental functioning before any order is issued, the matter is generally considered at various levels and the reasons and opinions are contained in the notes in the file. The reasons contained in the file enable the competent authority to formulate its opinion. If such an order is challenged in a court of law, it is always open to the competent authority to place the reasons before the Court which may have led to passing of the order. It is always open to the administrative authority to produce evidence alinude before the court to justify its action.

45. Untoward emergency situation or exceptional circumstances, the expressions appearing in paragraphs 3.3 and 3.4 of Appendix IV in the context of postponement, may not strictly be equated with the term 'unavoidable circumstances' used by the respondent No. 6. The attending facts and circumstances and the materials on record demonstrate that recourse to postponing the public hearing was taken because of the orders of the MoHA and advisory issued and extended from time to time by the MoHFW. On the teeth of the orders/advisories issued by the MoHA and the advisory issued by the MoHFW

prohibiting congregation/gathering of people, public hearing could not have been allowed to be conducted by the respondent No. 6. In the background of the facts which culminated in postponement of public hearing, the expression ‘unavoidable circumstances’ fits in with the expression ‘untoward emergency situation’ and ‘exceptional circumstances’.

46. In view of the above discussion, we find no merit in this application and the same is dismissed. The respondents will now deal with the request made by the respondent No. 7 vide application dated 22.06.2021 in accordance with law.

